



EXHIBIT U 17

**ANDILE ZOLA
TSOTSI**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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STATE

AFFIDAVIT

I, the undersigned

ANDILE ZOLA TSOTSI

Do hereby state under oath in English:

1.

I am an adult male with ID 4607245514086. I am a pensioner.

My contact details are:

Cell: 083 654 2778 / 065 842 4216

E-mail: zola.tsotsi@gmail.com

The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.

2.

My qualifications include two degrees, one a Bachelor of Science Honours in Mathematics and Chemistry from the University of Botswana, Lesotho and Swaziland (UBLS) in Lesotho in 1970, the other a Bachelor of Science in Chemical Engineering from the University of Surrey, United Kingdom in 1974.

2015

3.

- 3.1. I began my working career in 1974 with UOP based in Chicago, Illinois, USA. UOP is a Process Engineering company specializing in the engineering and commissioning of petroleum and petrochemical processes. After 9 years, I resigned and started Afritek Consulting in 1983 in Lesotho, an engineering company to consult in the then upcoming Lesotho Highland Water Project Phase 1. Following the democratic elections in Lesotho in 1993, I was appointed the Director General of the Ministry of Natural Resources. I resigned in 1995 to return to South Africa where I was appointed Environmental Affairs Manager in Eskom. I also served as Corporate Strategy Manager until I took early retirement in 2004 to start up a renewable energy company called Maisha Energy.
- 3.2. I started serving on the Board of my own company as Executive Chairman in 1983. During my stint with the Lesotho government, I was appointed Chairman of Lesotho Electricity Corporation, Water and Sewerage Authority, and Lesotho Highlands Development Authority. In 2004, the Lesotho government set up the Electricity Regulator called Lesotho Electricity Authority and I was invited to become its first Chairman. On completion of this role, I was appointed Chairman of Eskom Holdings in 2011. All the chairmanship appointments in the State Owned Entities were non-executive.

4.

- 4.1. I was appointed to the Board of Directors of Eskom Holdings (Pty) Ltd in July 2011. At the time of the said appointment, Mr. Malusi Gigaba ("Gigaba") was the Minister of Public Enterprises.
- 4.2. I was approached by Mr. Siyabonga Mahlangu ("Mr Mahalangu") who was then the Advisor to the Minister. He inquired if I would be interested in serving on the Board of Eskom, whereupon I responded in the affirmative after I had considered the matter over some days. I duly submitted my CV on his request and after a few months, I met with the Minister for an interview following which I was offered to chair



the Board. I accepted the responsibility. I was formally appointed for a 3-year term which was renewable once at the Shareholder's Representative's discretion, i.e., the Minister. Eskom was to become the 5th State Owned Entity ("SOE") that I would be Chairman of.

- 4.3. By the time of the end of the first term of the Board, Minister Lynne Brown ("Brown") had succeeded Gigaba as Minister.
- 4.4. The Ministry had put out an advert in the newspaper asking interested individuals to apply for non-executive director positions on the Eskom Board. I duly submitted and was informed in writing that my application was successful and that my second tenure would commence on 11 December 2014. I was re-appointed as Chairman.
- 4.5. I was not informed as to why Ms Chwayita Mabude and I were the only ones from the out-going Board re-appointed. I had no knowledge of who had re-applied.

5.

Relationship with the Ministers

- 5.1. I found former Minister Gigaba in office on my arrival. He was Minister for the majority of the duration of my first term on the board. He left in May 2014 and my first term ended in December 2014. I had got to know Minister Gigaba during the time of his service in the Youth League of the ANC.
- 5.2. Minister Brown arrived shortly after the departure of Minister Gigaba. I had not known or met Minister Brown prior to her arrival.
- 5.3. I found Minister Gigaba quite an easy going person and rather knowledgeable about Eskom. I had set up monthly reporting meetings with him and these interactions were productive. I recall some of the occasions when we went into different communities during the 49M campaign just how well he represented our commitment to educating our people about the optimal use of electricity and how



he created space for Eskom at the level of the Chairman to connect with a large spectrum of its customer base.

5.4. Minister Brown and I had an overlap of about 8 months. I tried to create a schedule of regular meetings with her but this did not materialize. I struggled to communicate with her on matters of the company and would only get her attention when there was a problem she wished to address. Her modus operandi were to communicate directly with some of the executives on specific company matters, which approach I felt was divisive.

6.

Relationship with the Guptas

6.1. The ANC had its usual fund raising Gala Dinner on the eve of the January 8 rally in Nelspruit in 2014. Eskom and the SABC were 2 of the main sponsors, and so the chairpersons of these SOEs were afforded not only the opportunity to address the gathering, but also offered seats at the high table which consisted of the ANC "Top Six" and 2 of the older Gupta brothers. The table had name tags so those who did not know one another were able to introduce themselves. This was the first and the only encounter I had with these Gupta brothers. I never got to see or talk to them thereafter.

6.2. I was requested by Mr Tony Gupta to meet with him at their Saxonwold residence on some 3 occasions and once at their Sahara Computers offices in Midrand.

6.3. Tony Gupta generally asked me for assistance on matters they were experiencing some problem with Eskom on, as well in situations where they could advance their business interests.



6.4. My response depended on how much knowledge I had on the matter in question. If I did, I would respond there and then, otherwise I would look into the matter and respond appropriately.

6.5. It was on matters of process that I found him difficult to deal with. He seemed to make little of the fact that management in State Entities is very process lead.

6.6. Tony Gupta explained that they had an interest to supply gas to the Western Cape and saw Eskom's Open Cycle Gas Turbine Plant as an anchor tenant for that business. Consequently, they were looking for exclusivity and wanted to sign an MOU with Eskom. It transpired that this MOU had already been negotiated by another company and at that juncture was with the Department of Energy for signature by the Minister, as was the practice. I explained to him that, not only was the MOU agreed with another party, but it was also beyond the jurisdiction of Eskom. After he discovered who the beneficiary of the MOU was, he promptly accused me of working with "Baba's enemies".

6.7. During the impasse of the TNA contract when the award of the contract by Acting CEO Colin Matjila was under scrutiny for irregularity, I was requested by Tony Gupta to "make this problem go away". I responded that this I could not do as there were processes in place that must take their course. For the first time in my encounter with him, he showed visible signs of anger and frustration as he kept insisting that I was not interested in assisting him.

6.8. There was a position on the organogram of the Procurement Division of Chief Procurement Officer. This position was unoccupied. Tony Gupta approached me to request that I help him fill the position with a person from MTN. I assumed that there was an advert out for this position and that he wanted me to drum up support for his candidate. I discovered that in fact the position was not even advertised and advised him that his candidate would have to compete for the



position with others when it is advertised. He insisted that I am the boss and can make it happen. I informed him that I don't make operational decisions.

6.9. Tony Gupta, made no secret of their intention to influence public servants to assist them with their business interests. He easily spoke disparagingly of those who did not want to assist them, and branded them as "Baba's enemies", a reference to President Jacob Zuma. I found it rather disconcerting that Tony Gupta could wily nily bandy about the name of the President of the Republic at the drop of a hat, let alone invoking expletives in reference to members of the Executive! Observing this behavior, I came to the conclusion that their proximity and ease of access to the President and his Executives is their source of power which emboldened them to direct the affairs of SOEs and Government Departments as has been attested to previously before this Commission.

7.

Events around the SONA of 2015

7.1. A day or two before the State of the Nation Address ("SONA") of February 2015, I was summoned by Minister Brown to her office. The substance of our conversation was as follows: *"Chairman, I have received complaints from management and Board members that you are interfering in management. Please refrain from doing so, because if you don't, I shall have to find someone else to do your job!"* My response was *"Most Board members hardly know what I look like, let alone not having worked with me yet. As for management, if scrutinizing their behavior and decisions and calling them to account constitutes interference with management, then I will happily continue doing so. If you had acceded to my request that we have regular briefing sessions, even this meeting would not have been necessary."*



7.2. The Minister's verbatim response was *"Chairman, you go and do what you have to do, and I will go and do what I need to do. There is no reason for you and I to talk about anything."* That is how the meeting ended.

7.3. On the same day, (the day or two before the SONA in Cape Town), Tony Gupta called and requested that we meet. He suggested that the meeting be at their residence in Constantia, to which I agreed. It turned out that the meeting was intended to tell me that I am not supportive of their business endeavors. He went on to say, *"Chairman, we are the ones who put you in this position, and we are the ones who can take you out!"*, whereupon I responded that *"You do what you have to do, let me carry on with the job that the Cabinet has given me"*.

7.4. What was ironical about this incident is that it occurred a mere few hours after my encounter with the Minister, who, for all intents and purposes, said the same thing to me

7.5. Following the breakfast meeting the President hosted the morning after the SONA, he did a walk about among the guests and when he approached our table, I stood up to greet him, whereupon he inquired how things are going at Eskom. I fleetingly said in response that I have an idea that we institute an external inquiry into the problems the company is experiencing. His response was *"qhubekani nisebenze"*, meaning carry on working.

8.

Responsibilities of the Chairman

8.1. The Chairman is responsible for the organization and management of all Board related matters, namely, meetings of all descriptions, excursions, remuneration, Board Sub-Committees, executing and monitoring of Board decisions and mandates, as well as Board evaluations.



8.2. On the strategic side, communication with the Shareholder's Representative on Company matters is the Chairman's responsibility. The highest accountability, and probably the most difficult, is for the Chairman to ensure that the Board and management, and by extension the whole company, is acting in the best interest of both itself and its stakeholders wherever they may be.

8.3. In general, the Board Chairman is the point of contact between the company and the Minister, whereas the Chief Executive has direct contact with the Director General.

8.4. At the level of the President, it is the Minister that communicates directly. The Minister is at liberty to invite the Chairman to a meeting with the President as deemed appropriate. Though there is no fiduciary relationship between the President and a Director of the Company, the President may summon a Director to a meeting.

9.

Responsibilities of the Board

9.1. The primary duty of the Board of Directors is to provide oversight over the business of the company at the behest of and on behalf of the Shareholder. In so doing, it is required to direct the affairs of the company within the framework of a set of laws (Company Law, PFMA, MOI etc.), prescripts (Shareholder Compact, Corporate Plan, Regulatory Mandate, etc.) employing management to operate the business so as to give effect to its outputs.

9.2. The Board discharges its responsibility through a number of Board Sub-Committees, breakaways (management interactions), Parliamentary Portfolio Committee meetings (Legislative Stakeholder interactions) and Annual General Meetings (Shareholder interactions).



10.**Board meetings**

- 10.1. Of the Board meetings that fall within the period January to March 2015, the only meeting that was scheduled was the 26 February meeting. The reason was because there are only 6 scheduled Board meetings per annum, and this was the first for the year.
- 10.2. The induction meeting occurs only when a new Board comes into being. It is not classified as a Board meeting as it has no statutory and fiduciary status. consequently, no decisions binding on the company can be taken in this meeting. These induction meetings are organized by the Shareholder.
- 10.3. The Board meetings convened for the 9 and 11 March 2015 are in fact classified as Special or Emergency Board meetings. The company prescripts stipulate that there must be a minimum of 7 days' notice for Board meetings. These two were convened at shorter notice.

11.**1st Board meeting – 26 February 2015**

- 11.1. At about 9pm on 25 February, on the eve of the first scheduled Board meeting, I received a phone call from then President Jacob Zuma. He told me he has been trying to reach Minister Brown, failing which he tried finding Deputy Minister Bulelani Magwanishe. Having failed to find the Deputy Minister too, he found the Acting Director General Matsietse Mokholo, who he informed that the Board meeting is to be postponed. He asked me if I had heard from her whereupon I responded I had not. He told me to expect her call. That was the extent of our conversation.
- 11.2. I was receiving a phone from President Zuma for the first time.



- 11.3. In regard to the postponement of the meeting, I would have expected to have been informed by the Minister in her capacity as the Shareholder Representative with whom the Board has a fiduciary relationship because she has the legal capacity to make this decision.
- 11.4. Board meetings have different categories. There are the Ordinary Board Meetings which are scheduled throughout the year. The draft schedule for these meetings is circulated to Board members towards the end of the preceding year for their comment. Once dates are firmed up, the final schedule is signed off by the Chairman and the published in the formal meeting roster of the company. None of these meetings may be cancelled because each one is designed to deal with specific aspects of the business which have to be addressed at specific times. Examples would be the Shareholder Compact, Corporate Plan, Integrated Report, Auditing of Financial Statements, Annual General Meeting, MYPD (Tariff) Application etc. These meetings can however be postponed on the understanding that they will be rescheduled. Postponement can either be canvassed among Board members for good reason, or may be effected by the Chairman under plausible circumstances, or may be requested by the Minister.
- 11.5. Then there are Extra-ordinary Board meetings, which usually far exceed the Ordinary Board meetings in frequency. When one takes into consideration the size of the business, one has to appreciate that the complexity thereof is proportional to the size. There is pressure for continuous decision making at the highest level. These meetings can be postponed or cancelled in consultation with Board members, or by the Chairman with good reason.
- 11.6. Another categories of meetings are Special and Emergency Board Meetings. The former are usually convened at the request of Shareholder's Representative (Minister) and generally address one issue of particular concern. Emergency



Board Meetings occur when there is a particular emergency. Both these types of meetings are convened by the Chairman.

- 11.7. All these kinds of meetings can be postponed by the Minister. It is unclear as to whether the Minister has the obligation to give reasons for postponement of Board meetings.
- 11.8. Shortly after I had spoken with President Zuma, I received a call from the Acting Director General Matsietsi Mokholo who informed me that the Minister has asked that I postpone the Board meeting. I inquired from her as to the reasons for the postponement. She informed me that she was not given any.
- 11.9. Immediately after this call, I instructed my office to send out the notice of postponement to all Board members.
- 11.10. This instruction to postpone the meeting was the first ever in the course of my tenure as Chairman.
- 11.11. In my telephone conversation with President Zuma, the President did not give me any reason for the postponement of the meeting.
- 11.12. I instructed my office to inform Board members of the postponement.
- 11.13. Whilst it was the President who communicated the need to have the meeting postponed, the actual postponement of the meeting was on the instructions of Acting DG who informed me that the Minister had asked for the postponement. Hence the communiqué to the Board members spoke of the postponement of the meeting by the Minister.



12.**Meeting at President's residence in Durban**

- 12.1. A day or two before the 7th March 2015, I received a phone call from Ms Dudu Myeni ("Ms Myeni") who informed me that the President would like and audience with me on 7th March 2015 at his Durban residence.
- 12.2. I asked what the purpose of the meeting is, whereupon she declined to discuss the matter over the phone.
- 12.3. My understanding at the conclusion of the telephone conversation was that the meeting is being requested by President Zuma.
- 12.4. Ms Myeni was at that time the Chairperson of SAA. My understanding of Ms Myeni's role is that of a messenger for the President, not the convener of the meeting.
- 12.5. On my arrival at the Presidential Residence in Morningside, Durban, I found Ms Myeni and her son Talent. Soon thereafter a gentleman named Nick Linnell arrived.
- 12.6. We immediately began a discussion of what was going to be presented to the President. This discussion was led by Dudu Myeni. She explained that the situation of Eskom's financial stress and poor technical performance warranted that an inquiry into the company be instituted. She further elaborated that, in the course of the said inquiry, 3 executives, namely, Chief Executive Tshediso Matona, Group Executive for Commercial Matshela Koko, and Group Executive for Group Capital Dan Marokane are to be suspended.
- 12.7. I found this matter altogether shocking and proceeded to question the need for suspending these executives as I saw this as a recipe for inducing instability in the company. She retorted that even the War room was experiencing frustration with the deteriorating performance of the Company, and that the inquiry was essential.



In her view, the suspensions of the executives will not create difficulties because it will be explained that they are not accused of wrongdoing, but are being asked to allow space for the inquiry to proceed unencumbered by their presence. Following this discussion, we went inside the residence and moments later the President joined our company.

- 12.8. After some pleasantries, the President inquired what was up for discussion, whereupon Ms Myeni began by saying that the performance of Eskom financially and technically is deteriorating to the extent that there is a serious concern that the company could fail to meet its obligation to supply electricity to the nation.
- 12.9. She pointed to the discussions that are going on in the War Room on the Company's poor performance, saying that even the War Room is very dissatisfied with its performance.
- 12.10. She then arrived at the conclusion that there needs to be an external inquiry into the performance of the company. She further proposed that 3 executives be suspended to make sure they do not impede this inquiry.
- 12.11. I responded by saying the idea of an inquiry was one I had always expressed even before the advent of the new Board. However, I disputed the suggestion of suspensions.
- 12.12. The President then inquired as to whether I knew which executives were to be suspended, whereupon I responded that I knew as Dudu had mentioned them in the discussion prior to this meeting. His response gave me the impression that he had been privy to this discussion.
- 12.13. Dudu Myeni had informed me on my arrival that Nick Linnell is a lawyer who she had commissioned to advise her at SAA and would be available to do the same for



us at Eskom. He made a few comments about how he thought the inquiry would be structured, and that it needed to be completed in 3 months.

- 12.14. I made the observation that it would be preferable if another way of recusal of the executives was applied as suspensions will likely bring instability into the organization and anxiety among investors. I committed to look into the company Human Resources rules for this purpose.
- 12.15. The President then suggested that I take this proposal to be looked at by the Board. He will in the meantime inform the Minister of these developments.
- 12.16. Ms Myeni seemed to have intimate knowledge of what was discussed in the War Room, though I did not know how she came about this knowledge.
- 12.17. The War Room was attended by Ministers and officials of a number of Ministries as well as Eskom executives.
- 12.18. From Eskom the attendees of the War Room were selected by the Executive Committee of management.
- 12.19. Matters discussed at the War Room were kept private and confidential
- 12.20. There was never any discussion as to who should be suspended. This decision was made somewhere by others before I became involved.
- 12.21. The individuals chosen for suspension were the Chief Executive Tshediso Matona, Group Capital Head Dan Marokane, and Technology and Commercial Head Matshela Koko.
- 12.22. My assessment is that each attendee had an interest in the creation of the Eskom inquiry with the exception of Talent who did not speak throughout.



13.

Interaction with Mr Linnell

- 13.1. I was introduced to Nick Linnell by Ms Myeni at the residence of the President in Morningside, Durban. He was said to be a lawyer.
- 13.2. Ms Myeni informed me that Mr. Linnell had assisted her before at SAA with issues she needed to be solved, and that he will be in a position to assist us at Eskom. I assumed that this is the reason that Nick Linnell was invited to the meeting.
- 13.3. At the end of the meeting with the President, Nick suggested that he would prepare a memorandum on the process to be followed, and an associated resolution for the Board.
- 13.4. Prior to this meeting, I had never met Nick Linnell.
- 13.5. Mr. Linnell and I worked closely once I had the opportunity to present the idea of the inquiry to the Board. He decided to travel directly to Johannesburg from Durban instead of going home to Cape Town first. On the morning of the Special Board meeting on 9 March, he was available on standby at my request should he be required to brief the meeting. On the Wednesday 11th March Board meeting he was present and responded to some questions on the Resolution he had prepared which had been circulated during the Monday 9th meeting.
- 13.6. Mr. Linnell continued to provide advice throughout the time of the work towards the suspension of the executives and beyond until I resigned. He stressed the importance of credibility in addressing this matter



- 13.7. Mr. Linnell first produced the memorandum which was setting out the rationale for the inquiry and the attendant resolution for the Board. He also produced and shared the letters of suspension of the executives, the press release and a draft Terms of Reference for the inquiry.
- 13.8. I did not give Mr. Linnell any mandate.
- 13.9. When he appeared before the Board, he was requested by some Board members to assist the People and Governance and Audit and Risk Sub-Committees.

14.

Board meeting of 9th March 2015

- 14.1. The Board meeting of 9 March was convened in response to the visit I had to the President's residence as I have described.
- 14.2. Given that the President had asked that I canvass this proposal for an Inquiry with the Board, I decided to call a Special Board meeting to test the Board's appetite for this proposal.
- 14.3. At the Special Board meeting of 9 March 2015, I informed the Board that I had been summoned to the President's residence for a meeting wherein the proposal for an Inquiry into the state of affairs of the company was made.
- 14.4. At the meeting doubt was cast on the quality of information that was coming from Eskom to the War Room.
- 14.5. The Board is being requested to consider instituting this Inquiry such that it is unfettered by management and other stakeholders.



- 14.6. I also presented the resolution that was prepared by Nick Linnell.
- 14.7. In the course of the discussion by the Board, I proposed that the Board invite the Minister for her to give the Board guidance on this matter.
- 14.8. Mr. Linnell had prepared a Memorandum which I had circulated to Board members in advance of the meeting. This document was presented and discussed at the meeting.
- 14.9. Mr. Linnell had offered to prepare the resolutions and I requested him to go ahead with the work so that I have something to present to the Board.
- 14.10. At the end of the Board meeting, it was concluded that the Minister be invited to engage with the Board on this matter.
- 14.11. To the best of my recollection, I contacted the Minister at the conclusion of the Board meeting.
- 14.12. The request for the Board to meet with the Minister meant that it was at the convenience of the Minister that the meeting will take place. Consequently, the meeting was agreed for the 11th March to accommodate the Minister's schedule.

15.

Board meeting of the 11th March 2015

- 15.1. The Board meeting of the 11th March had a 2-fold purpose. The first was it was intended to make up for the 26 February meeting that got postponed. Secondly, the Minister had indicated that she was available to attend on this day.



- 15.2. Mr. Linnell spoke on the resolutions which stemmed from the memorandum he had developed. The resolutions were circulated to Board members in the meeting of 9 March 2015.
- 15.3. Mr. Linnell was requested by me to introduce the idea of the inquiry to the Board. Board members asked a number of questions for clarity.
- 15.4. It is also at this meeting that the Board requested Nick to work with the 2 Sub-Committees that were mandated to pursue the Inquiry matter.
- 15.5. The Minister joined the Board meeting of 11 March by invitation from the Board. She was already aware of the idea of an Inquiry and she supported it. She gave the Board the authorization to proceed with it. (The minutes of this meeting are missing)
- 15.6. The Minister mandated the Board to carry out the suspensions of the executive. She even added the name of the Financial Director who was not part of the original 3 executives identified in the meeting at the President's residence. She further mandated the Board to carry out the Inquiry.
- 15.7. The Board deliberated on how the inquiry should proceed. It agreed on the need to have the executives whose area of responsibility would be inquired into be set aside for the duration of the inquiry.
- 15.8. The limitation of the human resources rules meant that the executives would have to be under precautionary suspension as there was no other method of recusal available.



- 15.9. The individuals who were to be suspended were identified as the Chief Executive Mr. Matona, Group Capital Executive Mr. Marokane, Technology and Commercial Executive Mr. Koko, and Financial Director Tsholofelo Molefe.
- 15.10. The Audit and Risk Committee was mandated to be responsible for setting up the terms of reference of the inquiry, and the People and Governance Committee would manage the process of suspensions.
- 15.11. The People and Governance Committee was to look into who would act in the positions of the suspended executives.
- 15.12. In order to mitigate any negative impact the suspensions may have on the Company; the inquiry was set to be completed in 3 months from inception.
- 15.13. It was agreed that the Terms of Reference which would form the basis for the inquiry should be developed by the Audit and Risk Committee.
- 15.14. When the Terms of Reference were being decided upon and subsequently drawn up, I was no longer involved and left whilst this process was in progress.
- 15.15. The basis of the suspensions of all the executives was the same. The idea was that none of them were to be able to gain unfettered access to the company for the duration of the inquiry to ensure that the work of the inquiry is not interfered with.
- 15.16. The executives were individually called to appear before the People and Governance Committee and informed of the suspensions.
- 15.17. The letters of suspension were read out to them. I assured each one that their suspensions were not occasioned by any preconceived wrong doing on their part.



- 15.18. The executives were not given more than the time of their appearance before the committee to deliberate on the suspensions.
- 15.19. I arrived at the People & Governance Sub-Committee shortly after it had started and on my arrival I found Ms Chwayita Mabuda Chairing the meeting. She pronounced the names of the executives who were going to act. There was no discussion as to which executives were suitable to act. At some point Ms Klein took over the proceedings. I was asked to handle the suspension presentations to the executives.
- 15.20. I objected to the inclusion of the name of the FD to the list of executives to be suspended as I felt this would create a problem with our investors and lenders. In so doing, I was exercising my fiduciary obligations in the interest of the Company. However, I was outvoted by my fellow Board members.
- 15.21. It was Dr, Ngubane who responded that the name was provided by the Minister whereupon I decided to call the Minister to register my objection.
- 15.22. The Minister insisted that the name of the FD be included.
- 15.23. I objected to the name of Khoza as acting Chief Executive as he was a Board member given the experience from the previous board of appointing a Board member to the Acting CE's position. He himself stated that he did not feel up to the responsibility.
- 15.24. Notwithstanding anything, it appeared that these names were cast in stone and no amount of objection was going to change the list.



- 15.25. The executives designated to act were Khoza as CEO, Nonkululeko Veleti as FD, Abram Masango as Group Capital Executive and Edwin Mabalane as Technology and Commercial Executive.
- 15.26. It was clear that the People and Governance Committee played no role in the selection of the executives who were to act.
- 15.27. There appear to be some errors and omissions in the minutes of this meeting. I am sited as having chaired the meeting. My recollection is that the meeting was chaired by Chwayita Mabude. Further, the minutes make no mention of the pronouncement of the executives who were going to act, including my objections.

16.

Acting positions

- 16.1. I never got to know or told when and how the executives were informed of their acting roles.

17.

Dentons investigation

- 17.1. I had already left Eskom at the time the decision to appoint Dentons was under discussion.

18.

Board meeting of 30 March 2015: Charges laid by the Board against me

- 18.1. Charge 1: The Director procured the services of an external consultant, Mr. Nick Linnell, to provide consulting services to the company without following the Company's prescribed procurement processes or informing the Board of his actions. In so doing, the Director crossed the line from being a non-executive Director to exercising executive power without the requisite authority.



- 18.2. Response: I traced the history of Nick Linnell's activities from the time of the 9 March Board meeting, the support he gave to both the Board and the ARC and P & G Sub-Committees. P & G declined to deal with the matter of Mr. Linnell's appointment but instead preferred that the Board handle it. Mr. Linnell could only be considered employed by the Board if he had a written letter of appointment or contract signed by the Chairman, or had received some remuneration or compensation for the work he had done for the Board.
- 18.3. Charge 2: The consultant commenced with his work to the knowledge of the Director and without the Board of Directors being informed that the work had commenced within the Company. The Director was aware that no contract of engagement for the Consultant had been concluded, thus exposing the Company to non-compliance with applicable statutes and procedures.
- 18.4. Response: Mr. Linnell was merely assisting the Board pro bono. Commencing work is only possible if it is triggered by some action of engagement by myself or the Board. Incidentally, by the same token, Mr. Kumalo, a Board member, organized a media specialist Mr. Happy Ntshingila to review a media statement that had been produced by the P & G.
- 18.5. Charge 3: The Director authorized the commissioning of a media statement in relation to an inquiry into the affairs of the Company with the assistance of the Consultant without the knowledge and consent of the Board. The media statement consequently fell into the public domain. The media statement contained numerous inaccuracies and misinformation which may lead to the company facing potential legal action from third parties named therein.
- 18.6. Response: I informed Mr. Linnell that the Minister of DPE had called me to request that I correct the misconception in the public domain that I would be leading the Inquiry. This was necessary for the integrity of the Inquiry. I requested Mr. Linnell



to draft a media statement. In it he had made some suggestions such as appointing a retired judge to head the Inquiry, and retaining the services of Grant Thornton to conduct some aspects of the Inquiry. I asked Mr. Linnell to forward the statement to the Company Secretary and my office executive. I asked the latter to send it out to the Board members for their approval as well as the Minister. Both the Minister and Board members who responded objected to the content of the press release. I then instructed the Company Secretary not to release it. I therefore had no knowledge as to how it got into the public domain.

- 18.7. Charge 4: The Company is in the process of establishing the Inquiry and the Director's actions put the integrity of the process and the Inquiry itself at risk. The Director's conduct has undermined the reputation of the Board.
- 18.8. Response: The idea of the Inquiry had been accepted by the Board. At no stage did the Board not know what was happening. A number of the steps the Board took were as a result of the advice of Mr. Linnell. I consulted the Board on this matter as a result of the instruction from the Minister.
- 18.9. Charge 5: The Director's actions did not meet the minimum requirements of the standard of care expected of him as a director of the Company and a member of the Board.
- 18.10. Response: I am of the view that the Inquiry was necessary in the public interest to indicate to the public that the Board was looking into the affairs of the Company. My letter of 26 March provide3d specificity around my action.



19.

My resignation at Eskom

- 19.1. Following the Board meeting of 30 March 2015 where charges against me were proffered, there was an In-Committee meeting wherein the Board took a decision to remove me as a Director.
- 19.2. I was approached subsequently by a delegation of the Board consisting of Mr. Khumalo and Dr. Ngubane. They informed me of the Board's decision, and persuaded me to accept it and that we would jointly draft a press statement confirming mutual agreement of an amicable separation, whereupon I decided to consult with my legal team.
- 19.3. Notwithstanding that my legal counsel concluded that the Board had a weak case against me, I decided not pursue the matter any further. I reasoned that because the Company was by then in a precarious position, it would be in the interest of the Company for me not to exacerbate the situation by thrusting it into a legal battle for my own personal gain.
- 19.4. I returned to the Board In-Committee meeting whereupon I tendered my resignation.
- 19.5. I stated that, as a director of the Company, I am entitled to payment of my legal defense as this was a Company matter, to which the Board concurred.
- 19.6. I asked that I be paid the balance of my term as Director, as I had 3 months left of it. The Board responded that remuneration of Directors is the competence of the Minister. They would recommend it but the Minister would have to approve.



- 19.7. I asked that retain the Company cell phone and tablet with the understanding that I would pay for their use. The Board agreed to this proposal.
- 19.8. A few days later after I had left Eskom, I was approached by a media organization for an interview. In the interview, I alluded to the fact that I believed that Minister Lynne Brown had a hand in my departure from Eskom.
- 19.9. Shortly thereafter, Dr. Ngubane called me to inform me that he had passed on my request for payment to the Minister. He further stated that, if I did not retract my statement I made about the Minister, I would not get paid.
- 19.10. Indeed, a week or so later, he called for us to meet, whereupon he showed me a one sentence letter from the Minister addressed to him saying that my request for payment had been declined.
- 19.11. Since the release into the public domain of the Gupta emails, it has come to my attention that reference was made to communication between Dr. Ngubane and a certain Mr. Howa who was then the editor of the New Age newspaper. It stated that Mr. Howa would assist Dr. Ngubane in drafting a media statement detailing my departure from the Eskom Board. This communication took place some 10 days before the matter of my resignation from the Board was discussed.

20.

Salim Essa

- 20.1. My first encounter with Mr. Salim Essa was at one of the TNA Breakfasts sometime around mid-2014. He was introduced to me by Tony Gupta as one of his business associates.
- 20.2. On one occasion thereafter, a company called Regiments had made an unsolicited offer to Eskom to raise much needed funds for Eskom via a methodology called



"Balance Sheet Optimisation". I asked the Acting CE and FD if this is something they think would benefit the Company. The CE was interested in exploring this proposal but the FD questioned Regiment's track record in this regard and opposed to the idea. Regiments had wanted some compensation from Eskom for placing the unsolicited solution. However, Management ultimately declined the offer.

- 20.3. The other occasion was when the new Board came into being where I was required to place Board members in Sub-Committees of the Board. Salim Essa sent me his configuration and asked that I pass it on to the Minister as my submission.
- 20.4. I quietly ignored his submission and sent mine to the Minister, whereupon the Minister responded with the exact submission I had received from Salim Essa.
- 20.5. I kept going back and forth with this process of chopping and changing the allocations with the Minister, until she called me to a meeting. At the meeting was Salim Essa and Tony Gupta. She merely informed me that the Board allocations will be the way she had sent them to me. This she did in the presence of these 2 gentlemen.
- 20.6. I do not know if Mr. Essa had any involvement in my resignation from the Board.
- 20.7. Mr Essa was never present at any of the meetings I had with Tony Gupta.

21.

The appointment of Mr Matjila as Interim CE

- 21.1. Brian Dames was to leave at the end of March 2014. The Board decided that no Board member would act in the position of CE.



- 21.2. The Board further decided to propose Dr. Steve Lennon to act in the position.
- 21.3. The reason for the choice of Dr. Lennon was because he had extensive experience of Eskom's business and that he had stated that he would not be contesting the position.
- 21.4. The Board duly mandated me to seek the concurrence of Minister Gigaba on the acting position by Dr. Lennon. The Minister initially agreed to the proposal.
- 21.5. Shortly before Brian Dames was to leave at end of March 2014, Minister Gigaba berated me over the phone for the choice of Dr. Lennon, saying that appointing a white man would prejudice the ANC's chances of attracting voters for the general election due in a few months.
- 21.6. The Minister informed me that he had decided to propose that Colin Matjila should act in the position of CE.

22.

T-SYSTEMS

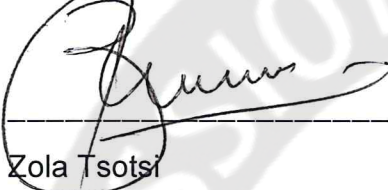
- 22.1. To the best of my recollection, the extension of the T-Systems contract was a matter dealt with by management. The Board or Chairman had no involvement in it save for a report to the Board by way of information. I do not recall the details and background around this matter.



After completion of the statement, the following questions were put to the deponent and his answers were recorded accordingly:

1. Q. Do you know and understand the contents of this statement?
YES
2. Q. Do you have any objections in taking the prescribed oath?
NO
3. Q. Do you consider the prescribed oath as binding in your conscience?
YES

I believe the statement gives a fair account of the event that happened.


Zola Tsotsi

13/02/20
Date

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Mthatha on the 13 day of February 2020, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.


Commissioner of Oaths

COMMISSIONER OF OATHS



21 November 2017

ANNEXURE 'SJT-4'

Statement to Portfolio Committee on Public Enterprises

I feel privileged to have been afforded the opportunity to appear before this committee so that I may make my contribution towards the unravelling of the issues that have contributed to current state of affairs at Eskom. The lapses in good corporate governance that have been occasioned by poor decision making have opened up the company to exploitation by unscrupulous rent seekers. Those of us who have been and continue to be at the forefront of these events, including any who may have even peripheral knowledge thereof, have both the responsibility and moral obligation to voluntarily provide this knowledge to this Committee and the nation.

In accordance with the information I received that Eskom will make available any documentation I may require in support of my preparation for my appearance before this Committee, I regret to say that, despite numerous requests, Eskom did not avail me a single document. I have therefore had to rely on my memory of the pertinent events during my tenure at Eskom. This is unfortunate as it limits my ability to support the work of this committee. Be that as it may, I am here committed to presenting my recollections to the best of my ability.

1. The TNA Contract

- 1.1 On my arrival at Eskom in 2011, there was an existing TNA contract which was in progress. It was due to expire in about June 2014. At the time of its expiry, Collin Matjila was Acting Chief Executive.
- 1.2 Mr Matjila acceded to the request that the contract be renewed. In so doing, he failed to apply a provision in the delegation of authority that enjoined him to deal with sponsorship through a Committee that was put in place to deal with such matters thus by-passing the process and acting outside of his delegation of authority. The finance Director among others in his management

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team raised objections to his actions, contending that he used the wrong delegation of authority, and that the correct one would require him to make the decision on sponsorship as part of a Committee.

- 1.3 Mr Matjila disputed this position and proceeded to sign the contract. A whistle blower reported this action to the chairperson of the Audit and Risk Committee, stating that the acting CE had flouted procurement regulations. The ARC chairperson then brought the matter to the attention of the Board which duly delegated the ARC to institute an audit inquiry into the matter.
- 1.4 The ARC appointed Sizwe Ntsaluba Goboda who produced a report with a finding that Mr Matjila had interpreted his delegation of Authority incorrectly by using a wrong process to award the TNA contract, thereby infringing the provisions of the PFMA in that his authorised expenditure would then be irregular.
- 1.5 Mr Matjila then requested the Board to seek a legal opinion in this matter, to which the Board agreed.
- 1.6 The legal opinion was provided by the firm of Ledwaba Mazwai Attorneys who upheld the SNG findings that Mr Matjila had acted outside of his delegated authority and recommended that the Board discipline the Acting CE. At this point, Mr Matjila was no longer with the company as the substantive CE Mr Matona was then in office, so the Board could not institute disciplinary action after the fact. Further, the lawyers advised that cancellation of the contract would result in expensive litigation and serious losses to the company. They also afforded the Board advice that meant accepting the contract, i.e., ratifying it meant accepting responsibility for Mr Matjila's breach. After deliberations the Board accepted this advice as an irregular expenditure finding was too ghastly to contemplate. The board then resolved to let the contract run the remaining few months of the extension.

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2. IT Procurement

2.1 I had established a practice of having regular weekly briefing meetings with the Chief Executive. At the time of the procurement of the IT services, Mr Matjila was Acting CE. It was in one of these meetings that I was, for the first time, informed that there was an IT services procurement process in progress to replace T- Systems contract.

2.2 I next learnt from the report of the Board Tender Committee (BTC) to the Board that the process had hit an impasse in that the negotiations with the preferred bidders were unsuccessful. Consequently the recommendation to the BTC was to extend the T-systems contract for a further 2 years.

2.3 To the best of my recollection, circumstances of the suspension of Mr Sal Laher were never raised at the Board, neither before nor after the suspension.

3. The Duvha Boiler

3.1 The procurement process of the Duvha Boiler was started after my time at Eskom. I therefore have no knowledge of this matter.

4. Suspension of 4 Executives

4.1 In order to do justice to the matter of the circumstances surrounding the suspension of Messrs Matona, Koko, Morokane and Molefe, please indulge me to sketch some of the events that occurred prior to this, which events take us to the time of the appointment of the new Board in early December 2014.

4.2 During the first 6 or so weeks the new Board members were busy with inductions and only started to get to grips with Eskom's business towards the end of January 2015.

4.3 In the period from the arrival of Minister Brown at Public Enterprises Department in May 2014 till the new Board was in place, I had been trying to

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cultivate a working relationship with the Minister and aspired to achieve one similar to how I related with the previous Minister Gigaba.

4.4 It became patently clear to me that I was not succeeding in this regard when the Minister called me to a meeting a day or two before the State of the Nation Address (SONA) in February 2015. At this meeting, she stated as follows: "Chairman, I have received complaints from management and Board members that you are interfering in management. Please refrain from doing so, because if you don't, I shall have to find someone else to do your job!" My response was "Minister, most Board members hardly know what I look like, let alone not having worked with me yet. As for management, if scrutinising their decisions and behaviour and calling them to account constitutes interference with management, then I will happily continue doing so. If you had acceded to my request that we have regular briefing sessions, even this meeting would not have been necessary" where upon the Minister responded by saying, "Chairman, you go and do what you have to do, I will go and do what I have to, there is no reason for you and I to talk about anything." That is how the meeting ended.

4.5 The very same afternoon, I was approached by Tony Gupta (Tony) who requested that we meet. At the meeting, Tony told me "Chairman, you are not helping us with anything. We are the ones who put you in the position you are in. We are the ones who can take you out!" My response was "Do what you have to do, and let me carry on with the job that the Cabinet appointed me to do!" So ended that meeting.

4.6 It is at this time that I felt that some sinister clouds are gathering because the coincidence of the two events was not lost on me. Our first Board meeting was scheduled for 26 February 2015. On the evening of the eve of the meeting day, I received a phone call from the President of the Republic of South Africa (the President) who informed me that he had tried to get hold of the Minister and Deputy Minister to no avail. The President said he was able to locate the Acting Director General and asked if she has spoken to me, which at that point she had not. The President then informed me that the Board meeting will not

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be taking place and that the Acting DG will call me to ask me to postpone it. Shortly thereafter I received a call from the Acting DG to say that the Minister has asked that the meeting be postponed. When I asked for the reasons for the postponement, I was told that the Minister had not given any. I then had the postponement communicated to the Board members.

- 4.7 The totality of these events had generated some apprehension in me about things to come. Hardly a week later, I was called by Dudu Myeni. She said that I should avail myself for an audience with the President, and declined to discuss any details over the phone.
- 4.8 On or about 7 March 2015, I arrived at the Durban Presidential residence and was met by Dudu Myeni, her son Talent, and a certain Mr Nick Lennell, who was introduced to me as a lawyer. Ms Myeni then proceeded to outline the purpose of the meeting, namely, that the situation of Eskom's financial stress and poor technical performance warrants that an inquiry into the company be instituted. She further elaborated that, in the course of the said enquiry, 3 executives namely, Acting CE Tsediso Matona, Group Executive for Group Capital Dan Marokane, and Group Executive for Commercial Matshela Koko, are to be suspended.
- 4.9 I found this matter altogether shocking and proceeded to question the need for suspending these executives as I saw this as a recipe for inducing instability in the company. She retorted that even the War Room was experiencing frustration with the decline in performance of the Company, and that the enquiry was essential. In her view, the suspension of the executives will not create difficulties because it will be explained that they are not accused of wrongdoing, but are being asked to allow space for the enquiry to proceed unencumbered by their presence.
- 4.10 Shortly hereafter the President entered. After some pleasantries, he requested to know what was up for discussion, whereupon Ms Myeni repeated what she had previously stated. The President then enquired if I knew who the executives are who were to be suspended, to which I responded that I would prefer that I consult the HR Rules of the company to check if there is provision

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for recusal rather than suspensions to achieve the same objective. Ms Myeni stated that Mr Lennell had assisted her with a similar situation at SAA and is being made available to assist. Mr Lennell then proposed that he draft a resolution for me to present to the Board setting out the rationale for the enquiry. The meeting ended.

- 4.11 I convened a Board meeting on 09 March 2015 where I presented the proposed resolution. The Board expressed its discomfort with this approach and instead proposed that the Minister be invited to engage on this matter with the Board.
- 4.12 The Board meeting with the Minister in attendance was convened on 11 March 2015. The Minister gave her support for the inquiry as well as for the suspensions of the 3 executives. The Board then resolved to proceed with both the inquiry and suspensions of the 3 executives. It also mandated the Audit and Risk Committee (ARC) to prepare the Terms of Reference for the inquiry, as well as the People and Governance Committee (P&G) to effect the suspensions.
- 4.13 At the inception of the P&G Committee meeting following the Board meeting, 2 astonishing events occurred. Firstly, Dr. Ben Ngubane stated that the name of the Financial Director must be added to the list of executives to be suspended. I immediately raised furious objections. For one, this executive's name was not among the names approved by the Board. More importantly, suspending the FD is going to generate shock waves even internationally especially with our investors and lenders because the FD is seen as the custodian of their investments. Dr. Ngubane responded that the Minister had instructed that the FD's name be added. I immediately called the Minister to raise my concerns and objection, but she rebuffed me.
- 4.14 The second astonishing event had to do with the appointment of the executives who had to act for those suspended. Hardly an hour after the end of the Board meeting which decided on the suspensions, Ms Chwayita Mabude was announcing the names in the P&G of the executives who were going to act. I immediately protested that nobody in the Committee, Ms

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Mabude included, other than myself, would have known which executives were suitable replacements. Once again Dr, Ngubane stated that these names came from the Minister.

- 4.15 Mr. Lennell assisted P&G in drafting the suspension letters, which were then individually handed out. I was at pains to assure all the executives that had there been any provision for their recusal other than suspension, we would have preferred to apply it, and also that their suspension does not mean they have been found guilty of any wrongdoing.
- 4.16 The following morning, 12 March 2015 at 10h00, I addressed a press conference wherein I announced the suspension of the 4 executives and the Company's intention to institute an inquiry.
- 4.17 The afternoon of the same day I was to have the most unpleasant and humiliating experience in all my tenure as Chairman. The head of Eskom Treasury informed me that our investors and lenders from across the world will be calling in to ask for an explanation of the actions of suspending the executives. Indeed I was on line with around 52 individuals trying to defend what essentially was an indefensible position.
- 4.18 Hardly a week went by and I was faced with having to defend myself against accusations from several board members that I was not consulting the Board in the preparatory work on the inquiry. The Board engaged a law firm to trump up charges against me that I am not fit to be a director of the Company. On 23 March, in the dead of night, I was given an ultimatum by the Board to resign or be charged with lack of fitness to be a director. I resigned under duress.
- 4.19 The termination of the services of the executives who left Eskom occurred after I had left.

In conclusion, I would like to state here that corruption is the scourge that is denying our people the opportunity of a decent and prosperous livelihood. It is the duty of all of us to rid our society of this evil. I therefore applaud the initiative taken by this

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Honourable House to get to the bottom of maladministration at State Owned Enterprises. I wish the committee well in this endeavour.

Thank you.



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ESKOM-07-042

U17-AZT-037



Eskom Inquiry: Zola Tsotsi

Public Enterprises

22 November 2017

Chairperson: Ms D Rantho (ANC)

Audio

Eskom Inquiry: Zola Tsotsi 2

Eskom Inquiry: Zola Tsotsi 3

Eskom Inquiry: Zola Tsotsi 1

Documents

Zola Tsotsi statement

Meeting Summary

Mr Zola Andile Tsotsi, former Eskom Board Chairperson, appeared as a witness. He read a sworn statement to the Committee. He noted that he had had problems in accessing certain information which would have better prepared him for the inquiry

Mr Tsotsi was questioned about:

- A meeting he attended at the Presidential residence in Durban where he had met with President Jacob Zuma and Ms Dudu Myeni, former SAA board chairperson and Mr Nick Lennell and Ms Myeni's son.
- His relationship with Minister Lynne Brown.
- The suspensions of four Eskom senior executives.

The Committee was also interested in the relations of Mr Tony Gupta, Mr Salim Essa with Minister Brown. It was concerned that, already in 2011 Eskom had borrowings and debt of about R12.5 billion, and to date there is state guaranteed debt of R365 billion, then Eskom posed a fiscal risk.

There was agreement that Mr Tsotsi had failed in his fiduciary duties, in not protecting the executives who left Eskom after suspension, preventing loss of income and in dealing with the undue pressure.

The Committee was surprised that a SAA board member would have had intimate knowledge of Eskom matters that she would be suggesting processes and procedures on how Eskom had to deal with operational matters.

Meeting report

Witness: Mr Zola Tsotsi, former Eskom Board Chairperson

The Chairperson read the oath for the witness before the Committee.

Mr Zola Tsotsi took the oath and swore to tell the truth.

Adv Ntuthuzelo Vanara, Evidence Leader, Parliament asked the witness to state his names. Thereafter he asked that Mr Tsotsi read his statement.

Mr Tsotsi read out his statement to the Committee (see document).

Mr M Gungubele (ANC) proposed that the Committee force Eskom to provide Mr Tsotsi with all the documents he required.

Dr Z Luyenge (ANC) agreed with Mr Gungubele.

Ms N Mazzone (DA) agreed and asked that the Committee find out the person who had refused Mr Tsotsi the documents he required.

The Chairperson said the Committee was in consensus and she wanted a way forward on whether the proceedings should continue.

Mr S Swart (ACDP) said it was important that the meeting continue and the witness could either be recalled or he could submit in writing what was outstanding as part of his evidence amplification.

Mr F Shivambu (EFF) proposed that Mr Tsotsi give titles of the documents he had required so that the Committee could subpoena those from Eskom. He agreed that the meeting continue.

ESKOM-07-043

U17-AZT-038

Mr M Tseli (ANC) said it was important to attach timeframes by when the documentation required from Eskom had to be provided to Mr Tsotsi and the Committee.

Ms Mazzone said she was concerned that it would be unfair if Mr Tsotsi were allowed to continue as he would be giving evidence from his memory alone and could unnecessarily perjure himself. She suggested a multiparty caucus with the Committee to discuss the way forward on the documents.

Dr Luyenge supported Ms Mazzone's proposal.

Mr Swart supported Mr Shivambu's proposal that Mr Tsotsi list the documents he required.

The Committee resolved to have a multiparty caucus after which they would continue with the meeting.

Adv Vanara asked the Chairperson to remind Mr Tsotsi that he was still under oath that he could not converse with anyone as the Committee caucused.

The Chairperson acquiesced to Adv Vanara's request and the witness was reminded he was under oath.

The caucus was held. On resumption of the meeting, the Chairperson said that the Committee had resolved that Eskom had to give him all the required documents by 15:00 before Mr Tsotsi left Parliament.

Mr P Gordhan (ANC) asked that the Chairperson request the current Eskom board chairperson to formally acknowledge that he would follow through with the Committee's request.

Mr Zethembe Khoza, Interim Board Chairperson, Eskom, acknowledged the request noting that Eskom was complying with the request.

Mr Gungubele said that probably Mr Tsotsi would have to say whether he wanted to proceed with witnessing in the absence of the documents which he had required and that he would have to clarify, emphasize and give certainty about events he recalled clearly.

Mr Tsotsi replied that in respect of matters which he could not substantiate because of lack of documentation he would clearly state that and was comfortable with proceeding on matters he had full recollection of.

The Chairperson asked the evidence leader to proceed with the meeting

Adv Vanara: Mr Tsotsi, in your statement you mention a meeting which took place at the Presidential residence in Durban where the people present were Ms Dudu Myeni, her son Thalete, and a Mr Nick Lennell who was introduced to you as a lawyer?

Mr Tsotsi: Correct.

Adv Vanara: There is a document in front of you which is addressed to the Committee and is a statement by Mr Nicholas Hugh Lennell. Mr Tsotsi, can you read paragraph 3 on page 1 of Mr Lennell's statement.

Mr Tsotsi read the paragraph.

Adv Vanara: There seems to be a second witness confirming the existence of the meeting, do you agree?

Mr Tsotsi: Yes, I do.

Adv Vanara: In your statement you mention Ms Dudu Myeni being at the meeting or at the Presidents' residence.

Mr Tsotsi: Yes.

Adv Vanara: Mr Nicholas Hugh Lennell has attached certain documents to his statement and I have heard you complain about the difficulties you had in accessing certain documents from Eskom. I would like us to go to the end of the statement and check the annexures.

The Chairperson asked that the Committee to simply number the pages for comprehension and to save time.

Adv Vanara: Do you agree that the annexures and statement seem to be relevant to what would have happened in Durban?

Mr Tsotsi: Some of them would be indeed.

Adv Vanara: Are these some of the documents which you requested from Eskom?

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Mr Tsotsi: Some of them.

Adv Vanara: Can you identify the relevant documents?

Mr Tsotsi: Annexures A and B I would have been interested in because of the board decision of the 9 March 2017 including the minutes thereof. Annexure C I would not have had an interest in because the terms of reference for the enquiry would have been produced after I had left the entity.

Adv Vanara: Annexure D is a press release by yourself and you surely must have had an interest in this?

Mr Tsotsi: Indeed, I was very interested in this document.

Adv Vanara: Now that you have the documents do you require the Committee to give you some time so that you can go through them briefly?

Mr Tsotsi: I am comfortable proceeding.

Adv Vanara: As you have said, you will say when recollection fails you; your statement puts one piece to this puzzle. Yesterday, two former non-executive directors, Ms Venete Klein and Ms Viroshini Naidoo who had just joined the Eskom Board in December 2016, both confirmed that you are the one who introduced to them the idea of an inquiry, which you confirm in your statement. They confirm that you indicated to them that the message came from the Presidency.

It is well and good that you tell us what happened in Durban. I want to deal with issues of ethical leadership though. You're the chairperson of the board of Eskom, one of the biggest state owned entities (SOEs) and the credit rating of Eskom was higher than when you left the SOE; is that not so?

Mr Tsotsi: That is correct.

Adv Vanara: You put up a fight from what I gather around the suspension of executives during the enquiry; am I correct in that assessment?

Mr Tsotsi: That is correct.

Adv Vanara: You are particularly concerned about the suspension of the finance director (FD) and the implication this would have on Eskom investors, lenders and market perceptions. Is that correct?

Mr Tsotsi: That is correct.

Adv Vanara: You also indicate that your fears became a reality when Eskom's head of treasury informs you that investors around the world would be calling you for an explanation of the suspension of the executives. Is that correct?

Mr Tsotsi: Correct

Adv Vanara: You say about 52 individuals had indeed called you where you had essentially tried to defend the indefensible. We have heard from the two non-executive directors that the first meeting had rejected the proposal and that had resulted in you being instructed to call the Minister to come and address the board; is that correct?

Mr Tsotsi: Not quite.

Adv Vanara: Is it not correct that when you first introduced the idea of the inquiry and the suspension of the executives at the first meeting around the 9 March, the board had disagreed with your proposal and had suggested that you call in the Minister of Public Enterprises.

Mr Tsotsi: That is correct but let me give you context. The point was that, notwithstanding whatever interests the President and the people around him had in this matter, we as the board had a fiduciary relationship with the Minister. Therefore in the meeting of 9 March, I was one of the people to propose that the matter be addressed with the shareholder representative.

Adv Vanara: You then call in the Minister on 11 March is that correct?

Mr Tsotsi: That is correct.

Adv Vanara: You were then in committee with the Minister, having recused the Financial Director (FD) and the Group Chief Executive (GCE)?

Mr Tsotsi: Correct.

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Adv Vanara: What did the Minister say there, after you told her about your visit to Durban and what had transpired there?

Mr Tsotsi: I introduced the matter and since there should be a record of this for corroboration I am going to speak to the best of my recollection. After the recusal and Minister's entry into the meeting, I then told her that the idea of the inquiry had been raised at the President's residence and that the board were uncomfortable with dealing with the matter in the way it had come; and that had prompted the need to get the views of the shareholder's representative.

Adv Vanara: What is the Minister's response to this; does it show any prior knowledge about the idea or is she perplexed that she does not know that you know about an inquiry.

Mr Tsotsi: The Minister did not show that she did not know about the inquiry proposal. She responded that the Department of Public Enterprises (DPE) supported the inquiry, as well as the suspension of the executives which had been indicated. She did not vacillate.

Adv Vanara: My understanding is that in the Durban meeting the suspensions were for three executives; is that correct?

Mr Tsotsi: Correct.

Adv Vanara: But we know that four eventually were suspended. Whilst at the Durban meeting you had your own reservations about the suspensions; is that correct?

Mr Tsotsi: That is correct.

Adv Vanara: Are you happy after the Minister had addressed the board meeting? Did the meeting continue?

Mr Tsotsi: Yes, the meeting continued.

Adv Vanara: Notwithstanding your concerns you went and suspended four instead of three executives. The fourth, which we understand was later joined, was the Financial Director. Is that so?

Mr Tsotsi: Yes, that is correct.

Adv Vanara: When did the Financial Director come to be included in the list?

Mr Tsotsi: Yes, she was not in the initial list. What had happened was that after the board had mandated the Governance Committee to carry out the suspensions, that Committee had immediately met to deal with the matter. The first order of business had been a statement which was made by Dr Ben Ngubane that the Financial Director had to be added to the list of suspensions. After the shock, I had then protested that that matter had not been raised at the board meeting. Apart from that, the consequences of suspending the Financial Director would be dire in the manner I have described in my statement, as it would attract the attention of our investors and lenders. Dr Ngubane responded by saying that it was the Minister that said the Financial Director's name had to be included in the suspensions. I found this astonishing and I felt then; that there seems to be some kind of fait accompli in this process, that a freight train was on the go and was not about to stop. I then called the Minister in great consternation raising my objection to the idea of suspending the Financial Director. The Minister would hear none of it and she told me to do what I was required to do.

Adv Vanara: This clearly is an instruction with profound financial, legal and other consequences and you are not happy with the suspensions as well. Why did you as the board decide to proceed, fully aware of all of the consequences?

Mr Tsotsi: That is a vexing question which I have spent a lot of time reflecting upon and I can only think there must have been pressure for these suspensions to go through. Though I could not fathom out what that could be, I had felt there was a way Eskom could still support the executives which was one of the reasons I had decided to not remove myself from the situation as amongst the things I was experiencing at the time was professionally the whole process would impact the career prospects and professional integrity of the executives. Therefore it was difficult and things were happening quite fast and reflection was not easy.

Adv Vanara: You say pressure contributed to you succumbing to this instruction; do you accept that those executives, the company, were looking up to you for protection at that hour of need?

Mr Tsotsi: That is correct.

Adv Vanara: Is it fair to suggest that you failed them?

Mr Tsotsi: Insofar as what ultimately happened, the board had within its power to have prevented what ultimately happened. It is easier of course to get a perspective of these things in hindsight. Certainly one cannot deny the fact that we failed to protect them, where we could have at that time.

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Adv Vanara: Not only did you fail the executives but you failed the company because four senior executives were to be sent home to idle when their expertise was required by the company. Is that so?

Mr Tsotsi: Insofar as discharging the company duties, I do not believe this created a gap or inadequacy but more the issue of personal pain insofar as the individuals involved, because the period of absence at that time was short and the impact I do not think would have been that immediate.

Adv Vanara: Mr Tsotsi, you must accept that Eskom today no longer has the expertise of Ms Tsholofelo Molefe, whom you confess had done nothing wrong and we know now that the person who replaced her is currently on suspension as well. Ms Molefe is no longer at Eskom and the company is going through turmoil in that her replacement is suspended as well.

Mr Tsotsi: When I responded to the earlier question I was doing so on the basis of what would have happened. I am saying so because I had a firm belief that once the inquiry had been concluded and because there was nothing that the executives had done wrong, we would bring them back into Eskom. But as we all know they never returned and in that instance I agree that Eskom has lost.

Adv Vanara: That you incurred fruitless and wasteful expenditure in that the four executives sat at home on full pay, you had to appoint people to act in their positions and pay acting allowances to those acting individuals. Is that correct?

Mr Tsotsi: That had to be done by the company; I was no longer there at the time.

Adv Vanara: The company received a ratings downgrade; did you know that?

Mr Tsotsi: Yes, I am aware.

Adv Vanara: Did it come as a surprise in view of your earlier observations?

Mr Tsotsi: No, it was not a surprise

Adv Vanara: So you failed the company in your fiduciary responsibilities towards the company by implementing an instruction that was clearly not in the best interest of the company.

Mr Tsotsi: As we were busy with this work, some of the outcomes, I did not anticipate. And we must take the responsibility for what ultimately transpired in respect of what you are saying, which is correct.

Adv Vanara: Since that incident to date; have you ever extended an apology to the three executives who must have suffered irreparable harm through your board's conduct?

Mr Tsotsi: I have spoken to all three of them and indicated my regret that things had happened the way they did and that I would not have wished that what happened occurred.

Adv Vanara: In light of the public humiliation that they would have suffered, I understand that Mr Dan Marokane is still struggling to secure decent employment, due to the stigma attached to the suspension. Are you prepared to publicly apologise on behalf of the board that you led, to those individuals for failing them?

Mr Tsotsi: I am more than prepared to apologise to Dan, Tsholo and Tshediso as I have already voiced my sentiments to them before, I will repeat the same here that I feel particularly bad and incidentally have suffered the same.

Adv Vanara: To the people of South Africa whose hopes and aspirations you carried when you led that Eskom board; for the downgrade of the company; are you prepared to apologise to the nation?

Mr Tsotsi: As leaders in these institutions we have a moral duty to accept whatever responsibility and the consequences thereof; I have no difficulty that having been part of those who led the institution and to the extent that the institutional performance resulted in the institution being downgraded, certainly I must be able to take the responsibility, but it is clear to all of us that the matter you refer to is a result of cumulative experiences that go far beyond even my tenure. I would not shy away for taking responsibility of the failure for not getting the requisite recognition in the performance of the business of Eskom.

Adv Vanara: Can you please then apologise to the nation.

Mr Tsotsi: I certainly apologise.

Adv Vanara: Your meeting with the Minister of DPE on the eve of the State of the Nation Address (SoNA); which Minister are you referring to here?

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Mr Tsotsi: I am talking about Minister Lynne Brown.

Adv Vanara: Was this a coincidental meeting or was it arranged?

Mr Tsotsi: We were having a meeting with this Committee the day before the SoNA, and along with me was Mr Matona. During the course of that meeting, I received a request from Minister Brown that I should meet her at her office. The meeting had not been scheduled prior to that. I then proceeded to her office for that meeting.

Adv Vanara: Your meeting with Mr Tony Gupta; where did you meet him, as it seems to be the same afternoon as the meeting with the Minister?

Mr Tsotsi: We were here in Cape Town.

Adv Vanara: Why would Mr Tony Gupta, who is not a shareholder or a public representative or even a board member, find courage to approach you in such a confrontational manner and read the riot act to you?

Mr Tsotsi: I do not know.

Adv Vanara: Where does Ms Dudu Myeni feature in the meeting which was in Durban? I understand that she was the chairperson of South African Airways (SAA) and had no involvement with Eskom.

Mr Tsotsi: That is true, she had no connection with Eskom; therefore I do not know where she features.

Adv Vanara: But she introduces the subject to you and though you met her at the President's residence she is not the President but rather your counterpart in another SOE. Therefore you should be able to collegially engage her and ask difficult questions; do you ask these questions?

Mr Tsotsi: As recorded in my statement, when I attempted to understand what was going on, she simply declined to tell me over the phone why I would be invited by her to the President's residence. Therefore I was not able to ascertain her involvement.

Adv Vanara: I am talking about when you were at the residence of the President with her and she was giving you information. Did you engage her on that basis as to what is going on?

Mr Tsotsi: No! I did not engage her to ask; what business is it of hers, rather I just listened to what she was telling me.

Adv Vanara: Having reflected on all these things do you later on revert to her to ask what the meeting in Durban had been about?

Mr Tsotsi: I did try to talk to her, probably the following day, to get to understand what was going on but to this day I have not been able to talk to her.

Adv Vanara: Then the President walks in and pleasantries are exchanged. What does the President say?

Mr Tsotsi: To the best of my recollection, the President asked what the meeting was about. Dudu Myeni responded by repeating what she had said to me before the President came in. She recounted what I had explained – mainly that there is a rationale for doing an enquiry at Eskom and there was a concomitant need to suspend three executives in the process.

Adv Vanara: Does the President sound unaware of the issue when it is explained to him what the meeting is about? Does he make any contribution or does he provide any counsel? What is the President's involvement in all of this?

Mr Tsotsi: I don't know what the President's involvement in this is. All he asked was if I was aware which executives are to be suspended.

Adv Vanara: So when you left the President's residence, you left with a clear instruction that you had to go execute. Is that correct?

Mr Tsotsi: When I left the President's residence, I left with the intention of testing this particular instruction, i.e. whether the board would have an appetite for doing this. The President is ordinarily not in a position to give instructions to the board. I did not take it that he gave me or the board an instruction. I took it that he has an interest in seeing that this happens and we have a fiduciary duty to examine whether this is something that would be of interest to the organisation. And because the President has expressed himself on this matter, it was pretty much logical for us to establish from the shareholder representative with whom we have a fiduciary relationship, what was the shareholder's actual interest in this. The President does not, in his capacity, represent the shareholder insofar as the memorandum of incorporation that governs the relationship, shares or stakes. It became clear that it was necessary to test the interest of the shareholder now that this idea has come from the President himself.

Adv Vanara: You need to be very clear on this particular aspect: the President did not invite you personally to his house. You were invited by

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Ms Myeni. Is that correct?

Mr Tsotsi: Yes, it's correct.

Adv Vanara: When Ms Myeni invites you to the President's house – what are your expectations? Is she inviting you to meet with her at the President's residence?

Mr Tsotsi: Myeni said to me I should please come to the residence for an audience with the President. I understood that the President was aware that I was coming and I expected that I see him.

Adv Vanara: Having met with Ms Myeni and the President, you seem to have left the President's house with something to consider. Where was this "something to consider" coming from? Is it coming from Dudu Myeni or is it coming from the President?

Mr Tsotsi: That was not very clear. My primary concern was that even though the originator or author on this matter was not explicitly clear, the fact that the President was aware of it and knew of it, says to me that as he is the Head of the State showing an interest in a matter of this nature, it should be put before the board to examine the issue and see how we can then exercise our fiduciary duties.

Adv Vanara: Did you ask the President if he discussed this issue with the shareholder representative? Did you ask anything from the President concerning this message you are taking to the board?

Mr Tsotsi: No, I did not. I did not see the need to interrogate the President on it. That would not have been in line with my fiduciary responsibilities. What would happen and did happen was to engage the Minister. The importance was to take the matter to the realm of responsibility where I was placed as a board member.

Adv Vanara: You are the message carrier from Durban to the board meeting and when you get to the meeting you say this message comes from the President. Is that your testimony?

Mr Tsotsi: Yes.

Adv Vanara: Surely you wouldn't expect your board members, as they did apparently, just to consume an instruction just because it is said to be coming from the President?

Mr Tsotsi: Correct, and the same applies to me.

Adv Vanara: Clearly you had concerns, because this is not coming from your direct manager, i.e. the shareholder representative, but it is introduced by Ms Myeni who has nothing to do with Eskom. It is relayed in front of the President and the President is asking you whether you knew some of these executives. Where do you get the notion that it is the President that gives the instruction? When you get to the board you are not saying the message is from Dudu Myeni, but it is from the President.

Mr Tsotsi: I did not say to the board the message is from the President. I simply relayed to the board exactly what had happened and that this matter was raised in the presence of the President and I felt it warranted that the board should listen and see whether the board wants to engage with this matter. If the board wants to, the first port of call should be to invite the shareholder representative to test this matter.

Adv Vanara: You left the President's residence with a message that was introduced to you by Dudu Myeni and this message was conferred in the presence of the President. Is that what I understand your testimony to be?

Mr Tsotsi: Yes, that is correct.

Adv Vanara: Is that the reason why you did not ask the President the questions?

Mr Tsotsi: Like I said before, it would not have served any purpose, because the responsibility for engagement of matters such as this rests with the shareholder representative.

Adv Vanara: You were clearly interested in meeting the shareholder representative. When you meet her either inside or outside of a board meeting, and if she asked you where you got this from, what would have been your answer?

Mr Tsotsi: I told the Minister what happened, i.e. that I was called to attend an audience with the President and that this matter was raised in his presence.

Adv Vanara: No, further questions.

The Chairperson thanked Adv Vanara and she said the Committee had suggested a long time ago that all the entity board chairpersons sit

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down and share experiences. The same applies to the Executive.

Ms Mazzone asked if Mr Tsotsi ever met, during his time at Eskom, with Minister Lynne Brown at her home and any member of the Gupta family.

Mr Tsotsi: At some point shortly after the new board was formed in the beginning of December, the Minister called me to her home and when I arrived there she was with two individuals: Tony Gupta and Salim Essa.

Ms Mazzone asked why he was called to this meeting.

Mr Tsotsi: There is a process that normally occurs when a new board comes into being, mainly the allocation of board members to different sub-committees. This is something that I in my experience initiated and would agree with the board and the Minister once the allocation is done. It was during the process of doing this that I was called.

Ms Mazzone: Basically, Tony Gupta and Salim Essa were there to advise you on board allocations.

Mr Tsotsi: What actually had been happening prior to me going there was that Salim Essa would draw up his ideas for board allocations, send it to me and ask me to pass it on to the Minister.

Ms Mazzone: It sounds incredibly worrying in light of the relationship Salim Essa has with the Gupta family. It would suggest interference with an executive position and it would infer that Minister Brown took direct instructions from people like Salim Essa and the Gupta family. Is that your understanding?

Mr Tsotsi: I am not in a position to say she took instructions from them, but it seemed to me that I was not able to complete this exercise without the involvement of Mr Essa. I got a list and I changed the list based on what I thought it should be. When I sent the list to her to get concurrence, she sent the list back and it had been changed to what it was when I got it from Essa.

Ms Mazzone: Basically your hands are tied because an unofficial third party was giving instruction to the Minister.

Mr Tsotsi: My hands were tied.

Ms Mazzone referred to paragraph 4.5 of Mr Tsotsi's statement where he said that when he arrived, he was approached by Tony Gupta who said, "Chairman, you are not helping us with anything. We are the ones who put you in the position you are in. We are the ones who can take you out." Why did Mr Gupta feel he had that kind of power over you?

Mr Tsotsi: I need to indicate that when I have had occasion to discuss something with him and he wanted something specific from me and I was not able to give it to him, he would say 'I must report you to *Ubaba*, because you are working with *Ubaba's* enemies'. The distinct impression he gave me is that he had a very close relationship with *Ubaba* and therefore felt he could do anything.

Ms Mazzone: Is it fair to say that you were in fact frightened and intimidated by the Guptas, especially Tony Gupta and the fact that they were answerable to *Ubaba* (the President)?

Mr Tsotsi: There was certainly an element of intimidation and I operated on the basis that should it be that the President is unhappy with what I'm doing or not doing with regards to these gentlemen, he will come to me and tell me that he was not happy. From that perspective, I felt that if there was need for admonishment, it would happen.

Ms Mazzone: I suppose one of the reasons you did not feel safe or comfortable going to the authorities was because it was difficult if you know that the person ultimately in charge of the country is involved in it.

Mr Tsotsi: I didn't necessarily feel at anytime that I should go to the President to seek protection. I simply took it that if there was anything that I needed to deal with and I was asked to deal with it, let it happen. That was the only way I felt things will come out.

Ms Mazzone: Can you give us a few examples of where you did do something at the request of Tony Gupta?

Mr Tsotsi: To the best of my recollection, there were maybe three things he directly wanted from me. Unfortunately, on all of it I was not able to assist him.

Ms Mazzone: Did you want to assist him?

Mr Tsotsi: Let me put it to you this way. If a business person comes to me, I would deal with him as I would any other person but when Mr Gupta came to me he said that they were interested in supplying gas to the Open Cycle Gas Turbine (OCGTs) in the Western Cape and hence have access to the Western Cape market where they would be an anchor tenant of the OCGTs; he would like me to assist them facilitate that. What I knew at the time was that there was an existing Memorandum of Understanding (MoU) with a particular company for the same

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purpose. The MoU had been canvassed with the Department of Energy (DoE) and ultimately signed by the Minister there. When I discovered this, I informed them that the matter was out of the hands of Eskom as there was the MoU. Mr Gupta later returned to me, complaining that we are dealing with Baba's enemies that are the company which Eskom had a MoU with, which should not have gotten what it had got.

Ms Mazzone: What was this company viewed as Baba's enemy?

Mr Tsotsi: I think it's called Prime Stream.

Ms Mazzone: Who was the Acting Director-General (ADG) at DPE at the time the President called you?

Mr Tsotsi: It was Ms Matsietsi Mokholo.

Ms Mazzone: So she gives you an instruction to call a board meeting, is that normal?

Mr Tsotsi: The ADG actually called me and informed me that the Minister said the meeting the board had to sit for, had to be postponed.

Ms Mazzone: But in your statement you say the President called you and said the ADG would contact you.

Mr Tsotsi: That is correct.

Ms Mazzone: So the ADG was acting on the instruction of the President who later probably got hold of the Minister.

Mr Tsotsi: I do not know how the sequence of authority went. All I know was that when the ADG called me on behalf of the Minister she said what I already said.

Ms Mazzone: When Ms Myeni invited you to the President's residence, were you not worried as to why she would be at the President's house with her son. Did this not strike you as extraordinary?

Mr Tsotsi: I was less focused on that and more on the fact that I was to have an audience with the President.

Ms Mazzone: Was it not odd that Ms Myeni was instructing you to have an audience with the President; being not his wife, she is also not his personal assistant (PA), therefore why would she be the one instructing you?

Mr Tsotsi: She was not instructing me; she was inviting me to have an audience with the President. As to why it would be her, I have no idea.

Ms Mazzone: It seems that Dr Ngubane and Minister Brown were in some cahoots as to who to fire and hire as evidenced in your statement. I think the board was absolutely correct when they asked you to tender your resignation because I think what you had done then at the board was incorrect. I also do not think you had executed the duties as mandated to you as board chairperson. In hindsight, would you have still taken the instruction and would you still have suspended the executives as you did or would you have logged charges of intimidation, as your statement now shows to have been an incorrect thing to do?

Mr Tsotsi: There was a very significant event in my book that occurred between the time I left the President's residence and the time when we sat down as one of the board's subcommittees to carry out the suspensions.

Ms Mazzone: What was that event?

Mr Tsotsi: That event was the fact that, as was the correct thing to do, I had brought the matter to the board. The board had insisted that the matter had to be dealt with in association and consultation with the Minister. Therefore, it was the board that made the decision and not Zola Tsotsi who decided to suspend the executives as I have no authority to suspend anyone. Because I am the person who read out the decision at the press conference, it would appear that this was my initiative, and that is not the case.

Ms Mazzone: Given the fact that you acted on instruction of the Minister and the board said we have to listen to what the Minister tells us, is Minister Brown captured in your opinion?

Mr Tsotsi: I don't know. Her visit to the board and her support of the suspensions...

Ms Mazzone: And her being at the house with Tony and Salim?

Mr Tsotsi: All I will say is that is clear collusion or association between Minister Brown and the Gupta family.

Ms Mazzone: Thank you.

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Members questions

Dr Z Luyenge (ANC): You recommended or motivated in a board meeting that a suspended official be in an acting position? Are you aware of that and who that executive was?

Mr Tsotsi: I am not aware of that and it would be inconceivable that I could ask somebody who is suspended to come and act.

Mr Luyenge: After Mr Matjila was actually suspended, who replaced him?

Mr Tsotsi: I am not aware that Mr Matjila was suspended.

Mr Luyenge: Mr Matjila acted as the CEO and actually left immediately thereafter. Who replaced him?

Mr Tsotsi: Collin Matjila's term as acting CEO ended when Mr Matona came on board.

Mr Luyenge: On the R43 million where Mr Matjila exceeded his mandate, what was the view of the board as it pertains to misconduct?

Mr Tsotsi: The action taken by Mr Matjila to approve the sponsorship was viewed as a transgression. When the board received the report from the committee that the board was asked to investigate this matter, the report indicated very clearly that, not only did the audit firm find that Mr Matjila had transgressed his authority, the legal advice that the board also sought subsequently, came to the same conclusion and in fact recommended the sanction of discipline. This was not feasible for the board to carry out, because Mr Matjila had left the company by then.

Mr Luyenge: Your meeting with the Minister ended abruptly and your first meeting of the board thereafter was postponed. What was the general view of the board members, because you were the chairperson, i.e. the convenor of the board, that a meeting is postponed without your consent.

Mr Tsotsi: There was certainly unhappiness, because the board meeting was postponed without any explanation to the extent that members raised this matter at the next opportunity which was the board meeting where the Minister was present. Not only was I anxious to get answers for the postponement, the rest of the board was anxious, but those answers were not forthcoming.

Mr Luyenge: Before you were appointed chairperson of the board, is there anyone who approached you for that position or did you actually get the support of the board members?

Mr Tsotsi: I was approached by someone in the Office of the then Minister, Malusi Gigaba. I was asked to attend an interview for the position where the Minister was present. Subsequent to that interview I was appointed as the chairman.

Mr Luyenge: You indicated that you were forced to resign. Can you attribute that to the relationship between you and the Minister? After the meeting with the President, did you contemplate sharing with board members both formally or informally, before it was formally presented to the board for implementation or confirmation?

Mr Tsotsi: There was no doubt in my mind that I was beginning to experience discomfort with the lack of communication with the Minister. I had been trying to improve the communication and relations with her. This discomfort culminated and was confirmed at the meeting in her office that I referred to. As we were dealing with the company's business up until the time I left, I virtually had no contact with the Minister. I was aware that there were other board members who had contact with the Minister, in particular Ben Ngubane. At the time of being asked to resign, there was a meeting the board had with the Minister in my absence. I was asked to recuse myself from that meeting and up to today I don't know what was discussed in that meeting. All I got subsequent to that meeting was this letter for me to answer some charges – one of which was the fact that I'm not fit to be a director. When I actually did resign, I requested some compensation for myself as I was leaving before the end of my term and payment of my legal representation. The board agreed to my requests, subject to approval by the Minister. Consequently the Minister declined to entertain compensation on my part and up to now Eskom has not paid my legal fees. I believe Minister Brown had no interest in my continued stay at Eskom.

The encounter at the President's residence occurred on a Saturday and the first meeting to address the matter with the board was on the Monday following that Saturday. Therefore there was no time to canvass board members of the matter outside of that meeting. But I felt it was okay for me to raise it at the board before convening with the shareholder representative.

Dr Luyenge: Were there any other instances where you had been instructed or the management of Eskom had been directed and eventually implemented instructions without consulting you, including tenders related to the Gupta family?

Mr Tsotsi: I was not involved with the procurement process; therefore I never saw the processes taking place. There is one particular instance which I recall where the board through its subcommittee on audit and risk had to intercede in a tender. That was at the beginning of our tenure when we were rotating our auditors. I recall Brian Dames mentioning this matter and I do not think he clarified the matter thoroughly. At the time we arrived at Eskom, one of the strongest mandates that the Minister Malusi Gigaba had articulated to the board

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had been Black Economic Empowerment (BEE) with a focus on the audit profession. The Minister had even convened a discourse of black owned audit firms indicating that he wanted to assist them grow in the audit business through the procurement process in the SOEs. Therefore our marching orders were clear that we had to ensure that in the procurement of audit services, that BEE audit firms were adequately included, right from the request for proposals to the negotiation of the final service providers. What happened was that at the time of the rotation of auditors, the Audit and Risk board committee which had the statutory responsibility for oversight of the audit business at Eskom instructed management to ensure that they make the provisions possible. They specifically looked at whatever prepared documents there were and infused them with what they thought the correct amount of provision for black firms. When the tender documents went out, the subcommittee discovered that they had been altered and it turned out the alterations had been done by someone in management. Therefore the audit and risk subcommittee decided and instructed management to recall the tender. That is the only time I recall where the board and its committee took a very decisive step in intervening in the procurement process.

Mr R Tseli (ANC): Can you confirm your tenure as board chairperson?

Mr Tsotsi: It was from June 2011 to the 23 March 2015.

Mr Tseli: When Mr Matshela Koko was appointed acting Chief Executive, were you chairperson of the board?

Mr Tsotsi: He was appointed after I had left.

Mr Tseli: How did you know that Mr Matjila had acted outside of his delegation of authority?

Mr Tsotsi: As indicated in the statement there was a set procedure regarding the engagement of this particular service. The procedure involved a committee set up to approve sponsorships. What transpired was that Mr Matjila did not use this committee and because of that he was judged to have used the wrong delegation of authority. When this matter was reported to the audit and risk subcommittee it had decided to test the matter with Sizwe Ntsaluba Gobodo (SNG) auditors. SNG found that indeed Mr Matjila had not applied the correct process in arriving at the awarding of The New Age (TNA) contract.

Mr Tseli: What did the board do regarding the forensic review recommendation that Mr Matjila had to be removed and criminally charged?

Mr Tsotsi: I do not believe there had been mention of criminal charges, insofar as I am aware the company in this event would use its internal disciplinary process to seek redress in such a situation. As I say that did not happen because Mr Matjila had left the company by the time these recommendations were issued.

Mr Tseli: How much money was involved in the Information Technology (IT) systems contract?

Mr Tsotsi: I do not recall the specific amount of money but it was a substantial amount.

Mr Tseli: And what are the provisions of the Public Finance Management Act (PFMA) regarding extensions of contracts by 24 months? Is there anything wrong in a contract being extended by a further two years?

Mr Tsotsi: The extension of the contract has certain processes, if followed, would be permissible and the procedures of the company do allow for extensions should there not be a situation where a renewal of a contract does not occur through a competitive process.

Mr Tseli: From what you are saying, the reason for an extension for a further two years was because negotiations with the preferred bidder were unsuccessful. Do you have an idea what it was that was negotiated?

Mr Tsotsi: I was not privy to those specifics therefore I cannot comment about that but I can say that it is a common practice when you are seeking to contract with someone to have conditions that you feel need to be satisfied where you discuss until you agree on how you shall move forward with your contractor. I think it was at the final stages where there was no meeting of the minds.

Mr Tseli: The problem here is that as the board chairperson, after being informed that negotiations have broken down with the preferred bidder and the recommendation is that the current contract be extended for another 24 months, you have no interest in the negotiations and what is so problematic that it necessitates extension?

Mr Tsotsi: When we talk governance we are talking about these issues or lack thereof. In the organisation there are very strict processes for handling virtually anything within the company and not least of all procurement. So there are very clear guidelines about at what level and who should be involved in procurement and what parameters exist for the decisions to be made. The last person to be involved is the chairman of the company as he had no business in the operations and procurement of services.

Mr Tseli: The meeting of the 26 February 2016 seems to be quite important as you also received a call from the President about the need for the postponement of the meeting. What were the issues to be discussed at said meeting?

Mr Tsotsi: The meeting had a normal agenda and I can recall what the issues were. This was to be the first meeting of the new board and the

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first board meeting of the year. What normally gets discussed at the beginning of the year would be major issues such as the shareholder compact out of which a corporate plan would be developed and a mid-term report on the audit situation of the company.

Mr Tseli: What was so special about this meeting that it had to be postponed?

Mr Tsotsi: That is the question I have been asking and I hope that the Committee will be favoured with someone that will come here and tell the truth.

Mr Tseli: Can you talk a little about Dudu Myeni who convenes a meeting and talks about people who must be suspended. Instead of you engaging her, you come up with an alternative of how best to deal with the issue.

Mr Tsotsi: I did indicate earlier that I did not feel pressure to interrogate at the time we were at the President's residence. She obviously had some authority to be able to invite me to a meeting with the President.

Mr Tseli: Is that why you convened an urgent meeting of the board to implement what Dudu Myeni told you?

Mr Tsotsi: I came back to test the significance of carrying out an exercise of this size with the shareholder representative. I would not ignore anything that was mentioned in the presence of the President knowing that he is aware of this. It was important that I should establish from the shareholder representative what their awareness of this is.

Mr Tseli: So after that meeting you did not make attempts to brief the shareholder representative about this meeting, but instead you convened a meeting according to paragraph 4.11 of your statement.

Mr Tsotsi: In my statement I mentioned the fact that I had this meeting with the Minister around 14 February. You would appreciate how dispirited I was after that meeting in terms of the confidence I felt the Minister had in me.

Mr Tseli: I'm on the board meeting you had in March to implement Dudu Myeni's instructions. You said 'I convened a board meeting on 9 March where I presented a proposed resolution. The board expressed its discomfort with this approach and in fact proposed that the Minister be invited to engage on this matter with the board'. From what you are saying, if they did not insist, this proposed resolution was without the knowledge of the shareholder representative.

Mr Tsotsi: That is not correct. I was trying to point out that I had no relationship with the Minister at that point. My responsibility was towards the board and the board had to deal with this matter with the Minister. In fact I was the one who insisted that we have to engage the shareholder on this matter. My statement conveyed the decision of the board and that decision was prompted by, amongst other things, what I had to say. Under ordinary circumstances I would have picked up the phone and said 'Minister, here is the issue and we need to engage with you'. Because my relationship with the Minister had broken down, I decided that my responsibility was to go to the board and say we need to invite and engage the Minister on this matter.

Mr T Rawula (EFF): You will agree with me there was a collaboration of executive authority (EA) and the Guptas which initiated the suspension of the executives. That initiative could not be placed at the board's feet, as it had embraced the executive directors. This is evinced from the event which the board had approved to welcome the executives and finance their induction. Therefore the board did not fire the executives because even then it had explored a recusal clause for the executives. You tell us that the Minister had reprimanded you for interfering with the operations of Eskom, and following that Tony Gupta reprimanded you as well. The call from the President seemed to be expressing a particular interest. Can you tell us what your relationship with Ms Myeni is or what her relationship with the President is?

Mr Tsotsi: I have no personal relationship with Ms Myeni nor do I know anyone who has a personal relationship with her. If you consider the objective situation and take the facts and actions that led to the suspension of these executives, the role of the board is clearly identifiable. We have discussed this; any role by the executive authority in collusion with Guptas and anyone else is not clearly evident. Therefore I imagine that if I was to speculate on such a situation, I would be opening myself up to having to substantiate that with facts. I am hoping that all of us who come to this inquiry will be candid, open and truthful about what actually transpired. There is no doubt that this picture is incomplete particularly because I was in the engine room of what was going on. There were things I picked up on, as I have already relayed to the Committee, that is: How is it that within an hour of the board suspending these executives that someone could come up with a list of people that are supposed to act in those positions? Having been close to the situation, I have a conviction that there is more to tell than what has been told so far. I hope and pray that the question you are asking about a hidden hand in this process will surface and someone will have the courage to tell South Africa exactly what transpired. I am afraid I cannot answer to your satisfaction.

Mr Rawula: The board meeting of the 9 March; we have heard that in that meeting when you raised the suspensions and the inquiry resolution the board was divided on the matter. You then proposed the inclusion of the Minister regarding the suspensions. At the meeting of the 11 March the inquiry resolution which had divided the board on the 9th in the absence of the Minister, was passed. Her presence seems to have empowered the board which is why I said earlier the suspensions were the decision of the EA, which you also felt compelled to actuate; am I wrong?

Mr Tsotsi: That is a very difficult question to answer because at the time when the Minister was with the board, board members raised

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questions. The Minister responded to most; and to the best of my recollection she was not fazed by the idea of having the inquiry and suspending the executives. She did not question as the board members had questioned the wisdom of doing this. She did not raise any discomfort. Therefore, it is not beyond comprehension for one to have gained certain impressions on that matter. But the issue is that much as one may have misgivings about the broader picture, one must accept that the facts of the matter are that DPE, through the Minister, supported this process.

Mr Rawula: Mr Tsotsi, you are on record here as having a sour relationship with Minister Brown. You were under pressure as you have said that you had an impression that the Guptas, who were unhappy with you, were close to Baba. The President had expressed his own interests in Eskom. That pressure was extended to board members through your leadership but I want to ask you: Have you ever received a brown envelope or been given bribe money to go against your fiduciary duties?

Mr Tsotsi: No.

Mr Rawula: Because under your leadership, people were suspended and there had to be acting officials, there was gross financial negligence at Eskom. What personal responsibility are you willing to take for this wasteful expenditure at Eskom so that Eskom can recover the money it lost under your leadership?

Mr Tsotsi: I think it is a matter of what the responsibilities of directors are and the circumstances. One would have to examine and make a clear determination of what is attributable at a personal level; which is something which would involve I believe people competent in matters legal. I cannot say what personal responsibility there would be, if any; because as I say, I am not a legal person.

Mr Rawula: Your meeting with Ms Myeni at the Presidential residence was never sanctioned by the Eskom board and you are on record as telling them afterwards about that meeting. Was the intention to name drop the President so that the board would feel unduly pressured - since the idea of the inquiry came from your visit to his residence where the side chick of the President, Ms Myeni, had told you?

The Chairperson: Mr Rawula, how do you know and how can you say that the President of a country has a side chick. That is out of order, please withdraw that statement.

Mr Rawula: I withdraw. The board became irritated with you and asked you to resign as you say that they started to trump up charges against you. What do you have to say to that?

Mr Tsotsi: In respect of the meeting at the President's residence I returned to Eskom because I felt that there was need for the board to be informed. It was up to the board to decide how to deal with that matter. I am and never was in a position to impose on the board and never did that because board members would have certainly spoken up had I imposed on them. Sure enough many board members including me were in disagreement with the inquiry and suspension process, but my duty was to bring the matter to the board. It therefore is a serious misrepresentation of the facts to say I decided and caused x, y and z. To that degree, when the board was making accusations against me, those had nothing to do with my fiduciary duties. It will be useful for the Committee to interrogate the charges that the board brought against me as they had nothing to do with causing loss of income to the business. The charges were unfounded allegations which were clearly, in my mind, to make me leave Eskom and the board.

There is one of these Gupta emails which speak about a certain Mr Howa referring to a statement which he was preparing for Dr Ben Ngubane. The statement had to do with how to phrase a press release speaking of my resignation. This matter is reported to have occurred about 10 or more days before my resignation. If we are to accept the veracity of these documents, this says my resignation was being discussed way before there was thought of me resigning, where one board member or more who were serving with me on the board were having a conversation with an outsider about how to reflect my resignation from the board. Hence I have every reason to wonder if my situation was not orchestrated from somewhere; because if you ask my counsel, you will be told how spurious the charges against me were. You could not face a court of law with those charges. As I said earlier I hope this Committee will be favoured with people willing to come here and say these things, as a lot more than meets the eye seems to have been going on. Therefore I am sitting here opened to insinuations and suggestions to what might have happened and what I might be seen to be guilty of; because these gaps exist and they need to be closed so the truth comes forward. For now I will say my removal from Eskom, which is not a resignation, as I am now strongly convinced that it had been orchestrated somewhere.

Mr S Swart (ACDP): Thank you for your coming before the Committee and your resilience in coming alone as other witnesses had their counsel with them. You indicated that you had an outstanding legal account which had to be paid.

Mr Tsotsi: I am glad you have raised the matter because I did have legal representation and currently do to date and I was meant to come here with said representation but a misunderstanding occurred yesterday morning. As I was preparing to come here my legal team's impression in consultation with the Committee support staff and counsel for the Committee was that they would not be permitted to sit-in the proceedings. But that was clarified to me that they would have been allowed to assist the witness rather than speak on behalf of the witness.

Mr Swart: Do you feel any disadvantage for not having your counsel here today?

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Mr Tsotsi: To some degree yes! At the time of my dispute with the board at Eskom there had been a commitment, and Mr Khoza was a board member then as well, and agreement by the board that they would pay my legal fees for the issue at hand at the time. But those legal fees were still outstanding.

Mr Swart: Have you felt intimidated by any person? And someone indicated that you are unemployed at the moment because of the stance you have taken?

Mr Tsotsi: I have not felt intimidated as such but I am aware that generally institutions that I would have ordinarily had some relations with seem to be shying away from me. I am aware that it is because of what transpired at Eskom and that no one is certain where I stand.

Mr Swart: You are not the first witness to say that and the message from this Committee to corporate South Africa is to look favourably upon such candidates prepared to take a stand for what is just and right, as we evaluate the evidence you have presented to us.

You indicate that there is a hidden hand here and maybe it is not so hidden and the freight train you analogised about is a coal train which is clear from your evidence to be the Guptas, Mr Salim Essa, aided and abetted by Minister Brown and uBaba President Zuma. Would you agree with that? As it is direct from your evidence.

Mr Tsotsi: I would not say the evidence is direct and you are welcome to connect the dots. My job is to detail my experiences and the deductions I will leave to yourselves.

Mr Swart: Have you read the Eskom Inquiry reference book by Professor Anton Eberhard?

Mr Tsotsi: I have actually had discussions with Professor Eberhard before he wrote the document.

Mr Swart: Does the book not connect the dots to a large extent in your view?

Mr Tsotsi: I think he has done a useful job in that the book gives us an analytical base from which to try and understand what is going on.

Mr Swart: You have just said that your situation was clearly orchestrated and one can see that is clearly a connecting of the dots. A new board is appointed where every member has connections to the Gupta family and Mr Essa. Immediately thereafter you are called to a meeting to discuss the suspension of the executives. You can clearly see a pattern to rid the board of those that could be seen as obstacles. Would you be in agreement with that to a certain degree?

Mr Tsotsi: I would say that the people who were battling for the organisation were having difficulty, because their views and authority were constantly being challenged. The pressure they were put under had to come from somewhere.

Mr Swart: The extension of the TNA contract was clearly to benefit a Gupta-related company. Once the Financial Director refused to sign it and it developed into irregular and wasteful expenditure and it is clearly in breach of the PFMA, i.e. the role Collin Matjila played in that regard. Are you in agreement with that?

Mr Tsotsi: I agree and in my statement I make the point that we accepted the finding as well as the corroboration by the legal firm.

Mr Swart: On the meeting with Dudu Myeni and the President where you are introduced to Mr Lennell, it seems to me that you got direct instructions that this was going to happen. The next day when you go to the board meeting you take Mr Lennell with you. That in itself appears to be a breach of procurement processes, because the board said there has been no procurement process to appoint this person to do the job. Do you agree?

Mr Tsotsi: There is a bit of a missing link. The reason I asked Nick to come was so that he could speak to the resolution document that he had prepared. I said that the board should consider engaging him in this exercise and the board then agreed that Mr Lennell will work with the audit and risk committee. There was however no formal engagement of Mr Lennell through a contract, but the principle to having him assist the board was accepted by the board. This was one of the reasons the board gave that I supposedly breached, as you are suggesting, the requirements and imposed Mr Lennell on the board. That was not the case.

Mr Swart: That was the meeting on 11 March. We have evidence from Ms Daniels that she and Mr Koko went to see Salim Essa on 9 March. They were then advised that there will be suspensions. The list Mr Salim Essa gave to you detailed how everything transpired. This information was in the hands of President Zuma and Minister Brown days before and you can very easily connect the dots. Would you agree with that?

Mr Tsotsi: I was not aware of that aspect of Ms Daniels' submission, but it does not surprise me. This was the point I was trying to make earlier that in certain situations your gut feeling tells you that there is more than meets the eye.

Mr Swart: You gave an example of doing things for Tony Gupta and you mentioned the gas to the Western Cape and he said to you 'we are dealing with Ubaba's enemies'. What on earth could that mean in your understanding?

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Mr Tsotsi: I understood him to be saying that we are assisting someone to access this gas business in the Western Cape who in fact is an enemy of *Ubaba*. In that instance he is effectively saying we are working against *Ubaba*. That was the intimidation tactic that was at play.

Mr Swart: Surely it also related to a market competitor to Tony Gupta himself, because he was competing in the same space but there was already a memorandum of understanding. Would you agree?

Mr Tsotsi: Correct.

Mr Swart: Therefore an enemy of Tony Gupta would be an enemy of President Zuma. He would spin it that way.

Mr Tsotsi: That is a fair conclusion to reach.

Mr Swart: Have you read the Public Protector's report?

Mr Tsotsi: I have only seen snippets of the Public Protector's report.

Mr Swart: The reason I'm asking is that indicated this freight train that is coming and if you read the Public Protector's report, its observances very clearly articulate a process by which the board cooperated and benefited Tegeta to purchase Optimum. That would seem to be part of the endgame of this whole process, i.e. appoint a board, remove some of its executives, bring in new people such as Mr Molefe who with Mr Anoj Singh facilitate a major coal contract for the Gupta-related Oakbay. Would you agree with that?

Mr Tsotsi: The totality of the picture and what emerges out of that, gives a view that all of these things are related.

Mr Swart: You have given us a clear picture that shows clear collusion between Minister Brown and the Guptas. Thank you, Chairperson.

The Chairperson reminded Members that Mr Tsotsi has to leave at 15h00 to catch his flight.

Mr E Marais (DA): The actions of Mr Matjila on the first page of your statement refers. Why was there never a follow through, because this person earned a big salary when he was in that position and his actions caused a loss for both Eskom and the country? It can't be because Mr Matjila was no longer with the company. What's your view on this?

Mr Tsotsi: I'm not sure what the legal provisions are, but perhaps on the basis of natural justice one could argue that the company ought to have recourse to recover its losses. At the time it was happening our thinking was just confined to the internal disciplinary process.

Mr Marais: The suspensions were clearly coming from the Minister's side. Did you as board chairman clearly ask the Minister on what basis these executives should be suspended and was there a procedure followed? What proof was there that they should be suspended?

Mr Tsotsi: There was no proof of anything. The idea was that there should have been another form of recusal so that they are not seen to be prejudicing the inquiry while being in their offices. There was no specific provision of this nature in the company's HR rules. There was some sort of special leave and this was actually muted in one of the discussions. I dare say I was the person who raised the idea of the special leave, but the argument against that was it does not prevent people from coming to their offices and have access to machines and information. The Minister did not give reasons for the suspensions when she came to the meeting and it was a serious limitation.

Mr Marais: I want to go back to your statement and the comment by Tony Gupta where he says 'we are the ones who can take you out'. Who is the 'we'?

Mr Tsotsi: I was assuming at the time he was talking about the Gupta family.

Mr Marais: Who was in charge of the War Room?

Mr Tsotsi: The War Room was set up so that there was total accountability to the Deputy President and the War Room had different levels, i.e. a policy level chaired by the Deputy Chairperson and the officials level was chaired by a DG in the Presidency. Overall accountability for the War Room rested with the Deputy President.

Mr Marais: You said there were requests made by Tony Gupta to you. One of these was the gas issue – what were the others?

Mr Tsotsi: Tony Gupta said he was aware there was a certain position in the commercial division of Eskom available; I think it was the position of Chief Commercial Officer. He had an individual that he wanted to take that position. It was a gentleman who worked for MTN. He asked me to help him place this guy in this position. The position was not advertised and I said I don't know anything about it and if it is advertised I presume the person can apply. When I asked about this and learned the position was not being advertised he told me that "you are the boss; you can just do it – what is the problem". I told him it doesn't work that way and I don't have operational responsibility. He said I am just not interested in assisting him.

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The other matter was the TNA and Collin Matjila matter. He asked me why I couldn't just make this problem go away. I told him the organisation has processes and these processes are being followed. That was the first time that he kind of threatened that I'm not delivering for him. This was around October/November and I think by the time after our previous encounter in Cape Town in February he had had enough, because I'm not assisting with anything.

Mr F Shivambu (EFF): Can you please summarise for us the recommendations by Mr Essa for the Eskom subcommittees of the board. Who were recommended for the board tender committee?

Mr Tsotsi: I will have great challenges without the actual documentation before me to recall the names, honourable Chairperson.

Mr Shivambu: Can we request when you can, you submit the names at a later stage or you cannot retrieve it anywhere?

Mr Tsotsi: I do not know whether the Eskom email system still contains those emails as he had sent me an email in that regard.

Mr Shivambu: But were the recommended names approved eventually by Minister Brown?

Mr Tsotsi: Oh, yes, definitely.

Mr Shivambu: Then we simply have to go to Eskom records to see who was appointed after Mr Essa had recommended board appointments. When you met with the Minister, Mr Essa and Mr Tony Gupta at the Minister's official residence, who did she introduce them as?

Mr Tsotsi: She did not introduce them to me; I take it she assumed I knew who they were.

Mr Shivambu: So you just started discussing internal Eskom affairs without their roles been clarified?

Mr Tsotsi: I actually did not even sit down as my time did not go beyond five minutes. All that transpired was that I only needed to affirm what the Committee selection would be as the Committee selection was made and when it would be sent to the Minister. The Minister then informed me in the presence of the two gentlemen that the list was finalised.

Mr Shivambu: In which month of which year was this meeting?

Mr Tsotsi: This would have been December 2014.

Mr Shivambu: It is strange because on many occasions the EFF has sent letters to Minister Brown asking her if she has ever met any Gupta family member and associates and she was emphatic about her No. Are you sure it was Minister Brown at that meeting because she is going to come here and repeat what she said to us before?

Mr Tsotsi: It was her.

Mr Shivambu: I am interested in the debt and borrowings of Eskom because the figures I have from the Annual Reports of the company are saying that in 2011 Eskom had borrowings and debt of about R12.5 billion, as compared to now where there is a state guaranteed debt of R365 billion. Does that reflect reality, in terms of your time as chairperson of the Eskom board?

Mr Tsotsi: I don't have the specific figures in my mind but for the duration of my time, Eskom debt was growing quite rapidly and we were borrowing against a guarantee and National Treasury was greatly concerned about that.

Mr Shivambu: I want to confirm that Tony Gupta asked from you to be supplier for OCGTs in the Western Cape, for appointment of a senior executive at Eskom and the TNA contract; is that so?

Mr Tsotsi: That is correct.

Mr Shivambu: The meeting with Ms Myeni at the Presidential residence. Did you not raise questions specifically about the suspension of Mr Matona, a former DPE Director General, who had just arrived at Eskom and she is saying you must suspend him?

Mr Tsotsi: As I have said already, I had expressed my shock and indicated to Ms Myeni that the suspensions had the potential to cause instability and anxiety in the business. She responded that there should be no difficulty with the suspensions as they would reflect that the executives would have not done anything wrong but obviously that was besides the issue in my mind. When the President came in I reiterated this by saying 'perhaps we should find a modality which would require no suspensions to be served but rather cause a recusal of the executives from their offices, as suspensions had all manner of implications, including on the personal and professional integrity of the executives'.

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Mr Shivambu: The dot that has to be joined now is that whenever Ms Myeni appeared before the Standing Committee on Finance she would bring some militia group called Black First Land First (BLF) to come and write letters to disrupt anything raised against SAA in Parliament and the Minister of DPE had written us a letter which was copied by BLF to object to this Committee doing what it is currently doing? And the modus operandi of the Guptas and their associates was to deny the existence of meetings with the President. The evidence of Mr Tsotsi is a clear bridge about when Eskom had been captured to date. The looting of Eskom was elevated recently by the payment by Eskom to Trillian which is owned by Mr Essa.

I think we are becoming clear about what has been happening and I suspect that the remnants of Mr Essa's instructions and control remain at Eskom. We may need to discuss how we deal with these illegally instructed appointments at Eskom because if the business owes R365 billion state guaranteed debt that is a danger to the fiscus. Already Eskom is shifting the costs to ordinary citizens by asking a 19.9% increase on electricity costs because a syndicate of criminals has run down the business for their selfish benefit and Parliament has to stop that.

Mr M Gungubele (ANC): What haunts me is the fact that no matter how committed our political principals can be to adhering to the principles of good governance; if those who are deployed under them cannot stand the test; whether it is new and future leadership, I suspect the problems we have will continue. Would you agree?

Mr Tsotsi: You are correct.

Mr Gungubele: I keep questioning that you are called by another SOE board chairperson to a special place of the President to discuss the dynamics of your entity and that translates to you acting without question afterwards. By the way, you will find that your version of what happened in the meeting of the 11th is disputed by some of the witnesses who were here, and whether they have an agenda, is another story. Your version says the Minister knew who was going to be suspended but the two other versions I heard simply said that you know what to do. Furthermore, it was said that you fought hard to convince the board. I am interested in your response to "fighting very hard" for something which you say was not your view. You have a right to challenge.

Mr Tsotsi: Indeed, in relation to the notion I was fighting hard; there is a misplacement of what the crux of the matter was that we were trying to get at during that time. I was chairing the meeting and wanted to be certain that everyone participates in this decision; and remember that this was the second meeting of the board therefore the engagement amongst board members was quite new. Therefore it is also possible that someone listening to me could have had the impression that I was being persuasive because I wanted to achieve something specific. That is not the case. What I think probably came across was that because I had more intimate knowledge about what was on the table than the rest of the board, it would have seemed that I was being supportive of what should happen to a greater extent than anyone else. All that reflected was that I was more conversant about what was being discussed.

Mr Gungubele: Being a board member and you see the board chairperson is coming from the President's residence where he met with Ms Myeni and he comes across as fighting passionately about something which the board felt was inappropriate. What would be your view of that chairperson?

Mr Tsotsi: If the chairperson came across to me like that, I would want to say and think that person has a particular prejudice in favour of what should be happening, or is very anxious and keen to carry out some particular mandate that this person received. What is not quite correct in what I heard yesterday was that it is not true that there was wholesale objection to the suspensions of individuals. What board members were objecting to was the approach in which the matter had come across. They did not like the idea that there was a document which purportedly represented a resolution which needed to be taken. The board felt that it was being ambushed into doing something which it felt it needed time to interrogate and have more say about, and they also needed to hear what the shareholder had to say. Not one person raised an objection to the idea that the executives had to be set aside, except to say let us try and find a better modality if it is possible, rather than suspension.

Mr Gungubele: Therefore you would say when Ms Klein says: 'to my understanding none of the suspended executives were given reasons for their suspensions; instead, they were simply told that they were required to step aside in order for the inquiry to be speedily concluded and that they were not being formally charged.

Mr Tsotsi: Ms Klein was the most vociferous person in this P&G meeting particularly pertaining to how this process must work. I recall that she even pointed out that having been a director for Institute of Directors in Southern Africa (IoDSA) she was quite conversant with governance processes that situations like this demand. So, I said it is fine we have no problem that is maybe why she was on the board. I think it is not correct to suggest that the executives did not get reasons for their suspensions.

Mr Gungubele: Do you know a Mr Malesela Sekhasimbe?

Mr Tsotsi: Yes, I know him. He was a general manager with the commercial division of Eskom. He through some process at the company ended up being suspended and he was in suspension at the time of this process. He would be a level just below the executive.

Mr Gungubele: What would be your comment to Ms Klein saying you once suggested that during that period of suspension, Mr Sekhasimbe should act as a CEO?

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Mr Tsotsi: I think that is ridiculous.

Mr Gungubele I think you said the President asked what the meeting was about but Mr Lennell's documents say the President knew what the meeting was about and actually committed at the end of the meeting that he would speak to the Minister with regard to how the discussions went. There you find two different versions of the same meeting

Mr Tsotsi: I would not say different versions but an issue of recall as Mr Lennell probably recalls more than what I have portrayed; but the essence is that I am saying that without forgetting I found them all there; therefore there could have been a prior conversation between Mr Lennell, Ms Myeni and her son before my arrival. Therefore he might have known more than I do about the President's involvement. I am reporting what transpired in the meeting with the President in the presence of Mr Lennell.

Mr Gungubele: But he says the President committed to speaking with the Minister at the end of the meeting with you present and what I am saying is that the President's commitment in that fashion could only be attributed to someone who understood the essence of the meeting.

Mr Tsotsi: Indeed, the President understood the essence of what needed to be done but when he was intervening in what was said, he was asking clarity seeking questions. At the end of the meeting when he committed to engaging the Minister that clarified the fact that he understood what was going on.

Mr Gungubele: There is a view that the appointment of Collin Matjila as acting CEO was against the view of the board. What is your explanation to that?

Mr Tsotsi: To clarify this: This happened around December 2013 and Brian Dames departure was fairly imminent and the board engaged itself on the acting CEO role. It was decided that no board member should act and we agreed to canvass a name of someone to act, and this was Dr Steve Lennon. I was instructed to canvass this name with Minister Gigaba which I duly did and the Minister was comfortable with the acting role of Dr Lennon. I informed the board of the comfort ability of the Minister with the canvassed name in this acting role. Towards the time when Mr Dames was to leave and Dr Lennon was to step in, I received a phone call from Minister Gigaba where he was quite irate. He complained that we are attempting to restructure the business without consulting. All that had been happening then was that we had asked Dr Lennon to see, post-Mr Dames exit, what kind of strategic view the leadership of Eskom should have on the business. How the Minister knew about that I have no idea but he was clearly aware and he subsequently wrote a letter that there would be no restructuring at Eskom until a new CEO is appointed. We then decided, as Dr Lennon withdrew as he felt prejudiced, that we had to look for someone else, which is how Mr Matjila came on board.

The Chairperson thanked Mr Tsotsi for coming before the Committee and apologised for keeping him for such a long time.

Mr Tsotsi: I think the things said here today are very important and I want to reiterate that I am very sorry to the three executives were lost to Eskom and because they have suffered in their careers as a result of this. I would wish that other board members and other persons involved in the process at Eskom at the time would share this with the executives. I do not know to what extent Eskom can formally declare its position in terms of that, but if it is possible I believe that Eskom too should declare its position regarding the consequences they have had to suffer because of us.

The Chairperson said the documents had arrived from Eskom which Mr Tsotsi had asked for.

The meeting was adjourned.

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

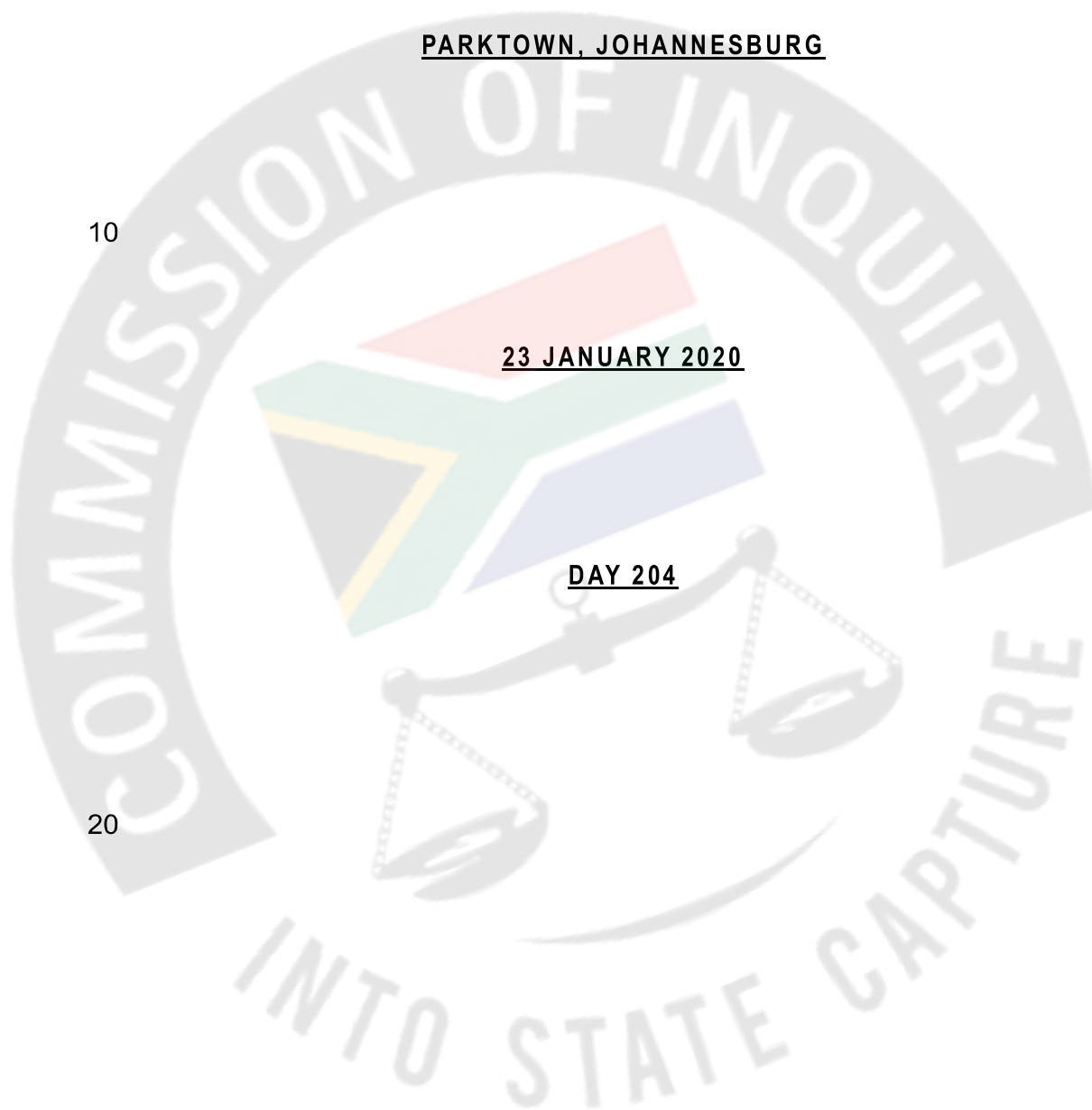
PARKTOWN, JOHANNESBURG

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in the rotation.

ADV KATE HOFMEYR: Mr Tsotsi in your evidence before the Portfolio Committee you did deal with this aspect of the new Board's appointments and an engagement you had after the appointments with Minister Brown. It is not an aspect that you have traversed in your affidavit at all but in our preparation for today we considered that testimony. Can you tell us what happened in that interaction about the appointment to Board committees?

MR TSOTSI: Oh I see what you are talking about. Yes. Chair this is a
10 process which ordinarily occurs when there is a new Board that comes into being. In the instance of Eskom what happened was that because of the number of sub-committees that have to be put in place there needs to be an allocation of Board members to the sub-committees. Now this allocation is ordinarily done by the Chairman and in consultation obviously with the members of the Board who are involved and of course with the – with the Minister. The exception would be the Audit and Risk Committee which is a statutory committee over which the Minister has got direct authority in who serves on that Board. But the rest of the committees I normally I ordinarily the Chairman would assist
20 in the case of Eskom as I say. So I went about doing this when the new Board was in place and in the process of doing this I received an email from a certain Essa – what is Essa's first name now? I just forget his first name.

ADV KATE HOFMEYR: Saliem.

MR TSOTSI: Saliem Essa yes. And Mr Essa drew my attention to a

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selection of Board members into various committees which he had done. And he then asked me to have a look at that and pass it on to the Minister. Now I was quite clearly taken aback around this because I did not understand what his role was and the reasons why he was involved in this. And so I pretty much ignored what [indistinct].

CHAIRPERSON: Sorry had you had any interactions with him before this?

MR TSOTSI: I had met Mr Essa in the – these breakfast meetings.

CHAIRPERSON: Yes. Okay.

10 **MR TSOTSI:** Yes. I had come to know him at that time.

MR TSOTSI: Yes okay alright.

MR TSOTSI: Yes. So he then...

CHAIRPERSON: When you said you ignored this email, is that right?

MR TSOTSI: Yes. And then I proceeded to do the selection the way I thought it should be done based on people's CV's and what they can contribute to the various committees. And I passed this onto the Minister which is what I ordinarily would have to do. And the Minister responded back to me and sent me what she purports was from her point of view what should be done. And when I looked at it it was
20 precisely what Essa had sent me. So I got the impression that there must be some collusion of some kind between Mr Essa and the Minister insofar as this matter is concerned. So...

CHAIRPERSON: You say it was exactly the same?

MR TSOTSI: It was precisely the same.

CHAIRPERSON: Hm.

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MR TSOTSI: So that was what had happened there in relation to the matter of Board members and their allocation to various committees of the Board.

ADV KATE HOFMEYR: Mr Tsotsi do you recall in your evidence before the Portfolio Committee talking about a meeting you had at the home of Minister Brown at which this issue was discussed?

MR TSOTSI: Yes I do recall that yes.

ADV KATE HOFMEYR: Because what you have relayed to us now is that the interactions you had with Minister Brown on this aspect was
10 done in writing as I understand it. You proposed to her and she came back in writing with a list that accorded with Mr Essa's list, is that right?

MR TSOTSI: Yes.

ADV KATE HOFMEYR: What about if any involvement at her home? Was that something that occurred? Your testimony previously said that you were called to her home.

MR TSOTSI: Yes I – the Minister did call me to her home and I duly went and this is the time when Chair we were still working on finalising the allocation to the Portfolio – to the committees of the different Board
20 members.

CHAIRPERSON: This would have been towards the – this would have been what – towards the end of – of the year of 2014?

MR TSOTSI: Yes correct. This would ordinarily have occurred shortly after the appointment of the Board members. So that would have been in December.

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CHAIRPERSON: Oh okay. Yes.

MR TSOTSI: Shortly after the 11 December.

CHAIRPERSON: Okay. Hm.

MR TSOTSI: And when I arrived at the Minister's residence there were two other people there. One was Tony Gupta, the other one was Saliem Essa. And I really did not spend more than maybe two, three minutes. In fact I did not even sit down. The Minister just simply indicated to me that I should please proceed on the basis of what she had indicated to me in terms of the allocations of the Board members into the different sub-committees of the Board. And I did not say much except to say that yes I have seen what you sent back to me and that is what we will proceed to do.

CHAIRPERSON: Let me just understand this. This was at a time when new members of the Board had been appointed.

MR TSOTSI: That is correct.

CHAIRPERSON: Towards the end of 2014.

MR TSOTSI: That is correct Chairman.

CHAIRPERSON: You were asked by the Minister to meet her in – at her residence, is that right?

20 **MR TSOTSI**: Correct.

CHAIRPERSON: So you went there.

MR TSOTSI: Yes.

CHAIRPERSON: On your own or with somebody else like DG or another Board member?

MR TSOTSI: No, no I went on my own.

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CHAIRPERSON: You went on your own.

MR TSOTSI: Yes.

CHAIRPERSON: At that stage did you know what she wanted to discuss with you or not before you got to the meeting?

MR TSOTSI: She did say to me that she just wants to clarify the issue of the appointments to the sub-committees of the Board.

CHAIRPERSON: Yes. And this was at a time when she had already sent you her allocation?

MR TSOTSI: Correct.

10 **CHAIRPERSON**: Okay. You had not responded yet to – to her allocation to her?

MR TSOTSI: No I had not responded yet.

CHAIRPERSON: You had not responded.

MR TSOTSI: No.

CHAIRPERSON: Okay. So you go – you get to her residence and you find that there are two people there whom I suspect you did not expect to be there. Mr Tony Gupta and Mr Saliem Essa.

MR TSOTSI: Correct.

20 **CHAIRPERSON**: And the Minister comes and discusses or tells you what you have just said in their presence?

MR TSOTSI: That is right.

CHAIRPERSON: And basically she was saying she would like you to proceed with the allocation as indicated in the allocation that she sent you?

MR TSOTSI: That is correct.

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CHAIRPERSON: And the two gentlemen were there hearing her listening?

MR TSOTSI: Yes that is correct.

CHAIRPERSON: And you did not have much to say in response?

MR TSOTSI: Yes that is correct Chair.

CHAIRPERSON: Was that then the end of the meeting or the meeting continued?

MR TSOTSI: No that was the end of the meeting. I just left and I left them there.

10 **CHAIRPERSON:** Oh. Did you ever get to understand why you needed to be told this in the presence of these two gentlemen?

MR TSOTSI: No Chairman I did not ask the Minister.

CHAIRPERSON: Yes. Yes. Okay. Thank you.

ADV KATE HOFMEYR: Mr Tsotsi how were they introduced at the meeting to you?

MR TSOTSI: They were not introduced at all. I think...

CHAIRPERSON: You knew them?

MR TSOTSI: I think the understanding that I – was that I knew them.

ADV KATE HOFMEYR: Hm. Indeed I think your testimony has
20 confirmed you did know both of them.

MR TSOTSI: Yes.

ADV KATE HOFMEYR: Prior to this, is that correct?

MR TSOTSI: That is correct yes.

CHAIRPERSON: But – I am sorry – but did the Minister know that you knew them already at that time? Because if she did not know that you

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knew them one would have expected her to introduce them to you.

MR TSOTSI: That is right Chairman I would have – I mean – I assume that the Minister must know that ...

CHAIRPERSON: You knew them.

MR TSOTSI: I knew them. Yes.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYR: And Mr Tsotsi how sure are you about this meeting at her home at which these two other people were present? I am asking because Ms Brown gave testimony after you before the
10 Portfolio Committee. As we read the transcript of her evidence she does not actually deny the meeting itself she denies ever having consulted with anyone about the appointments of Boards or their allocation to Board committees. But in the event that Ms Brown comes to give evidence and she is certainly scheduled to do so in the aviation session it is fair to ask you how certain you are that this meeting took place and the people there were the people who you say were present?

MR TSOTSI: Chair I am very certain. It is as simple as that. I am very certain.

ADV KATE HOFMEYR: Hm. Where is Ms Brown's – Minister Brown's
20 home, do you recall?

MR TSOTSI: Minister Brown at that time her home was in the government complex.

CHAIRPERSON: This would – official residence.

MR TSOTSI: The official residence yes.

CHAIRPERSON: Okay.

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MR TSOTSI: Yes.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: And did these two men ever say anything during this meeting as far as you recall? Anything of importance about this subject that was being raised?

MR TSOTSI: No Chair they did not say anything. Not – not something related to the meeting or to the discussion.

CHAIRPERSON: And – did you say the meeting lasted something like three minutes, five minutes?

10 **MR TSOTSI**: I would say about three minutes.

CHAIRPERSON: Yes okay alright thank you. And the – I am sorry – and the – the documents the one that you received from Mr Essa and the one that you received from the Minister and Ms Hofmeyr will tell me if we have got them – do – are we going to have them or we do not have them?

ADV KATE HOFMEYR: That was going to be my next question Chair.

CHAIRPERSON: Oh okay alright.

ADV KATE HOFMEYR: We have used every means available to us to try and find these emails and as the commission currently stands we
20 have not. So can you give us better guidance on that? Do you recall whether it was sent to your Eskom email address or possibly some other email address?

MR TSOTSI: It would have been my Eskom email address for sure.

ADV KATE HOFMEYR: Hm. And your response back would that have been – oh apologies you did not ever respond to Mr Essa. As I

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understand it you then corresponded with the Minister, is that right?

MR TSOTSI: Yes.

ADV KATE HOFMEYR: And again would that have been done from your Eskom email?

MR TSOTSI: Yes.

ADV KATE HOFMEYR: Hm. Chair it is not conclusive that we have not been able to find it. There are certain mail boxes that are available, certain of them have been imaged, certain of them are not. But I can certainly say as matters currently stand we do not have those emails
10 despite efforts to obtain them.

CHAIRPERSON: Okay. Yes. Yes.

ADV KATE HOFMEYR: And look for them.

CHAIRPERSON: But Mr Tsotsi is quite clear that he did receive an allocation as suggested by Mr Essa and he did receive an allocation as determined by the Minister and that the two were exactly the same.

MR TSOTSI: That is correct Chair.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Thank you. And then if we could move to 2015 because the next event that happens relative to the TNA contract as we
20 have pieced it together is a Round Robin resolution that circulated on the 3 February. Before we get there though on the 16 January 2015 there was the first Board meeting of the new Board, do you recall that?

MR TSOTSI: Yes.

ADV KATE HOFMEYR: And we will need to go to Mr Pamensky's bundle again Exhibit MM3 in order to find that minute.

**SUBMISSION BY BOARD OF ESKOM HOLDINGS SOC LIMITED
(REGISTRATION NUMBER 2002/015527/30)**

TO

**THE PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES INQUIRY INTO
CORPORATE GOVERNANCE AT STATE OWNED COMPANIES**



1. INTRODUCTION

- 1.1. Thank you for the invitation and the opportunity to share with the Portfolio Committee on Public Enterprises and fellow South Africans, the evidence on issues related to the Governance of Eskom

2. DISCLAIMER

- 2.1. This submission is made to the Committee subject to the conditions set out in this paragraph 2.
- 2.2. Due to the pressures of time as more fully set out in Eskom's letter dated 16 November and previous correspondence to the Portfolio Committee from Eskom, there may be information that is not available at the moment of making this submission. Eskom undertakes to provide such information before the end of the enquiry.
- 2.3. This submission is made reserving all Eskom's rights as a Company and that of Board members individually and collectively including without limitation their rights in terms of the Constitution of the Republic of South Africa 1996, the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act No. 4 of 2004 and the Rules of the National Assembly.
- 2.4. Myself and any other current board member or official that gives evidence in this Inquiry may not be able to recall events from memory during question time and will attempt after the hearing to submit any further documents requested by the Committee. Failure to recall an event should not be interpreted as a refusal to respond to the question.
- 2.5. In the preceding weeks various former officials and one former Board member have made serious false and unsubstantiated allegations about the board and individual current and past board members. I would like to draw the Committee's attention to the fact that while in some instances in our written submission we refer to a few of these inaccuracies, the failure to deal with such inaccuracies or to counter them in this submission or in the oral evidence should not be interpreted as acceptance by myself or the Board either individually or collectively, that such allegations are truthful.

3. CHALLENGES FACED BY ESKOM

- 3.1. In order for the Committee to appreciate the current challenges around liquidity and governance at Eskom, it is important to give some background of how these challenges emerged. These challenges are interrelated and related to structural and historical problems.
- 3.2. The importance of Eskom to the country, its people and economy cannot be overstated. Eskom generates approximately 95% of the electricity used in South Africa and approximately 45% of the electricity used in other parts of the African continent. Eskom generates, transmits and distributes electricity to industrial, mining, commercial, agricultural and residential customers and re-distributors.
- 3.3. I will deal firstly with the structural challenges. The challenges that the Board found when I was first appointed as a Board member in 2014, date back to the beginning of Eskom.
- 3.4. Eskom as a Company is 94 years old.
- 3.5. The Electricity Commission (Eskom) was established in terms of the Electricity Act of 1922 to “stimulate the provision, wherever required, of a cheap and abundant supply of electricity for the economic advancement of the Republic of South Africa”. While it was run along strict business lines, the objective was largely the provision of service for public benefit and not for profit. The organisation was directed by a chairman and six other commissioners, all appointed by the State President for their knowledge and experience in the various sectors of the economy and in the electricity supply industry. The entity was non-regulated and set pricing according to its business requirements at the time.
- 3.6. On 1 July 2002, when Eskom was converted from a statutory body to a public company, known as Eskom Holdings Limited in terms of the Eskom Conversion Act, 13 of 2001. Eskom’s two-tier governance structure of an Electricity Council and a Management Board was replaced by a Board of Directors.
- 3.7. Today, Eskom is also regulated under licences granted by the National Energy Regulator of South Africa, originally under the Act (41 of 1987), replaced by licences under the Electricity Regulation Act (4 of 2006) and by

the National Nuclear Regulator in terms of the National Nuclear Regulatory Act (47 of 1999).

- 3.8. Unlike its non-profit mandate at inception, Eskom today operates with a **commercial, compliance, and socio-economic** mandate in keeping with achieving social, financial, and environmental sustainability. Fulfilling its **commercial mandate**, Eskom must ensure that it is financially viable to continue to operate and to raise debt to fund its business operations and capital expansions.
- 3.9. In fulfilling its **compliance mandate**, Eskom needs to comply with the various licences and also live by the various government policies that govern state-owned enterprises and companies in general.
- 3.10. Finally, Eskom's **socio-economic mandate** helps South Africa achieve its broader developmental objectives of rural electrification, free basic electricity, job creation, and skills and supplier development.
- 3.11. Ladies and gentlemen, at this point, allow me to pause for, at this point, many may question whether it was these governance shifts that led Eskom down its current path?
- 3.12. On the surface, it may appear so, but the deep-rooted reality is that the answers lie in its boom and bust cycle – consistently moving in waves of excess capacity and capacity constraints, in line with economic fluctuations, over the decades. The boom cycle is typically represented by excess capacity, increase in sales, and excellent plant performance, while the bust cycle manifests itself through a shortage of capacity and poor plant performance.
- 3.13. So, while it may appear that Eskom recently took a stumble, the reality is that its operational and financial performance is expected in line with the bust and boom of the national economic flux.

- 3.14. A story that sounds overly familiar is the bust of the early 1980s. Complying with a request made in the mid-seventies and in the interest of the national economy to delay certain capital projects, Eskom lost three to four years of generating expansion, leading to the spate of power outages in the early eighties and an expensive capacity expansion programme, supported by government guarantees.
- 3.15. The 1983 De Villiers Commission of Enquiry was established as a result of concerns around the process and progress of the capital expansion programme and associated costs and impact on the economy. Power outages were frequent as a result of the unavailability of capacity and poor plant performance. At the time, plant availability was recorded at 72%. The new build at the time housed technology that was able to accommodate low-quality burn as a result of the poor sustainability of mines and poor quality of coal mined then. This followed the boom of the nineties and excess capacity due to the economic downturn experienced in the country. Plant performance was operating optimally, with 90:7:3 achieved, that is, 90% availability of plant, 7% planned outages, and 3% unplanned outages achieved in 1998. Eskom responded by driving a marketing initiative to increase sales and established Eskom Enterprises in 1999 to transition to new business operations and to grow new markets.
- 3.16. It was during this boom cycle that the new democratic government finalised the Energy White Paper in the late 1990s, outlining additional principles relating to Eskom's monopoly status and the proposition of breaking up the sector into a separate system and market operator and regional electricity distributors. This also included the fateful decision of cancelling the construction of new generation plant in anticipation of private investment by independent power producers. It, furthermore, kick-started the process to develop regional electricity distributors or REDS, as per a Cabinet decision. The REDS were subsequently cancelled in 2008, despite Eskom having ring-fenced its operating units in preparation for the transition.
- 3.17. The bust that followed in 2007/2008 is well known – labelled by Eskom's PR fraternity and engineers as load shedding. Load shedding was a consequence of a combination of events arising from the earlier deferral of planning and investment decisions by the new government, a similar unsound decision made by the Government in the mid-seventies. These

were a low energy reserve margin, inadequate coal supply, an increase in plant breakdowns in an ageing fleet, and insufficient generation capacity, coupled with a high demand due to economic growth and customer inefficiencies, thus resulting in load shedding – the controlled balancing of the power grid.

3.18. Eskom called for business, commercial, and residential customers to save 10% of electricity and to engage in energy efficiency measures.

3.19. Eskom's strategy at the time included:

3.19.1. demand-side initiatives, with integrated demand management calling all customers to manage demand by using less electricity and adopting energy efficiency products such as compact fluorescent lights and solar water geysers; and

3.19.2. supply-side initiatives to increase capacity. This included implementing the build programme, improving generation plant performance, utilising gas turbines to supplement capacity, and securing sufficient coal to generate electricity.

3.20. Eskom's financial stability was noted as a central challenge despite receiving a R60 billion equity loan from government. The average tariff failed to recover the full cost of producing electricity, with escalating primary energy costs and embedded derivative-linked contracts resulting in an accounting loss of R9.5 billion.

3.21. In addition, the funding model was inadequate for raising funds to finance the build programme. The capital costs of the build programme had escalated considerably due to an increase in global construction costs prior to the global economic crisis. The Board, under the then Chairmanship of Mr Bobby Godsell, had introduced a cost management programme that could see Eskom breaking even at an operating level.

- 3.22. During the latter part of 2009, Eskom experienced a leadership vacuum by losing its Chief Executive and Chairman, which impacted its reputation even further.

2010-2014

- 3.23. From 2010 to 2014, Eskom drove a recovery programme, achieving an increase healthy profits. Nersa had granted above-inflation tariff increases of an average of 31% in July 2009 and 24.8% in April 2010. Government's support included R430 billion in financial support, with R350 billion in guarantees, to deliver the country's electricity capacity expansion programme.
- 3.24. The country hosted a successful FIFA World Cup to which Eskom contributed by keeping the lights on. A new chief executive was appointed, and all vacancies in the executive management committee were filled.
- 3.25. The 2010 IRP was promulgated, providing guidance on the new expansions and diversification opportunities for greater regional development and electricity imports. The IRP provides a medium- to long-term plan that directs the expansion of electricity supply (including private and own generation) and power purchases from regional projects and demand initiatives in South Africa over the period 2010 to 2030. The IRP determines the timing and mix of the projects and provides the basis according to which NERSA will license projects.
- 3.26. Eskom subsequently signed on independent power producers to boost supply and diversify the national energy mix. Plans were in place to return the previously mothballed power stations and bring new units online. With the intent to ensure that IPPs obtained fair access on the transmission network, the government tabled the Independent System Market Operator (ISMO) Bill. This outlined energy planning, feasibility studies, IPP procurements, and market administration. This was, however, withdrawn in 2014/2015, as global implementation outlined potential risks.

- 3.27. In March 2011, in an effort to secure an energy-efficient future, Eskom, government, and business partners launched the biggest long-term countrywide saving movement called 49M. The objective of 49M was to change behaviour and to encourage all citizens to become more energy efficient, thereby protecting the planet, saving power, and sparing one's pocket.
- 3.28. The campaign was championed by the former Deputy President, Kgalema Motlanthe, and the former Minister of Public Enterprises, Minister Malusi Gigaba. The campaign, driven by Eskom's Corporate Affairs Division, included advertising across radio, TV, and print media, and it reached South Africans through the participation of corporates and retail partners, who activated the 49M campaign among staff, suppliers, and customers nationwide. The movement urged every South African to "Lift a Finger", which was all it took to switch off a light when not in use. The symbol of the key messages "Remember Your Power" and "If you are not using it, switch it off" was a yellow reminder string, a thread that tied these messages together. This became the single biggest effort driving South Africans at the time.
- 3.29. The success of the campaign is, today, evident from the reduction in electricity demand and sales, an increase in off-the grid supplies, an increase in energy-efficient products such as solar geysers, LEDs, and CFLs, and from energy-efficiency ratings on products in the marketplace.
- 3.30. Despite recording a net profit of R5.2 billion for the 2012/2013 period, Eskom continued to navigate through its financial and operational challenges. Funding new investments and the obligation to assure affordability for households and businesses remained key challenges flowing from the revenue gap resulting from the MYPD3 revenue determination.
- 3.31. Keeping the lights on, stabilising the short-term finances while managing an 8% annual average tariff increase allowed by Nersa, securing funding for the build programme, making progress on the build programme, and re-engineering the business for more effective performance remained critical in 2012/2013.

3.32. Operational challenges persisted, with the continued escalation of unplanned maintenance. Given a tight supply-demand balance, “Eskom had to frequently defer planned maintenance to ensure uninterrupted power supply, taking its toll on the generation fleet, the performance of which had become volatile”. Unplanned maintenance had increased from 7.97% to 12.12% at the end of March 2013. During this time, Eskom also experienced a significant set-back with the Duvha Unit 3 outage.

3.33. It was in 2013 that the Board approved the 80:10:10 strategy, which called for an 80% availability factor, 10% for planned maintenance, and an allowance for 10% unplanned outages.

3.34. Eskom limited electricity demand, and during 2012/13, demand management initiatives resulted in 2 244 GWh of electricity savings.

2014/15

3.35. On the 11 December 2014, a statement on the meeting of the cabinet of the Republic of South Africa of 10 December 2014 was released.

“Cabinet remains concerned over the disruptive effect the recent power outages are having on the daily lives of South Africans and its impact on households and business across the country. Cabinet adopted a five point plan to address the electricity challenges facing the country. A technical team war room for the implementation of the five point plan is constituted with immediate effect. The five point plan addresses the strain our electricity system faces. The plan covers:

1 The interventions Eskom will undertake in the period over the next 30 days

2 Harnessing the cogeneration opportunity through the extension of existing contracts with the private sector

3 Accelerating the programme for substitution of diesel with gas to fire up the diesel power plants

4 Launching a coal independent power producer programme

5 Managing demand through specific interventions within residential dwellings, public and commercial buildings and municipalities through retrofitting energy efficient technologies”

At this meeting cabinet appointed and announced a new membership for the Eskom Board of Directors

- 3.36. When I assumed my role as a board member at the end of 2014, I was surprised to learn that the landscape was more complex than what I perceived it to be as an ordinary citizen.
- 3.37. The month prior to my appointment, Eskom had yet again announced the development of a turnaround strategy to arrest the operational and financial decline and to stabilise the business. The Turnaround Strategy focused on four key areas: operational sustainability, revenue and customer sustainability, sustainable asset creation, and financial sustainability.
- 3.38. Eskom was still implementing load shedding, now in stage 3 impacting daily lives and industrial production.
- 3.39. Eskom’s narrative still read, I quote: “We have communicated for an extended period that the national power system is constrained due to the lack of available generating capacity. To balance and protect the power system, we have to apply demand management practices, which include utilising OCGTs and pumped-storage schemes, as well as relying on independent power producers (IPPs), interruptible load agreements, load curtailment by key industrial customers, and energy efficiency efforts by other customers. When sufficient demand savings are not realised, we have to resort to controlled, rotational load shedding.”
- 3.40. The company still faced financial challenges despite recording a profit of R3.6 billion (2013/14: R7.1 billion) and recording internal cost savings of R9 billion. Government provided an equity injection of R23 billion and conversion of its subordinated loan to equity (R23 billion + R 60 billion =

R83 billion). The shareholder also granted Eskom R350 billion worth of guarantees to assist with borrowings.

- 3.41. The build programme was behind schedule and had started later than it should have as a result of government's attempts to bring in IPPs. Undertaking a capital expansion programme of such a magnitude 20 years after the completion of such previous programmes was met by a loss of skills and a lack of construction experience. The additional challenges of insufficient funding, labour unrest and demands on the build sites, poor contractor performance, and significant cost overruns on the project resulted in significant delays, which ultimately escalated costs even further. Eskom was hopeful at the time that it would synchronise its first unit at Medupi by the end of 2015. The unit was commercialised on 23 August 2015, eight years after starting construction on 14 August 2007. At the start of construction Eskom had optimistically projected that the last unit of Medupi would be commissioned in 2015.
- 3.42. In addition to these challenges, Eskom experienced a significant safety incident at the Ingula construction site, where six contractors lost their lives onsite. This was painful for the company and resulted in additional time loss, as the Department of Manpower requested a shutdown of the site to conduct the necessary investigations.
- 3.43. The lessons learnt were expensive to both the company and country and were regrettably experienced at Medupi, Kusile, and Ingula at the time. Only the 100 MW Sere Wind Farm came in on budget and on time, having been commercialised on 31 March 2015.
- 3.44. In addition, operational performance was also deteriorating. Generation plant availability (EAF) declined to 73.73% for the year 2014/15, compared to 75.13% in the previous year. Unplanned maintenance (UCLF) had deteriorated significantly from 12.61% in 2013/14 to 15.22%, partly due to the Duvha Unit 3 incident and the Majuba silo collapse.

- 3.45. The financial health of the organisation remained under pressure given the flat demand and rising operating costs particularly in primary energy such as liquid-energy fuel to run OCGTs and the cost of maintenance.
- 3.46. Despite this, the renewable programme was progressing well as Eskom purchased 6 022GWh from IPPs during the year, at a cost of R9.5 billion.
- 3.47. Ladies and gentlemen, as the newly appointed Board this was the backdrop which sketched the enormity of the task at hand. It was a responsibility which each of us agreed to shoulder. We had no choice but to take a principled stand and take the necessary action for the benefit of our country.
- 3.48. Undeterred, we garnered our individual strengths to tackle the challenges and possible irregularities that were brought to our attention through our engagement with the executives.
- 3.49. The Board agreed to meet more frequently to address operational and financial challenges. We established two-task teams, one a build and the second an operational task team, each chaired by a Board member and which included executives from the business. The objectives were to fast-track the build programme and to arrest load shedding. I have no doubt that it was this hands-on approach and key focus of the Board and the leadership of Mr Molefe at the time that saw the build programme being fast-tracked and load shedding ceased when it did.
- 3.50. We resolved as a board to take bold and decisive decisions, for the benefit of Eskom, the shareholder and the country at large.

2015/2016:

- 3.51. With the appointment of a new chief executive and chairman, Dr Ben Ngubane we positioned ourselves to emerge from the current challenges.

- 3.52. At the end of the financial year 2015/16, slightly more than 12 months from the time that the new Eskom Board was appointed, we had challenged and changed the fundamental assumptions that guide this complex business. Through the Design-to-cost strategy we had made steady progress and had seen notable improvements. This had contributed to operational and financial sustainability for the company and had resulted in reliable electricity supply for the country.
- 3.53. It was extremely heartening to receive many team based presentations at the Board. Ordinary employees came forward and shared with delight their achievements. Majuba's collapsed silos was initially planned to be repaired in a few years. After a submission or two, this work was completed in a few months; all three silos were completely recovered and Majuba returned to a full and proud production of 6 x 600 MW of generation output.
- 3.54. Due to the able leadership of the new chief executive and his team, load shedding was terminated and we had made excellent progress on the new build programme with the commercialisation of Medupi Unit 6 in August 2015 and Ingula Unit 4 on 10 June 2016. To date the programme has been successfully fast-tracked with all four units of Ingula, Medupi Unit 5 and Kusile unit 1 having been connected to the grid.
- 3.55. We have developed a sustainable capital investment plan that prioritises projects closely aligned to our strategic objectives. These include our new build programme, the recovery of our generation asset base, completion of environmental projects and improvements in our transmission and distribution grid infrastructure.
- 3.56. We had taken full advantage of the equity injections by the shareholder and the conversion of the shareholder loan to equity.
- 3.57. We established a cohesive team between Board and Management and made an indelible contribution to achieving our combined success.

- 3.58. At the end of the financial year 2016/17 the performance reflected a concerted effort by the business to improve efficiencies, resulting in surplus capacity, increase cross-border sales, supported by improved plant performance.
- 3.59. Eskom is now open to support new investments in South Africa and across our borders. The move from a constrained power system to surplus capacity is a result of improved generation plant performance, units from our new build programme being commissioned and independent power producers being included in our mix.

Corporate Governance

- 3.60. There have been corporate governance challenges in Eskom over the years. One of the major challenges is the frequent turnover of both Boards and Chief Executives. For example in the last 10 years there have been 5 different chairpersons with each of them on average serving for a period of 2 years. Over the last 10 years there were 10 different Chief Executive Officers. This creates instability and a low morale and the inability to execute policies of Eskom to stabilise the situation. A new Board is about to be appointed and it will be the task of that Board to appoint a permanent Chief Executive Officer and I am confident that if the person appointed is the right fit for Eskom, Eskom can stabilise from a governance perspective..
- 3.61. I am confident that with the right leadership and intervention by the shareholder to try and deal with the structural reasons for the liquidity crisis within Eskom, Eskom can be restored to what it was.

4. ESKOM TRANSACTION WITH TNA MEDIA

- 4.1. On 14 April 2015, TNA Media (Pty) Limited ("TNA Media") concluded a sponsorship agreement with Eskom " in terms of which, amongst others, TNA Media would grant Eskom, amongst others, the following –
- 4.1.1. live broadcast of events for at least 60 (sixty) minutes;
 - 4.1.2. advertisements in the NEW Age;
 - 4.1.3. two tables, of 10 (ten) guests each at events; and
 - 4.1.4. a sponsorship speech, from the podium, before start of the events.
- 4.2. The duration of the contract was for 3 (three) years and to terminate on 30 April 2017.
- 4.3. The sponsorship fee payable by Eskom was R 43 200 000.00 (forty-three million, two hundred thousand rand), excluding Value-Added Tax ("VAT") for 36 (**thirty-six**) business briefing events at the cost of R 1 200 000 (one million, two hundred thousand rand) each.
- 4.4. The parties could cancel the agreement in the case where one of the parties breaches any terms of the sponsorship agreement.
- 4.5. Either of the parties could also, terminate the sponsorship agreement if any of the parties is declared "bankrupt" or any administrative receiver or similar officer, is appointed in respect of "whole or part of the assets of either party."
- 4.6. The agreement between Eskom and TNA Media was authorised and signed by Mr Collin Matjila who was the acting group Chief Executive Officer of Eskom.
- 4.7. Management of Eskom raised its concerns about the sponsorship agreement in light of commitment made by Mr. Matjila to TNA due to his lack of delegated authority, to conclude the sponsorship agreement and the absence of budget from which to pay the sponsorship fees. The Board through its committees, established that Matjila had acted *ultra vires* and committed Eskom to a sponsorship fee that was not budgeted for in that financial year.
- 4.8. SizweNtsalubaGobodo were instructed to carry out a forensic review of the sponsorship deal. SNG confirmed that Matjila had exceeded his powers by committing Eskom to an amount of R 3 600 000.00 (three million, six hundred thousand rand) without consulting the Executive Committee ("Exco") of

Eskom and committing Eskom regardless of the absence of budget from which the fee would be paid in that financial year. SNG characterized this expenditure as irregular expenditure.

4.9. SNG, further, found that the sponsorship agreement between Eskom and TNA Media did not have an exit clause for Eskom, despite the fact that the legal department of Eskom had recommended that an exit clause be inserted to protect Eskom.

4.10. The findings of SNG were confirmed by Ledwaba Mazwai Attorneys.

4.11. The Board decided not to take any action against Mr Matjila because he was no longer an employee of Eskom.

4.12. The Board decided to ratify the sponsorship agreement after obtaining taking into consideration the legal and reputational consequences of cancelling this agreement.

5. THE PROCUREMENT PROCESS OF IT SERVICES TO REPLACE T-SYSTEMS SUSPENSION OF SAL LAHER

5.1. The procurement processes which were initiated to replace T-Systems South Africa (Pty) Limited ("**T-Systems**") were started before December 2014 and therefore, the members of the current Board have no personal knowledge of the procurement processes involved in replacing T-Systems and the suspension of Mr. Sal Laher.

5.2. Eskom's records reveal that the procurement processes to replace T-Systems were suspended in and around December 2014 because more than 50% (**fifty percent**) of senior Eskom employees, who were critical to the management of the IT department, accepted voluntary separation packages from Eskom and left the employment of Eskom. This fact would have led to load-shedding because IT department is critical to the business of Eskom.

- 5.3. The Board decided to suspend the procurement process of replacing T-Systems to enable T-Systems to continue providing services to Eskom because T-Systems was well acquainted with Eskom's existing IT systems and to discontinue their services, would have had a negative impact on security of supply.
- 5.4. Eskom saved approximately R 800 000 000.00 (**eight hundred million rand**) by continuing to use the services T-Systems because T-Systems allowed certain functions which were the responsibility of T-Systems to be carried out "inhouse" by Eskom.
- 5.5. The agreement between Eskom and T- Systems is valid until April 2018.
- 5.6. Mr Sal Laher was suspended by Eskom in November 2014. The reason for his suspension was that he failed to follow procurement processes. The Board has been advised that there was an amicable settlement between Eskom and Mr. Sal Laher. Mr. Sal Laher was paid a severance package.

6. THE EMPLOYMENT AND EARLY RETIREMENT OF MR MOLEFE AS GROUP CHIEF EXECUTIVE AT ESKOM

- 6.1. On or about the 20th of April 2015 Mr Brian Molefe ("**Molefe**") was seconded from Transnet to Eskom to assist with operational requirements at Eskom. Molefe was initially seconded for a period of 3 months, which initial period was later extended for a further 3 month period. In total, Molefe was on secondment for 6 months.
- 6.2. On the 28th September 2015 the Minister of Public Enterprises – Minister Lynn Brown announced that the cabinet had approved the appointment of Dr Ben Ngubane as Chairperson of Eskom's Board and Mr Brian Molefe as the Group Chief Executive and Mr Anoj Singh as the Chief Financial Officer at Eskom.
- 6.3. On the 24th of September 2015, a draft offer of employment was prepared for Molefe on the basis that the Group Chief Executive - Molefe would be appointed on a permanent basis as a Standard F - Band Executive. The offer of permanent employment became effective from the 1st of October 2015. A formal letter was addressed to the interim Chairperson - Dr Ben Ngubane from the Minister of Public Enterprises on the 2nd of October 2015 in terms of which the Minister formally approved the appointment of Molefe. No mention is made in that letter whether the Molefe employment contract would be on a permanent basis or a fixed term

contract. In that same letter the Minister requested that the Molefe employment contract be provided to her within 3 months from date of this letter.

- 6.4. On the 2nd of October 2015 a letter was also addressed from the Minister to Molefe confirming his appointment. It is important to note that no mention is made of the term of the employment contract. The inference drawn based on the letter of the 2nd of October 2015 addressed from the Minister to the Chairman as well as the letter addressed from the Minister to Molefe also on the 2nd of October 2015 that Molefe's employment was on a permanent basis as no mention is made of a fixed term.
- 6.5. A standard F- Band contract of employment based on permanent employment was prepared on the 7th of October 2015. This employment contract was not signed by either Eskom as the employer or Molefe as the employee. On the 16th October 2015, a letter was addressed to the Minister from the Eskom Chairman requesting approval for the remuneration of Molefe, in terms of which the proposed total costs to company, was to be increased. This letter is indicative that the understanding by the Eskom board was that the employment of Molefe would be done on a permanent basis.
- 6.6. On the 1st of November 2015, the Minister responded to the letter of 16 October 2015, where she approved the proposed remuneration package to Molefe. This letter was addressed to the Chairperson and was received by the company secretary on 4 November. In that same letter she further expresses her view that the period of employment for Mr. Molefe be recorded as 5 years subject to annual performance reviews. This is the first time that Eskom is advised that the tenure of Mr. Molefe's employment be on a fixed term basis and not permanent.
- 6.7. An offer of employment on a permanent basis which had been prepared was signed by Dr. Ngubane on the 9th of November 2015. The offer of employment was co-signed by Mr. Molefe on the 11th of November 2015. It appears the chairperson may not have been aware of the letter sent to him and the company secretary by the Minister on the 4th of November.
- 6.8. It is important to note that the appointment letter did not state the specific term of tenure of the employment, although it was made clear that the offer of employment would be on a fixed term basis.
- 6.9. On or about the 16th of November 2015, various retirement issues were discussed between Mr. Molefe and the Chairperson. A specific term to be considered was whether Mr. Molefe would be entitled to early retirement at the end of his fixed term contract should his contract not be renewed. The Eskom Pension and Provident Fund was consulted on or about the 16th of November 2015.

to find out whether Mr. Molefe would be entitled to early retirement. The accepted rule within Eskom was that to be eligible for early retirement, an employee would have to have achieved a minimum age of 50 years and have been in service for not less than 10 years. Eskom Pension and Provident Fund confirmed that the tenure of service can be bought-in without having to serve the full ten year service. In other words, Eskom could pay in the balance of the years or the tenure that Mr. Molefe did not work in order to achieve the minimum 10 year threshold. On the 25th of November 2015 a letter was addressed by Eskom to the Minister in terms of which the specific retirement arrangements of Mr. Molefe were addressed and clarification was requested from the Minister.

6.10. In that letter Eskom specifically requests the following:

6.10.1. Regardless of Mr. Molefe's age after the five year termination date he be allowed to retire from Eskom's service on the basis that he is deemed to be aged 63.

6.10.2. That the penalty prescribed by the Eskom Provident Pension Fund for retirement prior to age 63 be waived.

6.10.3. That Eskom carries the costs of such penalties (to be paid over to the Eskom Pension and Provident Fund).

6.10.4. In the event that Mr. Molefe's contract is not extended beyond the initial five year fixed term, he will not be allowed to subscribe to any other SOC or Government Pension Fund;

6.10.5. Should the contract be extended however, it is important to note the costs of any subsequent penalties will decrease proportionately.

6.11. It is important to note that as at the 9th of February 2016 a formal response to the letter addressed to the Minister on the 25th of November 2015 had still not been forthcoming and at that time there was no formal contract of employment with Molefe.

6.12. On the 9th of February 2016, the People and Governance Committee meeting resolved that the early retirement of Mr. Molefe be approved within the rules of the Eskom Pension and Provident Fund with the benefit of buying-in additional years' service to enable him to retire. It was also highlighted in that same meeting that a fixed term contract of 5 years for a Group Chief Executive was unheard of and unprecedented for Eskom, and that this was the first time a fixed term contract was being implemented at this level. Due to the loss of benefits Mr. Molefe suffered as a result of being on a 5 year contract as opposed to being a permanent employee the early retirement was seen as an effort to mitigate some of these losses and

incentivise him. The resolution provided that in cases where a Director who is appointed on a fixed term basis decides to take early retirement and has a shortfall in respect of the number of years prescribed to be served by the Eskom Pension and Provident Fund, Eskom shall:

6.12.1. Bridge the gap and pay the balance of the tenure or remaining years required to make up the entire ten year tenure;

6.12.2. Waive penalties applicable to early requirement;

6.12.3. Refund the Eskom Pension and Provident Fund the applicable costs for additional service added plus penalties applicable to early retirement.

6.13. On the 7th of March 2016 a formal employment contract was drafted and signed by both Eskom and Mr. Molefe. This contract was based on a five year fixed term and on the basis of the resolution dated 9th of February 2016, in terms of which early retirement would be permissible upon termination of the fixed term contract. On the 6th of September 2016 it was decided to increase the long term incentive award for Mr. Molefe to two times the annual pensionable earnings as the amount was relatively low based on the benchmark against similar long term incentive awards to Chief Executive at this level.

6.14. On the 24th of October 2016, the Eskom People and Governance Committee approved the additional award in the form of an increase of Molefe's long-term incentive to two times the annual pensionable earnings.

6.15. On the 11th of November 2016, Mr. Molefe formally submitted his request for early retirement in term of the rules of the Eskom Provident and Pension fund read together with the resolution of the 9th of February 2016. In that same letter he indicated that his last day of service would be the 31st of December 2016.

6.16. Mr. Molefe's retirement letter was discussed at the special People and Governance Committee meeting on the 21st of November 2016. The meeting was not quorate and could not make any decision. During that meeting the terms of the retirement letter requesting early retirement was noted and supported to be taken further through the process.

6.17. On or about the 13th of April 2017, the Chairperson of the People and Governance Committee was made aware by a Journalist that alleged payments in the amount of R30 000 000.00 were made to Mr. Molefe from the Eskom Pension and Provident Fund. This is the first time that Eskom became aware of a potential leakage of confidential information regarding Molefe's early retirement.

6.18. On or about the 19th of April 2017, a request was made to meet the Minister. The meeting was attended by the Chairman Dr Ngubane, the Chairperson of the People and Governance Committee, the Company Secretary, the Minister, the Director General and three advisors from the Department of Public Enterprises and the Senior Manager dealing with Executive remunerations. Eskom explained that because Molefe was on a fixed term contract, Eskom had approved that at the end of the fixed term that Molefe be entitled to early retirement principally due to the fact that his tenure was on a fixed term basis and it was uncertain whether it would be renewed, and on the basis that he had in fact over a period of time served various stints of short duration on a fixed term basis with various other state owned entities such as Transnet. The net effect was that his pensionable salary did not have sufficient time in the form of years of service to accrue during his period of employment. The Minister was adamant that the funds in an amount of R30 103 915.62 paid to the Eskom Pension and Provident Fund in respect of Molefe's early retirement would not be permissible and should be repaid.

6.19. In a letter from the ministry of Public Enterprises to the media dated 27 April 2017, the Minister formally declines payment of Molefe's early retirement pension pay-out. In her communication to the media, the Minister indicates that the proposed pension payment pay-out is not justifiable in light of the current financial challenges faced by state owned entities and the country as a whole. The Eskom Board thereafter took the decision and then engaged with Mr. Molefe with a view to re-appointing Molefe and reinstating him as Group Chief Executive in accordance with the Minister's directive not to pay out his early retirement pension. The effect of a reinstatement would be that Molefe is restored as Group Chief Executive and that he would in turn have to refund all monies paid to him as at the end of December 2016, in respect of his early retirement. In terms of a meeting held on the 2nd of May 2017 the Eskom Board discussed various options available to them regarding Molefe's retirement decision and the Minister's directive not to pay-out his early retirement pension. It was decided that the Board would engage with Molefe with a view to rescinding the Board's prior decision to accept his application for early retirement. The meeting confirmed that considering it did not have the support of its principal for the approval of the early retirement application and that they were legal risks associated with other options, the proposed option to rescind the previous decision would be a fair and clean solution in the interest of all concerned. It was therefore resolved that the Board elects to rescind the decision to approve the application in November 2016 of the Group Chief Executive Mr Molefe for early retirement. On the 11th of May 2017 a letter was addressed to the Minister in terms of which the Eskom Board's position regarding Molefe's early retirement was communicated.

6.20. In that same communication Eskom communicated to the Minister that a decision had been taken by the Board to rescind Molefe's application for early retirement. With this option Molefe would be required to pay-back any funds

received by him back to Eskom, as well as any Eskom Pension and Provident Fund funds paid pursuant to his early retirement and resume his employment as the CEO of Eskom, and he would additionally be re-instated as a Director on the Board of Directors.

- 6.21. In the same letter a second option considered was a non-consensual rescission in terms of which in the event that Mr. Molefe did not consent to a rescission of the decision taken to provide him with early retirement, Eskom would have to launch a court application to overturn its decision taken on the 21st of November 2016 (to approve early retirement for Mr. Molefe, as well as attempt to overturn the Eskom Pension and Provident Fund's decision made pursuant to rule 28.3 of the EPPF rules. If Eskom does not bring this application, the Minister may institute an action against Eskom on the basis that its decision of 21st November 2016 to accept early retirement was irrational and unreasonable. This option would only be considered if Mr. Molefe did not agree to a rescission of his approval for early retirement.
- 6.22. The third scenario envisages resignation in terms of which Mr. Molefe's application for early retirement be rescinded and thereafter Mr. Molefe retains the option to resign from Eskom's employ. In this scenario he would be entitled to his normal retirement benefits in terms of the Eskom Pension and Provident Fund Rules. Eskom agreed that the employee may return the monies paid to him which were linked to his early retirement. Under the final option being a settlement payment, the parties may agree that Mr. Molefe's approval of his early retirement be rescinded and in that instance they would pay him a settlement amount to be agreed on.
- 6.23. On the 11th of May 2017 a letter was addressed to Mr. Molefe by Eskom in terms of which it is recorded that the Board has taken a decision to rescind the initial decision to approve his early retirement. It is further recorded that the Board requests Molefe to resume his duty as Group Chief Executive by the 15th of May 2017 on the basis of a reinstatement agreement to be signed.
- 6.24. On the same date, namely the 11th of May 2017, Molefe concluded a contract to be reappointed as Group Chief Executive Officer. In that reinstatement agreement Molefe agrees that he resumes his duties as Group Chief Executive Officer and to pay to the Eskom Pensions and Provident Fund all the amounts due to the Fund which were paid to him pursuant to his early retirement. The period between 1 January 2017 and 15 May 2017 is regarded as unpaid leave.
- 6.25. It should be noted that in terms of the Eskom Pension and Provident Fund member's guide to benefits clause 3.3(d) provides for early retirement with separation benefits. The following is recorded:

“a member between the ages of 50 and 65, who has contributed to the fund for a minimum of ten years, may go on early retirements with separation benefits and without penalties. By mutual agreement with the employer”.

- 6.26. The attainment of at least 50 years of age and the completion of at least continuous pensionable service rule is again confirmed in the Eskom remuneration and benefits practices policy dated 6 of November 2015.

In terms of the revised rules of the Eskom Pension and Provident fund, Rule 24 records the following under the heading Early Retirement:

“Notwithstanding the provisions of rule 23, a member may retire from the service after attaining the age of 55 years of age, in which case he shall be entitled as from the date of his retirement to a pension in respect of his pensionable service to the date of retirement calculated in terms of Rule 22 reduced by a factor equal to thirteen fortieth of one percent for each month by which the period from the date of his retirement to the date on which he would have attained the pensionable age exceeds 24 months.”

- 6.27. It therefore appears that in terms of the Eskom Pension and Provident Fund rules Mr. Molefe would have had to attain the age of at least 55 and not 50 before he can apply for early retirement. In terms of Rule 28 of the same rules this provision deals with retrenchment and not early retirement. It is accepted that Eskom and the Eskom Pension and Provident Fund mistakenly interpreted Rule 24.1 and Rule 28 in its interpretation regarding Molefe’s early retirement.

- 6.28. It is a common error between the parties and Eskom’s approval for Molefe to take early retirement based on the Eskom Pension Fund Rules was a reference to the incorrect clause reference as Molefe would have had to obtain the age of 55 and not 50 before he could take early retirement.

- 6.29. In conclusion, Mr. Molefe was initially seconded to Eskom for a 6 month period. On the 1st of October 2015 an offer of employment was made to Molefe initially on a permanent basis, however based on the communication from the Minister the contract of employment was changed to a five year fixed term contract.

- 6.30. The challenge with the five year fixed term contract is that the employee’s Pension does not have enough time to accrue as it is not known whether the employment or the fixed term would be extended for a further period or not. In the circumstances Eskom took a decision to allow Molefe to take early retirement on the basis or understanding that he would have reached the age of at least 50 at the end

of his fixed term contract and to the extent that he has not served a minimum of 10 years' service.

6.31. It is accepted that Molefe's employment on a fixed term basis was a first for Eskom and historically all Chief Executives have been employed on a permanent basis. It is further accepted that the Minister has never responded to Eskom's letter dated 25 November 2015 requesting approval for Molefe's early retirement.

6.32. It is only on the 19th of April 2017 that the Minister formally confirmed that she would not approve an early retirement and pay out to Molefe. As a result of the Minister's directive, Eskom was proactive in rescinding its decision taken on the 9th of February 2016 to approve Molefe's early retirement. Molefe was subsequently reinstated in May 2017 and the parties were restored *ante* to the same *status quo* they were in as at 31 December 2016 as a result of the rescission of the decision taken and reinstatement of Molefe.

7. SUSPENSION OF FOUR EXECUTIVES

7.1. The new Board was appointed at the beginning of 2015. During this period Eskom faced severe challenges. The country was experiencing stage 3 load shedding. The Department of Public Enterprises in a presentation to Parliament on 25 March 2015 estimated that stage 3 load shedding cost the economy between R60 to R80 billion per month. Eskom was using R1 billion per month on diesel due to the use of gas generators instead of coal. Eskom advised the Minister that it may not be able to pay salaries and the build programme costs escalated.

7.2. Amidst this crisis faced by the Company, at the second meeting of the new Board the then chairperson Mr Zola Tsotsi asked the then Company Secretary Mr Malesela Phukubje to request an urgent board meeting. This notice was sent out on a Sunday evening at approximately 8 pm in the evening on March 8. The Board meeting was called for the 9th March.

7.3. The notice was accompanied by a Memorandum submitted by the chairperson which referenced the implemented restricted supply of electricity to all areas for a number of months and the problem that notwithstanding the integration of Medupe Unit 1 continued maintenance and unscheduled shutdowns have and will continue to cause ongoing planned and unplanned outages. Reference was also made in the memorandum to the fact that the CEO publicly stated that these unplanned and planned outages would continue for a period of five (5)

years. The other problems mentioned were the fact that the Medupe and Kusile plants were years behind schedule and went billions over budget. The lost revenue as a result of lost sales arising from non-supply ran into billions. This coupled with escalating funding shortfalls had increased interest costs beyond prudential limits.

- 7.4. All this resulted in Eskom having to seek increasing funding from Treasury and it was also anticipated that funding shortfalls will continue. The memorandum also referenced serious and embarrassing issues relating to tender and other expenditure disputes some which become the subject of court actions which increased negative perceptions of Eskom.
- 7.5. It was also stated in the memorandum that such problems and failings create consequential risks which extend far beyond the Company and South Africans. It has a serious impact on the economy which covers all sectors and postponed foreign and domestic investments some of which are cancelled outright. In turn this creates increased unemployment and pressure on the fiscus.
- 7.6. The Board has been reliant on Executives for information. It was felt that the Board is obliged to establish the reasons for the crisis through a factual enquiry so that it could address the causes. It was therefore proposed that an independent external inquiry be held which was referred to a deep dive investigation and that the Board should act immediately given the serious impact of these problems on Eskom and the economy as a whole.
- 7.7. Based on the severe risk of further outages and little independent understanding of the facts it was felt that the Board should immediately act to establish firsthand the causes of these challenges and intervene to arrest them or deal with them. It was recommended that the Board urgently authorise and mandate an independent external enquiry for this purpose.
- 7.8. It was also recommended that this enquiry should be unimpeded by the management and the Board and other policy stake holders. It must be credible and objective and it must have a mandate to be penetrating and unhindered. The Board must create the space and environment within the company for the investigators to be unimpeded and with no influence from Management.
- 7.9. The Chairperson then placed this resolution which was drafted by him before the Board. It was further recommended that the investigation must be mandated to a Board sub-committee who will then draft Terms of Reference and will be mandated with oversight of the enquiry. The resolution proposed that the Board

appoint a Board sub-committee comprising of Mr Tsotsi, Miss Mabude who is chairperson of the Audit and Risk Committee and myself who was at the time chairperson of the People's and Governance Committee and that they be mandated with delegated authority of the Board to determine the Terms of Reference of the enquiry and to contract the independent investigators. The enquiry must take place within three (3) months and a final report must be presented to the Board, the Minister and the Presidency not later than 30 June 2015.

- 7.10. At the board meeting, Mr. Tsotsi reported to the Board that the Presidency had expressed concern that the impact of Eskom and the power outages on the country was being understated. It was felt that the Board should get to the bottom of matters and establish the exact causes of the problems so that it could take decisive action. Mr Tsotsi said that he had been requested to ask the Board to authorise an independent external enquiry.
- 7.11. A discussion among Board members followed and aspects of the Resolutions were changed for example the Board decided that the Finance Director should be approached to fund not the Minister of Finance. Mr Tsotsi reported that an independent resource had already been identified by the Presidency to carry out the resolution and he, the chairperson, had already gotten a document in that regard.
- 7.12. Board members raised a number of objections including that they were not comfortable with making a major decision such as this based purely on a two (2) page document and the concern that for a period of three (3) months both the Board and Management focus would be taken away from resolving the matters at hand. Others felt that there were insufficient facts placed before the Board to make such a far-reaching decision. Members also felt that if as the chairperson said this was a request from the Presidency it should simply have been a directive to the Board from the Presidency or the shareholder representative in which case the resolution should state that the enquiry was a request from the Presidency. It was also felt that while deviations from procurement processes were allowed when warranted it would be necessary to understand why the Presidency required this deviation for this committee.
- 7.13. In response to these concerns Mr Tsotsi said that it would be prudent to receive a direct communication from the shareholder representative being the Minister around the issue and he undertook to discuss the feeling of members with the shareholder.

- 7.14. At the meeting of 9 March it was resolved that the request for the establishment of an external and independent enquiry was noted. Secondly it was resolved that the board should engage with the Minister of Public Enterprises to obtain clarity around the Terms of Reference the Scope of Objective and Achievement of the Board of Enquiry.
- 7.15. Due to the concerns raised by the board members on the 9th March another board meeting was convened this time with the Minister in attendance in order to clarify the issues raised in the previous meeting. This meeting was held on the 11 March at 12 mid-day. The meeting started at 10 am with the Minister in attendance. At this meeting the Minister once again raised concerns about the Eskom board getting to grips with the operational issues and to try and resolve the underlying reasons for the load shedding and other problems.
- 7.16. From 12 noon the board held an in-committee session. At this in-committee session Mr Tsotsi once more proposed that an enquiry be done and that certain executives be asked to step aside during the course of this enquiry to ensure that the enquiry remains independent and without interference.
- 7.17. The Minister made it clear that she has no authority as to instruct the board as to what to do but mentioned certain issues of great concern to her such as the negative developments in the South African economy being the fall of the Rand, the Standards and Poor two (2) year review leeway period granted to the country, the low growth of the economy and the possible effect of a downgrade of the sovereign credit rating. She was also concerned about the February level of load shedding. In the meeting with the Minister various questions were raised by board members such as the cancellation of the meeting of 26 February 2015.
- 7.18. After further discussion it was agreed that the enquiry would occur and that executives who are responsible for areas which will be the focus of the enquiry should step aside temporarily for the duration of the enquiry in order not to impede it. The meeting with the Minister lasted from 10h00 till 12h00 thereafter the board went into an in meeting. At the meeting further discussions were held about the enquiry. Board members felt that based on the motivation and the concerns around the impact of the challenges at Eskom on the economy that there is a need for a fact finding enquiry. However the board did not accept all the recommendations by Mr Tsotsi on how the enquiry should be conducted. It felt that rather than a committee comprising of the chairperson it should be the Audit and Risk committee that should be the custodian of the process and it should where necessary engage with other committees.

- 7.19. Mr Tsotsi once more highlighted the fact that he believed it was necessary for the employees to step aside. Board members raised a question regarding what impact this would have on the operations of the business given issues of continuity. Some board members still wanted a fact finding exercise to be undertaken before actual suspension were implemented as this would be necessary to avoid acting against possibly innocent executives. In response to these concerns Mr Tsotsi suggested that some of the executives were involved in wrongdoings and listed these.
- 7.20. Mr Tsotsi identified people who needed to be requested to step aside, as the Group Executive; Commercial and Technology; Group Executive Group Capital; the Finance Director and Chief Executive Officer. An Aide Memoire was presented by him which contained a draft suspension letter and contained specific instances of alleged wrongdoing by three (3) executives.
- 7.21. Board members felt that it would be better if subcommittees discussed the matters first and ensure that proper processes were followed. In response Mr Tsotsi advised that a lot of ground work had already been done in this regard and a report can be given to board members at a later stage. He felt that the most important thing is that the enquiry is done and it should be done soon. Board members pointed out that it would be of great concern especially in the market for Eskom to suspend the Financial Director and the Chief Executive at the same time. Mr Tsotsi alleged that the Finance Director had problems about her as because she had allegedly met with Tenderers during a tender process. The board members nevertheless felt that the enquiry should not focus on individuals but rather areas of responsibility which is why people should be allowed to step aside for its duration.
- 7.22. After further discussion it was then resolved that the enquiry should proceed and that the executives concerned should be placed on leave and that the Audit and Risk committee and the people in Governance Committee should work on the Terms of Reference. The Board also requested that an opinion be sought from a labour lawyer to ensure due process be followed.
- 7.23. The stepping aside of the Executives were for a period of three (3) months only after which it was understood that they would come back in view of the fact that there were no findings of wrongdoing against them as yet.
- 7.24. Given the crisis that the country faced and the impact on the ongoing load shedding on the economy and having weighed up all the necessary facts decided

that such an enquiry is necessary and approved the suspensions. The enquiry was conducted by Dentons and was concluded within three (3) months.

- 7.25. I would further like to point out to the Committee that the report of alleged wrongdoing which Mr Tsotsi referred to in the meeting of 11 March has never been presented by Mr Tsotsi despite such a request.
- 7.26. The board became even more concerned about Mr. Tsotsi's after the decision was taken on the 11th March 2015. This concern related to the Terms of Reference of the enquiry and Mr. Tsotsi's insistence on engaging consultant Mr. Nick Linnell without a proper procurement process.
- 7.27. During a meeting on 14 March 2015 after Mr Tsotsi left the meeting and Dr Ngubane acted as the chairperson, Board members expressed concerns around the conduct of Mr Tsotsi. Concerns related to the fact that Mr Tsotsi appeared to be involved operationally which was not the role of non-executive directors. It was accepted that Mr Tsotsi is entitled to perform his duties as chairperson but he should not be allowed to sign contracts and engage in operational matters. Other concerns about the chairperson were putting out press statements about the enquiry without the Board's approval.
- 7.28. In a meeting held on 19 March 2015 Mr Tsotsi acknowledged that he had appointed Mr Nick Linnell without proper processes and he apologised for this. Board members felt that certain actions of Mr Tsotsi had compromised the independence of the enquiry and the Board took certain decisions. The Board resolved that in order to avoid such lapses, the Audit and Risk Committee should deal with the matter to ensure a fair and transparent process. The Board had a long discussion at that meeting and confirmed that they believed based on the crisis faced by Eskom and its impact on the economy that a fact finding investigation was necessary but that it is important that it be done in a manner that ensures independence and integrity. The conduct of Mr Tsotsi up to that point concerned the Board members to such an extent that they discussed two options which either meant that Mr Tsotsi should step aside for the three (3) months as well or based on his apologies for his action the Board could work with him and provided that he obeys the rules of governance.
- 7.29. A decision was taken to express a lack of confidence in Mr Tsotsi. Board members were very unhappy about the fact he had a report purportedly drafted outside Eskom but had not produced such report. There were other

reasons why the board felt they have no confidence in him and these were contained in a charge sheet.

- 7.30. After the enquiry two (2) of the four (4) executives indicated that they would not like to come back to Eskom after the enquiry was concluded and agreed on a settlement with Eskom. Mr Matona took Eskom to the labour court but later settled. One (1) of the executives Mr Koko decided to return. Eskom agreed for Mr Koko to return.
- 7.31. It has been suggested in the media and here at this committee that the reason for Eskom's downgrade was based on the suspensions of the four (4) executives. I think it is important to point out that while that was one of the reasons, other reasons were cited by Standard and Poor. In their Standard and Poor stated that in their opinion *"material execution risk remains associated with the government's support plan, and that Eskom's operating performance has not yet stabilised due to rising costs and the very tight generation capacity margin in South Africa."*
- 7.32. Faced with a crisis of the magnitude Eskom faced at the time the Board was concerned to bring stability to the Company and applied its mind, had discussions both in board meetings and in Audit and Risk committee and People and Governance.
- 7.33. In para 4.17 of Mr Tsotsi's statement he indicated that he was on the line with 52 individuals trying to defend what was essentially an "indefensible" position regarding the suspension of the individuals. Based on the fact that he is the person who came to the Board with the suggestion of the enquiry and the suspension of the individuals Mr. Tsotsi knew that this statement was factually incorrect.

8. PREPURCHASE OF COAL FROM OPTIMUM

Background

- 8.1. The Committee requested us to comment on the purchase of Optimum Coal Holdings by Tegeta from Glencore. I wish to point out that Eskom was not involved in the purchase of Optimum Coal Holding by Tegeta and is therefore is unable to assist the Committee in this regard as this was a commercial transaction between two private companies. What I can inform the Committee

about is the pre-purchase of coal from Optimum by Eskom and I set out the facts below.

Eskom Coal Strategy

- 8.2. It is important by way of background to briefly speak about Eskom's coal strategy. In 2008 Eskom implemented its coal strategy which was revised in 2012. The purpose of the strategy was to drive several strategic objectives. However the operating and financial environment had shifted significantly over the past 5 years since 2012 in particular in the following key areas, funding, demand and energy mix, the coal supply landscape, emissions regulations and coal contract performance.

Based on this five (5) objectives were developed to form a revised coal strategy these were:

Financial Sustainability:

- 8.2.1. Attain a delivered cost of coal in line with the NERSA, MYPD determination while managing escalations year on year after that;

Generation of least cost production:

- 8.2.2. Ensure optimal dispatch of coal-fired power stations in least cost merit order;

Security of Supply:

- 8.2.3. Achieve an acceptable balance of security of coal supply and risk exposure, ensuring that generations burn plan is met and prescribed stockholding is maintained;

Logistics Optimization:

- 8.2.4. Optimize road and rail transportation operations to drive cost efficiency while delivering the road to rail migration programme;

Market Transformation:

- 8.2.5. Leverage Eskom's buying power to enable coal market entrance by Black emerging miners and to drive Eskom's transformation objectives.

- 8.3. Financial sustainability is the overarching objective of the Eskom coal strategy, with several Eskom initiatives identified to achieve the cost targets
- 8.4. Therefore, the approach of the Eskom Coal Strategy is to optimise value from the existing cost-plus mines by:
 - 8.4.1. Providing the required capital to cost-plus mines where a clear positive business case for Eskom's long-term coal cost exists;
 - 8.4.2. Implementing initiatives to maximise the volumes of cost-plus mines while minimising unit costs;
 - 8.4.3. Ensuring the optimisation of any approved capital (for example, capital scrubbing and timeous delivery of projects);
 - 8.4.4. ensuring increased cost-plus mine volumes, which also reduce the share of short-/medium-term coal and overall Eskom coal bill; and
 - 8.4.5. using Eskom's position to support country developmental objectives in a cost-effective way.
- 8.5. Allow me to provide the context with regard to prepayments. Firstly, prepayment is a common commercial practice that is used widely and is not unique to Eskom contracts. It is used in large projects, coal mining contracts, and emergency supply contracts. The principle of prepayment is prevalent in Eskom's cost-plus supply contracts with large mining houses such as Anglo American, South 32 (formerly BECSA), and Exxaro. These mining houses supply approximately 80% of Eskom's coal, while Tegeta supplies less than 5% of the coal volumes required by Eskom.
- 8.6. History can attest that this was common practice in the industry. For example, in the 1960s, Eskom negotiated a long-term (40-year) contract for Komati Power Station, paying for the actual cost of mining, including an agreed profit margin. Since Eskom could obtain capital at a cheaper rate than the mining house, it also provided most of the capital associated with the colliery. This was done due its costly experience at Klip Power Station, where the colliery had run out of coal before the station had come to the end of its useful life. The lessons learnt over the years is how we achieve a balanced risk exposure to both parties.
- 8.7. Eskom used the prepayment method in the past when coal stocks were low. This was to secure coal stocks and to avoid load shedding.

- 8.8. The first Eskom coal emergency arose in 2008 after load shedding due to constrained coal supply conditions. During the 2008 emergency, the Eskom Board approved advance payments to the value of R400 million to enable suppliers to undertake projects needed to supply coal. To this end, Eskom concluded a coal processing contract with prepayment terms. The agreement was with Isambane, who eventually paid off the prepayment.
- 8.9. Furthermore, a prepayment in the form of a loan was provided in 2008 to buy equipment to process coal. The loan was recovered in 12 consecutive instalments from 1 March 2008.
- 8.10. Eskom also entered into loan agreements to assist Rand Mines for capital expenditure. The first loan was payable over a period of 20 years until 31 December 2013. The second loan was in 1998, and it will be paid in full by December 2017. Eskom also assisted another Rand Mines operation with a loan, which has since been paid, for bridging finance.

Prepurchase of Coal from Optimum

- 8.11. On 8 December 2016 a round robin resolution was submitted to the Board by management.
- 8.12. The round robin was accompanied by a submission which contained the motivation for the round robin. The submission was titled: Prepurchase of coal from Optimum Coal Mine (Pty) Ltd.
- 8.13. The background to this was that Mr Koko in his capacity as Chief Executive Generation on 6 December 2015 wrote a letter to the Department of Mineral Resources. The letter dealt with the security of coal supply to the Hendrina Power Station. Referring to Optimum, the second paragraph of the letter read as follows:

“In rather dramatic fashion, the company was placed under business rescue and Eskom was faced with intermittent veiled threats of liquidation while at the same time, the business rescue practitioners purported sort constructive engagement between the parties”.

- 8.14. The letter further went on:

“Optimum supplies one of Eskom’s key contributors to the National Power Station as Hendrina Power Station is a stalwart in the Eskom fleet, supplying approximately 2000 MW to the national grid. Glencore was fully aware of the dynamics and history relating to the nature of the coal supply agreement and its structure when it concluded the sale with its previous owners. ”

- 8.15. Referring to a representative of Glencore not insisting on the extension of the Kroonfontein Coal Supply Contract with Eskom, Koko stated further:

“Eskom is perplexed by this about-turn given the events of the past few months and at the blatant disregard Optimum displays for the impact that the threats of liquidation has on the precarious balance of electricity security and commercial viability. As a Glencore operation, Optimum surely cannot be perceived to be acting in the national interest.”

- 8.16. Mr Koko expressed his concern around the question of business rescue and indicated while they appreciate the turnaround of the business the *“erratic display of business stability”* may compromise security of coal supply to Hendrina in the short to medium term.
- 8.17. He indicated given the serious risk of security of supply to Hendrina Power Station, Komatie Power Station and Arnot Power Station is of key national interest which is why he thought it appropriate to bring it to the attention of the Director General in the Department of Mineral Resources. Mr Koko then requested intervention by the Department of Mineral Resources to obtain a resolution of the problem of coal supply.
- 8.18. The Director General of Department of Mineral Resources responded in a letter indicating that they will engage with parties and will take certain steps to assist considering the significant risk to the country. The Department requested that Eskom play an active role in supporting the rescuing of the mine and in return for securing the honouring of the current contract up to 2018 to consider making a pre-payment for up to one years coal supply. This was to ensure that supply is guaranteed and averting any national crisis.
- 8.19. The resolution authorized the chief executive officer, and the group executive Generation and the chief financial officer to conclude a pre purchase agreement with to negotiate a prepurchase of coal agreement with the proposed owners of Optimum.
- 8.20. The motivation for the round robin was stated that Eskom faces a supplier risk of coal to the Hendrina power station of 5.5 Mtpa by OCM as result of the business

rescue proceedings. It also indicated that there was a potential proposal from the business rescue practitioner which was supported by the department of mineral resources and this related to the purchase of coal to the value of R1.86 billion which would mitigate the supplier risk. The counter party risk was to be mitigated via section of the coal to Eskom.

- 8.21. The funding of the pre-purchase was going to be secured by reducing the working capital inventory from 54 days to 40 days. Eskom was going to achieve a value benefit of R238.9 million.
- 8.22. The motivation further indicated that the proceeds of the R1.86 billion pre-payment of coal were to be used by optimum to extinguish existing liabilities to ensure the business continues as a growing concern. It further stated that the shutdown of Optimum could potentially result in thousands of job losses.
- 8.23. Board members had a number of questions including whether the price was the best price. The board also said that the matter must be discussed at an IFC meeting rather than merely via round robin which IFC meeting took place the following day on 9 December.
- 8.24. After being satisfied regarding this, the board resolved to approve the round robin resolution subject to all the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary. The management and company secretary would know that any amount above R1.5 billion has to be approved by the executive authority being the Minister and therefore the board assumed that they would do this.
- 8.25. Based on all the submissions, the board believed that this payment was for the pre-purchase of coal from the Optimum coal mine. The board was therefore shocked to see in the press sometime in July 2017 that management had converted what was meant to be a pre-payment into a guarantee.
- 8.26. In her evidence to parliament Ms Susan Daniels made it clear that she was aware from at least 10 December that the prepurchase was converted into a guarantee. She stated that on the 10th of December Ms Caroline Henry who was a senior general manager for the treasury department in Eskom decided that instead of laying out the 1.6 billion in cash she would prepare a note and rather request that a guarantee in favour of the Tegeta to be issued through ABSA. According to her own evidence, she would have worked on the guarantee with Ms. Henry. This guarantee would be for three months and she stated in her evidence that

she understood that it exceeded the borrowing limit of Eskom and needed approval.

- 8.27. Despite Ms Susan Daniels being aware from as early as 10 December 2015 that a guarantee was issued contrary to what the board resolution stated, she failed to inform the board that this was the case. At the board meeting of 19 April 2016 she again failed to inform the board that contrary to what the board authorised a guarantee was issued without the necessary approvals. This is why in the minutes of 19 April 2016 there is merely noting and confirmation of a prepurchase of coal from Optimum mine. At no stage was the board aware of Tegeta or that it was given a guarantee.

9. ESKOMS RESPONSE TO PUBLIC PROTECTOR

- 9.1. The Public Protector sent questions to Eskom management before she released her report in November 2016.
- 9.2. Management through Mr. Brian Molefe, Mr. Anoj Singh and Ms. Ayanda Nteta, responded to the questions which were sent to Eskom and the Public Protector does deal with some of the responses from Eskom management in her report.
- 9.3. The Eskom Board of Directors ("the **Board**") was not given an opportunity to deal with issues raised by the Public protector in her report. The Company Secretary and head of Legal Services Ms. Suzanne Daniels responded to issues raised in the report but did not consult the board on such responses in spite of the fact that reference was made to some board members and the board. To date Board does not have access to the response which Ms. Daniels sent to the Public Protector.
- 9.4. The Board, even though it was constituted with new members except the Chairperson, has a few comments regarding some of the observations by the Public Protector on Eskom. The board sought legal advice about any action it could take regarding the report but was advised due to there being no findings, only observations, any review would not be successful. The Public Protector's comments about Eskom are in pages 310 to 315 of the Public Protector's report. The one issue which the Public Protector raises in respect of Eskom, is the pre-payment for coal to TEGETA Exploration and Resources (Pty) Ltd ("**TEGETA**") in April 2016.

- 9.5. The Public Protector also dealt with the relationship between the Gupta family and individual former Board members of Eskom. Im not able to comment on this and some of the former members of the Board, have dealt with this issue before this committee.
- 9.6. The Public Protector seems to suggest in her report that the Eskom Board breached its fiduciary duties to uphold the values enshrined in section 217 of the Constitution of the Republic of South Africa, 1996 ("the **Constitution**") as well as section 50 of the Public Finance Management Act No. 1 of 1999 ("**PFMA**") in approving the pre-payment for coal to TEGETA.

Prepayment for coal from Tegeta

- 9.7. The Board Tender Committee ("**BTC**"), a sub-committee of the Board on 11 April 2016, was approached by management to consider, on an urgent basis the purchase of coal from TEGETA to supply Arnot Power Station for five months.
- 9.8. This submission by management required the following resolution from the BTC

"1. Addenda to the Short-Term Coal Supply Agreements between various suppliers and Eskom be concluded to extend the supply of coal from various sources to Arnot Power Station for up to a further five (5) months and/or such period as may be requested by the supplier but not later than 20 September 2016;

2. The Chief Financial Officer is hereby authorised to approve the basis for prepayment to secure the fixed coal price for the period of extension provided that there is a discount in the price, the supplier offers a guarantee in favour of Eskom and that the CFO can provide assurance to the committee that the transactions are economically viable for Eskom; and

3. The Group Executive (Generation) is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.”

The “Salient Facts” are inter alia as follows –

“The requirement for the supply of contract coal originates from the April 2016 Supply Plan as presented at the Primary Energy Tactical Control Centre of 8 April 2016: It was identified that supply to Amot will not be adequate to meet the burn requirements of the power station over the winter months and that there is an urgent need for additional coal. This identified requirement is as a result of the need to build up stock days over a short period while the (RFP request for proposal) for Arnot is being finalised. This shortfall of supply amounts to approximately 2.1 million tonnes.

At present, this RFP is in the negotiation phase and it is anticipated that it will take up to a maximum period of 5 (five) months to conclude the supply contracts.

The current short-term portfolio consists of two suppliers, namely Umsimbithi Mining Pty (Ltd) and TEGETA Exploration and Resources (Pty) Ltd. Umsimbithi is contracted to supply Amot with 540 000 tonnes and is currently underperforming due to protracted Industrial action. The current contract supply will then be depleted in and around June 2016, should the Industrial action be stemmed and full mining operations resume. The supplier indicated a willingness to extend from July 2016 until September 2016 on similar terms and conditions.

TEGETA's short-term contracts are for 600 000 tonnes of coal from Optimum's export. Supply for these contracts is due to be completed by the 15 April 2016. The coal from Optimum's export stock is a higher-grade coal that is suitable for Amot and Kriel Power Stations and is difficult to source from elsewhere.

These contracts were entered into in terms of the Medium-Term Mandate granted by the Board Tender Committee (BTCI 11 September 200. The BTC approved a mandate to negotiate and conclude CSAs on a medium-term basis for the supply and delivery of coal to various Eskom Power Stations for the period October 2008 to March 2018 and this included the beneficiation of coal by suppliers or their contractors.”

The benefits for extending these Short-Term Contracts Include the fact that the coal is being mined and can be delivered without delay –

“•TEGETA has the potential to supply approximately 250kt per month and Umsimbithi approximately 180kt per month. It would therefore be in the best interests of Eskom to negotiate and conclude extensions to these Short-Term Contracts to alleviate the coal shortfall at Amot due to the closure of Amot colliery. Additionally, to alleviate the shortfall coal requirements at Kriel Power Station due to the underperformance of Kriel Underground mine;

- By procuring this coal for Amot and Kriel Power Stations, it will assist towards building stock days as according to the April 2016 Supply Plan, as presented at the Primary Energy TCC of 8 April 2016 there is currently an estimated 2.14Mt tonnes shortfall at Amot Power Station for FY2017 and 280 000 tonnes shortfall at Mel Power Station for FY2017.

Both suppliers have indicated a willingness to extend current contracts, however, TEGETA has requested that Eskom consider some form of prepayment to enable it to meet the production requirements from the export component of the mine in lieu of the fact that it subsidises the direct feed to Hendrina Power and this will enable it to meet the coal supply demands for the two power stations in the short term.”

- 9.9. The document states that the cost of the TEGETA prepayment for the next 5 months will be approximately R 586,787,500.00.

9.10. The above document was approved and signed on 11 April 2016, Ms. Ayanda Nteta, Mr. Edwin Mabelane and Matshela Koko.

9.11. The approval of advance payment, as requested by management on 11 April 2016, is covered in Supply Chain Management Policy 32-1034 Rev 2 of 2014 ("**SCM 32-1034**").

SCM 32-1034 provides, inter alia, that whilst Eskom does not encourage the provision of advance payments, an advance payment may be an acceptable strategy for Eskom in certain circumstances. This may be considered in cases where the supplier will have to make a big capital outlay before starting with the contract. It further indicates that an advance payment will only be issued on condition that the supplier must provide an advance payment bond/guarantee and that the relevant contractual provisions relating to advance payments also need to be included in the contract. As I indicated in paragraph 9 there are precedents for this practice.

9.12. On 8 April 2016 TEGETA made an offer to supply additional coal for the Amot Power Station from the Optimum Coal Mine over a period of five months. This offer was made subject to a prepayment for the coal. The purpose of prepayment was to secure coal for Eskom, particularly of the high quality that was required by Arnot Power Station. To ensure TEGETA's ability to meet the production requirements for both Hendrina and Arnot in the short term, prepayment was requested. TEGETA indicated that the prepayment would enable them to operationalise plant and equipment that had been placed on 'care and maintenance' during the shutting of the export component of the mine.

9.13. The BTC approved pre-payment to TEGETA of R 659 558 079.38 (**six hundred and fifty-nine million, five hundred and fifty-eight thousand and seventy-nine rand and thirty-eight cents**) inclusive of Value-Added Tax ("**VAT**").

9.14. The BTC resolved, *inter alia*, that the Chief Financial Officer ("**CFO**") is authorised to approve the basis for pre-payment to secure the fix coal price, provided –

9.14.1. there is a discount of the price;

9.14.2. the supplier offers a guarantee in favour of Eskom; and

9.14.3. the CFO provides assurance to the BTC that the transaction was economically viable for Eskom.

Public Protector's Observations

9.15. The Public Protector says the following in her report –

“After evaluating the responses received from Eskom, it is clear that they do have the requisite policies in place which provide for a prepayment of coal to be made. This is in line with various agreements put in place by Eskom after the energy crisis in 2008.”

9.16. While acknowledging that the Board had the requisite policies to award pre-payment, she made the following comment –

“Eskom had previously done extensive due diligence on OCM which formed part of the Co-Operation agreement, they were aware of exact production outputs for coal and the price of coal being supplied by OCM. At the time of concluding the contract with TEGETA for the supply of coal to Arnot power station, Eskom was fully aware that the sale of all shares in OCH to TEGETA had not gone through. It appears to not make commercial sense for Eskom to contract with TEGETA for a higher price of coal knowing exactly where the coal was being received from.”

9.17. It is clear from the above paragraph that the Public Protector does not make a finding about breach of fiduciary duties by the Board (BTC) but rather, speculates that the transaction may not make “commercial sense.”

9.18. What she fails to take into account is that the price for coal supplied to Arnot was higher than price for coal to other power stations because of the quality of coal required to power Arnot. Eskom paid R 1132/ton (**one thousand, one hundred and thirty-two rand per ton**) to Exxaro for the supply of coal to Arnot and the amount which Eskom pre-paid to TEGETA was less than the amount paid to Exxaro per ton.

- 9.19. Furthermore, Ms. Ayanda Nteta, gave the Public Protector reasons for Eskom's pre-payment to TEGETA instead of Optimum Coal Mine (Pty) Ltd ("**OCM**"). Ms Ayanda Nteta gave the following reasons –

"TEGETA would be the controlling shareholding of OCM. pursuant to the transaction initiated by the business rescue practitioner with TEGETA to ensure OCM remains sustainable pursuant to its release from business rescue;

As part of the sale of shares agreement with OCH by the business rescue practitioner, OCH had to be substituted by TEGETA to the coal supply agreement between OCM and Eskom; and

TEGETA became the controlling shareholder of OCM on 1 September 2016, when the business rescue practitioner discharged OCM from business rescue." Page 311 of the Public Protector's report.

- 9.20. The Public Protector says that the responses given by Eskom appear to not make commercial sense as it appears that coal could have been sourced directly from OCM at a reduced rate.
- 9.21. OCM was under business rescue and the business rescue practitioners were not prepared to sell coal to Eskom at a reduced rate because they said that OCM went into business rescue precisely because the purchase price of coal paid by Eskom was low.
- 9.22. Eskom was not aware of the price at which OCM was selling coal to TEGETA and therefore, it could not negotiate for a lower price than it paid TEGETA.
- 9.23. The pre-payment of TEGETA was found to be in line with the policies of Eskom and it made "made commercial sense" by the Senior General Manager (Assurance and Forensics) at Eskom (see page 190 of the Public Protector's report).
- 9.24. In conclusion, the Public protector did not make any finding in respect of the breach of fiduciary duty by the Eskom Board but speculated about the form of

transaction and price that the coal supply to Arnot was supposed to take. She did not receive expert evidence regarding what constitutes “commercial sense” in those circumstances.

- 9.25. Furthermore, the Public Protector speculates that the conduct of Eskom Board, in buying coal from TEGETA, was solely for the benefit of TEGETA. She bases her speculation on the analysis of payments made by Eskom to TEGETA in respect of coal supply. TEGETA was supplying coal to Eskom and Eskom was not entitled to tell TEGETA how to spend the money Eskom was paying to TEGETA.

10. THE PURCHASE OF OPTIMUM COAL HOLDING BY TEGETA FROM GLENCORE

- 10.1. TEGETA Exploration and Resources (Pty) Ltd ("**TEGETA**") purchased all the shares in the issued share capital of Optimum Coal Mine (Pty) Ltd ("**OCM**") and purchased claims against OCM from Optimum Coal Holdings (Pty) Ltd ("**OCH**") for an amount of 2 100 000 000.00 (**Two point one billion rand**). The Sale and Purchase Agreement for the sale of shares and claims ("**SPA**") was signed in December 2015.

- 10.2. The suspensive conditions were, amongst others, that –

10.2.1. Eskom must consent to the sale and purchase of shares by TEGETA;

10.2.2. release of the guarantees provided by OCH to Eskom;

10.2.3. TEGETA to issue a guarantee to Eskom in respect of its obligations in the Coal Supply Agreement ("**CSA**"); and

10.2.4. cession and assignment of rights in CSA to TEGETA.

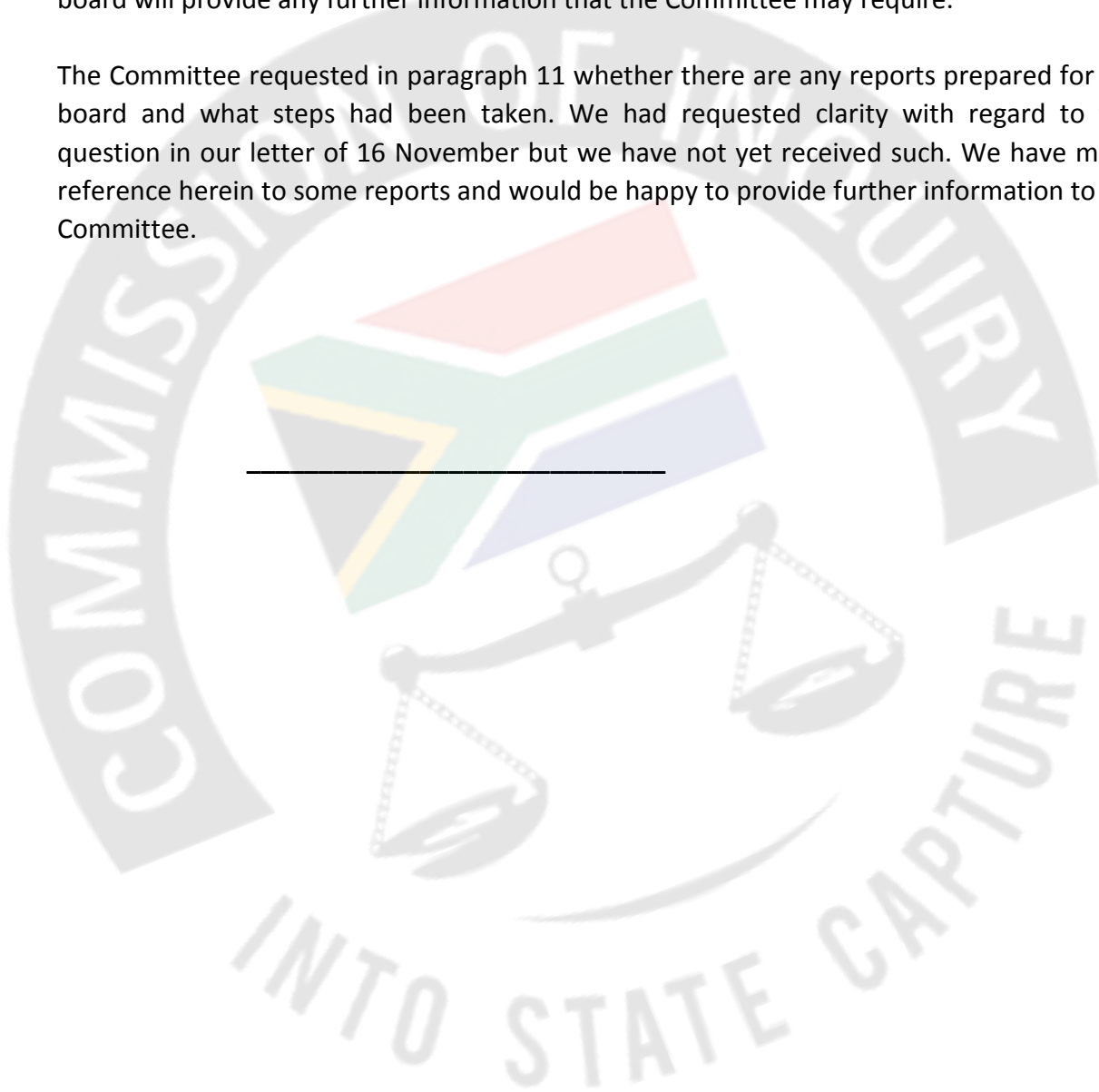
- 10.3. Eskom was not involved in the negotiations of the terms of the SPA. The role which was played by Eskom was to secure its interest in the coal supply by OCM and to that extent the conditions precedent mentioned above, were inserted to protect Eskom's interests.

- 10.4. Eskom's involvement in the sale of shares and claims by TEGETA from the BRP of OCM was limited to the approval of the cession and assignment of the coal supply agreement from OCH to TEGETA and this was confirmed by the Public Protector in page 251 of her report.

11. CONCLUSION

I hope the information provided herein will assist the Committee in its deliberations. The board will provide any further information that the Committee may require.

The Committee requested in paragraph 11 whether there are any reports prepared for the board and what steps had been taken. We had requested clarity with regard to this question in our letter of 16 November but we have not yet received such. We have made reference herein to some reports and would be happy to provide further information to the Committee.



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF
STATE**

AFFIDAVIT

I, the undersigned

TSHOLOFELO BEATITUDE LETTIE MOLEFE

Do hereby state under oath in English:

1.

I am an adult female, a South African citizen, with identity number 681104 0566 089 and currently residing at Number 1225 Waterfall Country Estate, Maxwell Drive, Midrand, Gauteng Province, Republic of South Africa. My qualifications include BA (Hons) in Accounting and Finance from the University of East London in the United Kingdom, and a Bcompt (Hons) from University of South Africa. I am currently in the full time employment of Telkom SOC Limited ("Telkom"), with address 61 Oak Avenue, Highveld, Centurion, employed as Group Chief Financial Officer. I am duly authorised to depose to this affidavit in my personal capacity.

2.

The facts deposed to herein are within my personal knowledge unless the contrary is stated or the context indicates otherwise. These facts are, to the best of my knowledge and belief, both true and correct.

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3.**Employment Background**

I am a chartered accountant by profession. I started my career with Coopers and Lybrand in 1993 as an article clerk, having completed a BA in Accounting and Finance in the United Kingdom after being awarded a British Council's scholarship. Upon completion of my articles, I moved to IBM as an internal auditor for two years. I left IBM in April 1998 to join Liberty Life, as senior internal auditor. I joined ABSA, before the Barclays' merger, in 2001 as a senior manager in audit and risk management. I then moved to FNB as a CFO in the personal banking segment for a very short while after which I joined Eskom in 2005 as a finance manager in the Transmission division. I was promoted to become a general manager of finance and business services in the same division, a position I held for five years before I was promoted to Group Executive of customer services division. I was then appointed as Eskom finance director in January 2014.

4.

At the time of my appointment as finance director in January 2014, Mr Brian Dames was still the Chief Executive Officer (CEO). He then resigned from the company and left in March 2014 after which an interim or acting CEO was appointed, Mr Collin Matjila (Matjila). Matjila held this position for six months, until 30 September 2014. Mr Tshediso Matona (Matona) was appointed CEO of the company effective 1 October 2014 and held this position until both of us were suspended from the company on the 11th of March 2015.

5.

In and around March 2014, I was called to a meeting by Mr Thamsanqa Msomi, at the time he was the Chief of Staff for the Minister of Public Enterprises, Mr Malusi Gigaba.

He congratulated me on my appointment and stated that he hoped that the Department of Public Enterprises would have a better working relationship with me than they had with my predecessor, Mr Paul O'Flaherty. He indicated to me that the department was constantly receiving complaints about Eskom not embracing transformation from a procurement perspective and they hope that things will change now that I was appointed. I informed him that transformation has always been one of the priorities of the company and one of primary importance to the Eskom board. He indicated to me that there are a number of black suppliers that complained about not being awarded contracts and would like to meet and discuss their complaints. I indicated to him that I relinquished my role as chairperson of the Exco Procurement Committee and that Eskom had a Chief Procurement Officer who deals with those issues. I however stated that I do not have a problem to meet those aggrieved so that I can direct them to the appropriate channels within the company. He then stated that he would make arrangements for me to meet the suppliers that were complaining.

6.

Events relating to Regiments Capital deal

Indeed, he did arrange such a meeting, with Mr. Salim Essa (Essa), whom I met for the first time. Essa stated that there are various black suppliers that are trying to do business with Eskom but they are constantly being turned away as it seems Eskom is biased towards white suppliers. There were no specifics to his statement just a blanket declaration.

7.

During April 2014, the Eskom Board under the chairmanship of Mr Zola Tsotsi (Tsotsi), met for two days to go through the strategy of the company. Part of my role during the two-day strategy session was to present a financial sustainability plan to the Board. After my presentation, Tsotsi indicated that the plan was not robust enough and said that the Minister of Public Enterprises would like the Board to submit a robust plan within three

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months, in light of the Eskom financial challenges.

8.

Matjila, indicated that he would work with me to review the plan and re-table before the Board. After the Board strategy session, which was on a Friday, Matjila requested that we meet on Sunday to discuss the way forward. We met on the Sunday, at Time Square in Monte Casino. At our meeting, he suggested that we solicit help from external service providers to revise our financial sustainability plan. He indicated that there are people that can assist us on an urgent basis and he knew that they had helped other state owned entities. A few minutes thereafter, and to my surprise, we were joined by Essa, whom I had been introduced to a couple of months ago by Msomi (Chief of Staff for Public Enterprises).

9.

Essa re-introduced himself to me, clearly not remembering our first encounter a couple months before. It became clear to me that he was very well briefed on the strategy planning session and the financial qualms of Eskom. He appeared to have prepared very well to meet with us and propose his solution. Essa indicated that he knows a company, Regiment Capital that can assist with unlocking cash on the Balance Sheet. He said that they had done work successfully at Transnet, SAA and City Power. Matjila, who appeared to be very interested and asked Essa how soon could he arrange a meeting with Regiments Capital. Essa replied "as early as tomorrow". Almost as if this was prearranged. At this stage I assumed Essa was a shareholder of Regiment Capital.

10.

On Monday at 16H00 a meeting was arranged with the CEO of Regiments Capital, Eric Woods, at Eskom offices. The representatives of Eskom were, Matjila, Dr Steve Lennon (Lennon) (Group Executive: Sustainability) and myself. Mr Woods presented to us who Regiments Capital was and what work they had done previously at various companies.

When questioned about whether his firm had the capacity to deal with the enormous financial challenges Eskom had, he indicated that they would normally partner with McKinsey Consulting Firm for big assignments.

11.

At the end of his presentation, Matjila asked him to put together a proposal and submit to us by Friday the same week. After the meeting with Regiments Capital I went to Matjila's office, suggesting that we run an open process as Regiments Capital was not the only firm that had shown interest in assisting Eskom with balance sheet unlock initiatives. Matjila blatantly rejected my suggestion stating that those companies had done work with Eskom for many years and had failed to deliver. He also added that we do not have time to run an open process as this was an emergency. I informed him that the procurement policy does allow for emergency situations and we should follow that. He still rejected my proposal indicating that if I was uncomfortable with the proposed plan he would deal with the Regiments Capital proposal when it arrives.

12.

Regiments Capital took 14 days instead of the 5 days originally agreed upon to submit their proposal. The proposal came in the form of an agreement with terms and pricing, which therefore did not constitute a proposal. The agreement was sent to me by email, copying Matjila. Upon receipt and review of the document, I wrote an email to Matjila stating that what Regiment Capital had done was inappropriate as they had submitted an agreement which they wanted us to sign as opposed to a proposal for review. In my email, I copied the company's Head of Legal at the time, Mr Neo Tsolanku, suggesting that he advises us appropriately as this had not followed due process and in fact, as the proposal was an agreement and was submitted two weeks later, it no longer qualified as urgent or an emergency in terms of the company's procurement policy. Matjila called me in the evening and reprimanded me for putting such messages on email and asked for a

meeting.

13.

We met the following morning at Tintswalo (now Riboville) at the Waterfall Equestrian Estate. At the meeting he expressed concern that I was not supporting him, stating that he had no aspirations of becoming the CEO of Eskom, but that he had a mandate from the Shareholder to fulfil certain urgent matters within three months and that we do not have time to be following our long-winded procurement processes. I said to him as the CEO, or acting CEO, of the company, he was within his right to go back to the board and ask them to amend the delegation of authority if he felt that it was limiting his ability to deliver expeditiously. He stated that he would do no such thing as he had a mandate from the shareholder.

14.

After the meeting, I went to my office, I printed out the agreement from Regiments Capital and left it in his office for his signature as he had indicated that he was comfortable to sign the agreement. I then left to meet my Finance team at the Eskom Academy of Learning for our strategy session. Later in the day he called me and said to me I need to sign the agreement as this was within the ambit of my responsibilities. We quarrelled over the phone for a while as I vehemently stated that I was not in agreement with signing a contract with Regiments Capital and highly concerned of the flouting of Eskom's procurement processes. He was adamant that I should sign the agreement and stated that he would send the agreement with the driver to me for signature. I informed him that I would not sign the document. I believe that he realised that I was going to stand firm in my decision and he resolved that I should put in writing my reasons for refusing to sign the agreement.

A handwritten signature in black ink, appearing to be 'TM' followed by a stylized flourish.

15.

I immediately called the Chairman, Tsotsi to inform him of what had transpired between myself and Matjila, who also asked me to relay everything in writing. I drafted a memo to the chairman detailing the events leading to my disagreement with Matjila and my reasons for refusing to sign the Regiments Capital agreement. I was clear that this would be against the company's procurement policy and procedures. I emailed my memo to Tsotsi and Matjila, copying other Board members, Mr Mafika Mkwanaazi (Mkwanaazi) (chairperson of the Investment committee), Dr Boni Mehlomakhulu (Mehlomakhulu) (chairperson of Social, Ethics and Sustainability committee) and Ms Bajabulile Luthuli (Luthuli) (chairperson of Audit and Risk committee). A few days later Mr Tsotsi convened a meeting with all those copied on the email. Luthuli, unfortunately could not join the meeting.

16.

I received support from the two board members at the meeting that we should have followed due process as the terms and the pricing in particular was not competitive. It was also mentioned that although the financial sustainability needed to be submitted to the Minister of Public Enterprises urgently, it did not meet the criteria for an emergency as defined in the procurement policy. Tsotsi voiced his dissatisfaction over the delay stating that Matjila and I were busy wasting time with long-winded procurement processes and heads are going to roll if the Minister does not receive the financial sustainability plan in a few weeks' time.

17.

I requested that if the Board felt comfortable to enter into such an arrangement with Regiments Capital, then they should give me a mandate in writing, which I will consider. The Board approved a mandate to only do a high level desk top exercise to test the viability of the options that had been proposed by Regiments Capital.

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18.

Events relating to the New Age (TNA) deal.

A transaction like the New Age deal would have formed part of a sponsorship arrangement. All sponsorships were the responsibility of Corporate Affairs which was headed by Mr Chose Choeu (Choeu). Choeu reported to Ms Erica Johnson (Johnson), who was Group Executive looking after Strategy and Corporate Affairs.

19.

In and around April 2014, Johnson together with Choeu requested to see me in Ms Johnson's office to discuss the instruction from Matjila for them to conclude an agreement with TNA for the New Age business breakfasts. They were both not in support of the deal as the company did not have sufficient budget to make such a commitment and owing to the fact that Eskom did not have a policy in place for sponsorships of this nature. I informed them that the company cannot be spending on such sponsorships when we are dealing with serious financial challenges. I also advised that given the fact that there was no budget for sponsorship deals, Matjila would need to request approval from the Board. The meeting ended and the next time this matter came to my attention was when Choeu emailed me a copy of the New Age agreement signed by Matjila. I was perturbed by this, given the discussion we had. The agreement was a three year commitment for R43 million, with no exit clause, signed by Matjila, with Mr Freddy Ndou (Ndou) and Choeu as witnesses.

20.

I responded on email to Choeu (copying Matjila) expressing my concern regarding committing the company financially knowing very well that there was no budget available for the commitment. I also raised the concern that Matjila did not have the authority to



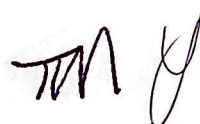
commit the company for a value of R43 million, as it was outside of his delegation of authority. I recommended to Choeu that this contract would have to be tabled before the Board for ratification. Matjila then called me to say that he was well aware of what he had signed and told me to stop questioning his authority. I then spoke to our legal counsel at the time, Mr Mohamed Adam (Adam), regarding the contract and he indicated that he was aware of it. He did not agree with the contract especially because the contract had no exit clause for Eskom. Adam also informed me that he had already escalated the matter to the chairperson of the Audit Committee, Ms Jabu Luthuli. Ms Luthuli instituted a forensic investigation into the matter with Gobodo forensics. The matter was investigated and during that time we were also preparing for our interim results.

21.

The Gobodo forensics report highlighted that there was wrong doing on the part of Matjila in that he did not have the delegation of authority to commit the company for a contract of this size without following the company's governance process. The Board then started to seek legal advice on the actions to take against Matjila, who by then had stepped down as interim CEO and the new CEO Mr Tshediso Matona (Matona) had taken office effective from 1 October 2014. As a result of this transgression by the interim CEO at the time, the Auditors indicated that they would qualify their review opinion for the interim financial statements with an emphasis of matter paragraph regarding a reportable irregularity by an executive authority.

22.

What was important about these financial statements was that we were preparing to go on a deal roadshow to raise an international bond. Therefore, it was very important that the board approve the financial statements. However what happened on the day that the Board was meant to sign the financial statements, which was a few days before the results announcement, Tsotsi called me to say that he is going to cancel the meeting, as he was receiving pressure from outside to cancel the meeting. I then called all the board members and explained to them how important it was that they approved these set of



financials. So the board members aligned with my thinking with the exception of Tsotsi and Ms Chwayita Mabude (Mabude) (a board member). The majority of the board members supported my recommendation and they continued to have the board meeting without Tsotsi to approve the financials.

23.

Events leading to my suspension


I was suspended on the 11th of March 2015 alongside three other executives. Before we were suspended the newly appointed board had held two meetings – the first meeting was on the 9th of March. The board that had been deliberating on matters that I have stated above were replaced in and around June 2014 with the exception of Tsotsi and Mabude. The board meeting of the 26th February which was on the annual board calendar had been cancelled. The importance of this cancelled meeting was to approve the business plan for the next cycle and recommend the funding plan and borrowing program to the shareholder for approval in terms of the PFMA. Notice of a board meeting was sent to all board members by the Company secretary via text message (sms) on the 8th March to attend an urgent meeting the following day (9th March 2015).

24.

At the meeting on the 9th March, Mr Zola Tsotsi informed the Board that he had been requested to do an investigation into the state of affairs of Eskom specifically the financial challenges, the operational challenges, the delay in the build program and any other matters that the board or the Minister was uncomfortable with. The board did not support this proposal from the chairman requesting that the Minister of Public Enterprises, Ms Lynn Brown (Brown), should come and address the board directly to explain why it was important to conduct such an inquiry. The meeting was then adjourned shortly thereafter.

25.

On the evening of the 10th March I received a text message regarding notice of an urgent meeting to be held on the 11th March. On the 11th March, the meeting started with



Matona giving his account of his 150-day plan essentially and shortly thereafter Brown joined the meeting. After 45 minutes of her arrival, Matona and I were requested to leave the meeting. We both obliged.

26.

Later that afternoon at approximately 16h30, Matona was called first and he was then told that he would be suspended. I was summoned after Matona and I was informed that I would be suspended. I was issued with a letter of suspension that indicated that the board of Eskom has on instruction of the Minister, decided to do an inquiry into the state of affairs of the company and because I'm the executive that is responsible for one of the matters that would be investigated, the board wants me to step aside so that I do not interfere with the investigation process. What was interesting however was that they did say we had done nothing wrong however we should hand-in our working tools (e.g. laptops) and failure to do so would result in "further" disciplinary action. So it was quite confusing at that time to be told that we had done nothing wrong, but we are being asked to step aside while an investigation is conducted, and for our work tools to be handed in whilst also threatening disciplinary action.

27.

My suspension, though difficult to believe and understand, did not come as a surprise. A day before my suspension, the Senior General Manager for Shared Services Ms Nonkululeko Dlamini (aka Veleji), came to me in panic and informed me that Mr Matshela Koko (Koko) called her and requested that she go to Melrose Arch to meet some people. At the time we agreed that she would not go and that if Koko called her again she would refer him to me. Later on the same day, Mr Dan Marokane, Group Executive: Group Capital Division, (Marokane) informed me that he had heard from Ms Suzanne Daniels, Executive in the office of Chief Procurement Officer, (Daniels) that he, Koko, Matona and



I would be suspended the following day (11th March) at the board meeting. Before the board meeting commenced at 9am, I went to see Matona in his office and he also informed me that he had heard from outside sources that we were going to be suspended at the Board meeting later that day.

28.

While we were waiting to be called, I also received a call from one of the General Managers, (I can't remember which one) asking me if it was true that we were being suspended. I received information from reliable sources that at Essa's behest four of the General Managers were called to his offices in Melrose Arch. These general managers were informed of the suspensions that would take place the following day and that they should be ready to act in our stead.

29.

We were informed that the inquiry would take three months but two months into the suspensions we had still not heard from the board on whether the inquiry had started. Shortly thereafter, I started engaging my lawyers, and we posed questions about the terms of reference of the inquiry I was suspended in lieu of. During the latter part of May 2014, I received a call from Daniels representing the new Chairman Mr Ben Ngubane (Ngubane) to discuss a possible amicable exit.

30.

Present at the meeting was members of the the new board, who were elected in December 2014, namely; Ms Veneta Kleins, Mr Romeo Khumalo, Mr Zethemba Khoza, Ngubane and Daniels. Mr Romeo Khumalo led the discussions, admitting that the process they had followed in conducting our suspension was flawed and that they had

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been misled by Tsotsi. In their view they felt that we probably had reached a point where we could no longer be able to work together considering the fact that the investigation would also take some time so it was probably best for us to part ways and that I continue with my career. And that's what essentially happened. I subsequently left the employ of Eskom after signing an agreement of exit with the Board on 30th June 2015.

I know and understand the contents of this statement

I have no objections in taking the prescribed oath

I consider the prescribed oath as binding on my conscience



Signature of Deponent

22/07/2020

Date

I HEREBY CERTIFY that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn before me at Sandton on the 22 day of July ²⁰²⁰~~2019~~ the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

Burgarelus



COMMISSIONER OF OATHS

Veronica Helen Vurgarellis
ex officio commissioner of oaths
Attorney of High Court of
South Africa
Lawtons Inc practicing as
Lawtons Africa
140 West Street
Sandton



[Handwritten signature] *[Handwritten initials TM]*

IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES, (NATIONAL ASSEMBLY), [CORPORATE GOVERNANCE IN ESKOM]

STATEMENT

I, the undersigned,

NICHOLAS HUGH LINNELL

State that;

1. I am a director and shareholder in CT&A Project Management Pty Ltd (trading as *The Project Office*) and employed there since 2001/2. We provide business improvement services across a number of disciplines.
2. I hold BL. LLB law degrees from the University of Zimbabwe and a B.Com (Honours) degree from University of Cape Town. I have been engaged in business activities within corporates and in consulting services for 35 odd years.
3. I was approached on or about 7th March 2015 by Dudu Myeni for who I had provided consulting services at Mhlathuze Water and SAA. The request was to attend a meeting with the President and the Chairperson of Eskom, in Durban on the 8th March. The purpose was to discuss the feasibility of undertaking an inquiry into Eskom.
4. Context
 - 4.1. At that time the country was experiencing rolling power outages and there were commentaries suggesting they would get worse before they got better. These included views that a complete outage was possible and that should that happen it would potentially take weeks to begin to bring the network up again. During such a period there would be no

power at all. Business has since estimated that these failures cost the economy billions and billions of Rands. The troubles at Eskom must also have weighed on the minds of the rating agencies.

- 4.2. There were continuing media articles alleging corrupt or improper commercial activities at Eskom with some executives being publically named.
- 4.3. Public statements by Minister (Brown) that she was not receiving credible information from Eskom must have further concerned stakeholders.
- 4.4. There was a national crisis at this time.
- 4.5. There were public calls for an in depth enquiry into Eskom.
5. I attended the meeting in Durban on Sunday 8th March 2015. When I arrived at the Presidency Mr Tsosti, the then Chairman of Eskom and Ms Dudu Myeni were already there. We discussed the intended enquiry, how it would take place and what it would seek to achieve. After a period we joined the President.
6. The President was clearly familiar with the purpose of the meeting and we provided a summary of what was proposed (arising from the earlier discussions referred to above). This included a number of key principles.
 - 6.1. For the enquiry to have credibility it needed to be open, independent and comprehensive. It needed to be free from internal interference.
 - 6.2. It needed to be quick as lengthy previous enquiries in other state entities led to greater harm than good.
 - 6.3. It needed the capacity and capability of the best investigators across commercial, financial and technical disciplines. It was therefore not suitable for one entity to conduct it.
 - 6.4. It needed to be seen to be credible. Sound communications with stakeholders and the public were necessary.
 - 6.5. I cannot now recall whether my proposal for a retired judge to oversee the enquiry was mentioned during this discussion. However it was always my contention that that was necessary and it was included in the Terms of Reference and media release.
 - 6.6. The Board and the Minister (Brown) must be in agreement and supportive and seen to be so.
 - 6.7. I discussed implications of board and PFMA approvals (see memorandum referred to below which included seeking approval of Ministry of Finance)

6.8. The matter of suspension of top executives was discussed. The rationale supporting suspensions was that;

6.8.1.If investigators were going to have the freedom to follow the evidence there needed to be an environment free from fear or intimidation. These conditions do not have to be “active” to exist and the passive presence of key people can inhibit openness. These were precautionary suspensions and those included would be counselled on that point as would the media release.

6.8.2.The risk to the business of suspensions of key people would be managed by appointment of capable subordinates. A strong communication strategy would convince stakeholders and the public that this was a positive not negative approach. The enquiry would be limited to 3 months.

6.9. My own role would be to act as a coordinator and interface with the Board.

7. The President listened to these views and asked one or two questions then he agreed. He undertook to speak with the Minister and Mr Tsosti would speak with the Board.
8. As the matter was urgent I would travel to Johannesburg the following day and be available to the board as and when required.
9. Overnight I drafted a proposed Board memorandum, proposed resolutions and an aide memoire on suspensions. I forwarded these to Mr Tsosti. (**Attached**). I assume this was subsequently circulated to the Board. This included;
 - 9.1. Detailed background to the importance of events and the seriousness of the state of Eskom.
 - 9.2. Process of consensus and approval between the President, The Board, the Minister (Brown) and Ministry of Finance (funding approval). This is important as it clearly is inclusive, transparent and required the approvals of Finance and DPE.
10. On that Monday 9th, I sought legal advice from leading labour attorneys (in my own capacity) on the labour issues and obtained opinion from them.
11. I went to Megawatt Park in anticipation of being called by the Board. I took with me a senior labour lawyer to deal labour law matters if requested by the Board. We were however later told the Board was not in agreement and we left. In part I considered that that might be the end of the matter.
12. On Wednesday 11th I was again called by the Chairman to Megawatt Park. On this occasion I was called into the board meeting.
13. Clearly the matter had already been discussed and agreed to. I was asked to introduce myself and there were a number of questions. These included the proposed suspensions. We also discussed how the communication aspect of these should be managed. It was important to be

discussed the process of the discussions with the four executives identified and the media and communication strategy. It was critical to take the public into the board's confidence and say what the Board was doing and why. Experience dictates that transparency is critical to credibility.

14. During that meeting I had the impression that the Minister of Public Enterprises had immediately prior to that moment addressed the Board on the matter. I was not privy to those discussions nor the Chairman's presentation.
15. After that meeting there was a press conference attended by a number of the Directors at which the Chairman stated publically that there would be an in-depth enquiry, it would be speedy and was urgent. My appointment as coordinator was announced.
16. The media announcement created significant interest which was not negative. This is important in the context of the following week's ratings announcement.
17. After the press briefing I met with Ms Mabude (chosen to lead the Board committee overseeing the enquiry) and we discussed the scope and principles of terms of reference. I suggested matters such as the need for an independent whistle-blower facility to allow people to give anonymous tip-offs and meeting the executive team. Their input would be critical but more importantly their trust in the process was critical. I also met with the Senior General Manager: Assurance and Forensic Office of the Chief Executive and discussed the approach and IA involvement.
18. That same afternoon, Ms Mabude and Mr Naidoo (Board Recovery and Build Programme Review Committee (BRBPR) chair) and I met with the Executive (about 30 executives). Mr Naidoo introduced me as having been appointed by the board to coordinate the enquiry. I was asked to provide a brief overview of the enquiry and the purpose of the interaction with them – to obtain suggestions for the scope. It was agreed that they would provide the – I think head of legal, with all their suggestions and these would be forwarded to me to have included in the proposed scope.
19. I then left Megawatt Park. The enquiry was firmly in progress with Board approval, the executive and the public informed.
20. Following that I received a number of communications from Eskom including an invitation from Mr Naidoo, a director, to join the Board Recovery and Build Programme Review Committee (BRBPR) workshop the following week. His communication with that committee included reference to the Board's intention to commit to a "deep dive" investigation.
21. I also received an invitation to attend a Board A&R subcommittee (delegated board authority to oversee the enquiry) meeting to be held on the 19th and then again on the 23rd March.
22. On the 12th March Minister Brown released a media statement endorsing the Board's decision to hold an in depth enquiry.

23. There was no doubt that at this time that the enquiry was in motion.
24. I was about that time required to provide my proposed draft terms of reference to Malesela Phukubje the company secretary by Sunday 15th 6pm.
25. Over the next few days I made enquiries with legal and accounting firms seeking those which had capacity, capability and no prior conflicts (previous advice to Eskom).
- 25.1. I met with ENS and received from them a written "CV". I considered them for the commercial forensic investigation stream.
- 25.2. I had telephonic discussions with Grant Thornton for the financial stream. Other leading accounting firms had previous advisory experience with Eskom.
- 25.3. I canvassed potentially names for the retired judge role with a highly respected lawyer and compiled a list with a preferred candidate. This candidate would without any doubt have been welcomed by all stakeholders and the public as providing the right oversight (It would not be fair to identify this candidate as he was never in the end approached or aware of the possible role).
- 25.4. I spoke with industry experts as to potential candidates for the technical stream. While this never developed further there was the formation of two teams for this area (it being hugely complex and difficult to scope). One team would be an overseas technical entity and the other, a group of acknowledged South Africa technical experts (group of "wise men/women"). The advantage would be that they would have "local" knowledge and be able to assist with directing focus for the overseas entity.
26. I emailed the draft terms of reference to Ms Mabude and the company Secretary on Sunday 15th at 7.05pm (**attached**). [Just before or after this I received a company proposed terms of Reference from the Company Secretary which I did not use but serves a point of comparison to that proposed by myself].
27. There were a number of important issues included in my proposed terms of reference.
- 27.1. It was detailed and comprehensive in it's scope – it was to be an in depth enquiry.
- 27.2. It proposed the appointment of a retired judge – it would have credible independent oversight;
- 27.3. It referenced the streams of enquiry that would be undertaken by different entities - it was unlikely that one entity could have the cross skills necessary for such a comprehensive enquiry.
28. On the evening of Monday 16th I had a discussion with Ms Mabude regarding the terms of reference which I had submitted. That discussion was brief. I was concerned that Ms Mabude

now refused to allow me access to the input received from the executives (see para 18 above). There was a notable cooling of enthusiasm. That conversation ended with an agreement that I would meet Ms Mabude the following morning at around midday (17th).

29. At 4.50 am on the 17th March I received an email from a Mr Thulo Selele copied to the Company secretary informing me that I was no longer required to attend the BRBPR meeting as the A&R subcommittee would now be handling the inquiry. The time of this email struck me as peculiar. It was also contrary to the previous evening's parting understanding with Ms Mabunde. My perception was there had been an intervening event.
30. Upon making some enquiries concerning this abrupt change of events I received information (hearsay) that a number of members of the board and some of the suspended executives had attended an late night private meeting during the night of Monday 16th. I assumed that this was linked to the early morning email.
31. On Wednesday 18th at 9.21am I forwarded a further draft of the terms of reference and proposed media release to the Chairman of Eskom and Ms Mabunde. I strongly recommended that the media statement be released urgently – by midday same day (18th) as it was important to maintain a positive endorsement through the press – public and stakeholder opinion was critical.
32. I never received any response to this email from the chairperson of A&R (Ms Mabunde).
33. However the Chairman contacted me and informed me that he had spoken to Ms Mabunde and she had undertaken to come to his house as soon as she was able to discuss the documents sent. He asked that I also attend.
34. By midmorning there was no further response and I called the chairperson and suggested I visit him as the media were asking for comment and without it the company was beginning to receive negative publicity. What was intended to be a positive intervention was evaporating. I was keen to have information in the public domain and receive informed commentary the following day.
35. The Chairperson informed me that the Minister had called him and instructed him to ensure a media report was issued due to the poor press – it was now a week after the announcement and there had been no further media release and the public was already sceptical of Eskom. He agreed to the release and instructed me to forward it directly to the company secretary and manager in his office. The instruction was that it follows the normal process and be copied to all directors and the minister.
36. Later I realised it was never released and upon enquiry by me to the Chairman I was informed by Mr Tsosti that the Minister of DPE and certain directors had objected to the press release and he had told the company secretary not to release it.

37. He also informed me that the Minister's office stated (hearsay) that protocol does not allow the Board to appoint a retired judge without the President's authority. I stated that to my knowledge that is not true. Effectively this aspect of the TOR was being rejected.
38. Later that evening (Wednesday 18th) I received a call around 6pm from the Chairman asking me to come to his house as the Chair of A&R had arrived. The three of us met and we first reviewed the media statement. In effect the Ms Mabunde wanted all the references to the scope and approach including the retired judge and the use of three independent forensic teams to be excised.
39. I provided reasons why I disagreed with that view and none of these reasons were challenged by Ms Mabude. The response was simply "the committee does not want this". When I asked for reasons why the committee would have a different view Ms Mabude did not provide any. At this time the Chairman intervened as he did not like the adversarial tone that the discussion had taken on.
40. Ms Mabude then suggested that I attend a meeting of A&R the next day – Thursday 19th in the evening and present my arguments to them. I subsequently received a formal meeting invite to that planned meeting.
41. However it was subsequently cancelled and my attendance not required. Instead an urgent board meeting was called, I think for the Friday 20th.
42. I was later informed that Mr Tsosti was to appear before the board for a disciplinary hearing arising from his actions to set up the enquiry. I was asked by his legal representatives to provide a statement of my and Mr Tsosti's roles which I did. The content of much of this statement here is taken from that contemporaneous statement provided around the 20th March.
43. I have in my possession original documents and emails that support this statement and which will also provide timing and dated versions of documents referred to.
44. I subsequently saw a press release from Eskom stating that I had been removed alongside Mr Tsosti.
45. Notwithstanding the termination of the enquiry, the Board did not reinstate the suspended executives despite their suspension having been explicitly linked to the enquiry.
46. Subsequent information
- 46.1. Subsequent to the aborted enquiry there was public demand for an investigation into Eskom. This resulted in the Board appointing a legal firm, Dentons to undertake an enquiry. Later (much) Eskom released parts of their report. The questions ought to be posed – Why was a second enquiry mandated given the first was aborted; Why specifically was Dentons appointed; What were their agreed terms of reference and if they were narrower than the first enquiry proposed why were they narrower; What were their

findings and more particularly what did they not find that subsequently has come to light through the Gupta leaks and other investigations.

46.2. I have seen Ms Davids (Eskom legal advisor) evidence before the Committee with reference to her meeting with a member of the Gupta family on the 9th March 2015. She stated that Gupta informed her of the proposed enquiry and suspensions (prior to the board decision of the 11th). I can state that at no time was any Gupta or (to my knowledge) any related person ever party to discussions in which I was involved. However by 8th and certainly the morning of the 9th the board and the Minister had met to discuss the enquiry and proposed process. It was therefore open knowledge to many people within Eskom by that time (9th). Why the Gupta's were aware at all is worth querying.

46.3. The question has been posed whether the suspension of the executives on the 10th directly resulted in the downgrade of Eskom the week following the suspensions. This question ought to be put to Standard and Poors as only they would know. However an article by Dirk De Vos in the Daily Maverick on the 23rd March 2015 reviewed Eskom's situation and its mounting debt and troubles. Eskom was clearly is a dangerous place. He stated that the suspensions did play a role. However that ought to be tested as it had been anticipated prior to the suspensions. However to the extent that it did play a role in the downgrade, the further question ought to be asked – was it the suspensions *per se* or the events thereafter – the muddled handling of their suspensions, the poor media releases, absence of stakeholder engagement in what was intended, the subsequent cancellation of the enquiry but continued suspension of the executives.

47. Conclusion

47.1. A valid question must be why was I was appointed in the manner that why was I appointed that by those did so. I don't know that answer although I have asked myself many times.

47.2. I can however state that the reasons given me at that time for the enquiry were sound and supported by most informed persons at that time – it was necessary. In itself there is nothing untoward about that. If there was ulterior motive as I have often pondered, it is confusing that it was so quickly aborted.

47.3. From my first engagement my position was I would do it if it was open, independent (and seen to be so), having proper credible oversight, with skilled and credible resources. That was never challenged and it must have been with that in mind that I was proposed and appointed. Why the charade if it was never intended to be.

47.4. The trigger to abort the enquiry must have been the circulation of my written, detailed terms of reference and proposed approach. That was the death knell.

47.5. The reasons given for its termination then, warrant testing.

Signed on 21st November 2017 at Cape Town

Nicholas Linnell



ESKOM SOC**9TH MARCH 2015****Memorandum**

The Company has implemented rolling restricted supply to all areas for a number of months. Notwithstanding the integration of Medupi unit 1, continued maintenance and unscheduled shut downs have and will inevitably cause ongoing planned and unplanned outages. The CEO is on public record as having forecast that these will continue for as much as 5 years.

Medupi and Kusile are years behind schedule and tens of billions over budget.

Lost revenue as a result of lost sales arising from supply not meeting demand runs into billions.

Escalating funding shortfalls have increased the interest carrying cost beyond prudential limits.

Eskom has been obliged to seek increasing funding from treasury. The forward forecast anticipates that funding shortfalls will continue.

The Company has also been subjected to public embarrassment relating to tender and other expenditure disputes -some of which have become litigious. These compound current negative perceptions of Eskom.

The impacts of these failings are numerous and the consequential risk extends far beyond the Company to all South Africans. Economic capacity is being severely restricted across all sectors and curtailed foreign and domestic investments postponed or cancelled outright. These in turn create a spiral effect with increasing unemployment and pressure on the fiscus.

The past response by Eskom has been to offer the public little insight to the causes and little guidance to the future. Public announcements are often uninformative or silent. The perception is that there has been a tendency to deny and defend. As a consequence neither business nor the man-in-the-street has any notion of what the future holds. That perception extends to a belief that - "neither does Eskom". This Board is duty bound to establish the facts and to address the causes and implications.

Until this moment the Board has been entirely reliant on the Executive for information pertaining to these challenges. It is abundantly clear that this in itself is part of the problem. This Board has no independent and objective insight into the extent that some of our failings might be caused or exacerbated by management failure. Given the abnormal risks facing the Company and its obligations to the public, this board must know the facts - as unpalatable as they might be.

The Board is also in an unenviable position as it is known that the Executive relationship with the shareholder can at times be more engaging than it is with the Board. While this Board can have no quibble with close shareholder relationship this may not be a substitute for proper and sound corporate governance.

Given the severe risk of further outages and little independent understanding of the facts, there it is critical that the Board act immediately - to establish first-hand the causes of these challenges

It is recommended that the Board urgently authorise and mandate an independent, external enquiry to establish the facts of the current difficulties. This enquiry must be unfettered by management and the Board and other policy stakeholders. It must be seen to be credible and objective. It must have a mandate to be penetrating and unhindered.

The Board must ensure that it creates the space and environment within the company and amongst stakeholders for the investigators to fulfil this mandate unimpeded and without influence.

The resolution before the Board provides the authority for such an enquiry.

In order to facilitate the urgent and independent execution of this resolution, a further resolution provides the delegation of the selection, mandating and contracting (including terms of reference) and oversight of the enquiry to a board subcommittee. While this subcommittee remains accountable to the full Board, the subcommittee should have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the fulfilment of the mandate, as the board would itself have.

There is therefore an urgent and pressing need for the Board to gain first-hand an unabridged review of the facts and their impact.



ESKOM SOC**DECISION RECORD OF THE BOARD****9TH MARCH 2015****Resolution**

1. That this Board resolves that there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors. Ordinarily notice of at least 7 days is required. Due to these exceptional circumstances (recorded in the memorandum) this Board resolves to accept short notice and to receive and consider the notice and resolutions of this meeting.
2. That this Board resolves that an external and independent enquiry be set up to investigate and determine the facts relating to the current technical, commercial and structural status and any acts and/or omissions that have contributed to the current deficiency of generating and distribution capacity of Eskom.
3. That the Board resolves to appoint a Board subcommittee comprising Zola Tsotsi, Chairperson of the Board, Ms Chwayita Mabude, Chairperson of Audit and Risk Committee and Zethembe Khoza, Chairperson of People and Governance Committee, mandated with delegated authority of the Board to determine the terms of reference of the enquiry; the selection, mandating and contracting of the independent investigators; and the oversight of the enquiry. The subcommittee shall have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the unfettered fulfilment of this mandate, as the board itself would have such power and authority, and further, without limitation, to ensure that the environment within the Company does not hinder or create a perception of hindering the enquiry and to take all such necessary steps to ensure such.
4. That the Board authorises the Chairperson in consultation with the Minister and the Minister of Finance to approve expenditure sufficient and necessary to fund this enquiry.
5. That this enquiry shall be required to present its final report to the Board, the Minister and the Presidency no later than the 30th June 2015.
6. That the subcommittee shall have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary given the target to complete the investigation within 3 months (urgency) and to appoint such persons or entities to conduct the enquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have any effect on the enquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations.

[illegible]

Members:	Signature:
1. Zola Tsotsi	
2. Tshediso Matona	
3. Tsholofelo Molefe	
4. Ms Chwayita Mabude	
5. Norman Tinyiko Baloyi	
6. Dr Pathmanathan Naidoo	
7. Venete Klein	
8. Nazia Carrim	
9. Romeo Kumalo	
10. Mark Vivian Pamensky	
11. Zethembe Khoza	
12. Dr Baldwin Sipho Ngubane	
13. Devapushpum Viroshini Naidoo	

DRAFT

TERMS OF REFERENCE FOR A FACT FINDING INQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

The Board has received complaints and concerns raised by various sources, both internal and external to Eskom with regards to inter alia sufficiency and reliability of supply of electricity; escalating build project costs; escalating maintenance costs; high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. In addition the Board has recognised the need for independent assessment of the state of the company's capability and performance. The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of reference.

To this end, the Board of Directors have resolved to institute an independent inquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. Included in the authority to institute this inquiry is also the authority to:

- To consider and approve the terms of reference as proposed by the project coordinator;
- To consider and appoint a retired judge to oversee the independence of the inquiry from amongst a panel recommended by the inquiry coordinator;
- To consider and appoint services providers for the three separate areas of inquiry from a panel proposed by the inquiry coordinator;
- To receive and consider the interim and final reports and provide comments to the inquiry teams as necessary;
- To ensure that the scope of work as defined in the terms of reference are delivered within prescribed time lines;
- To approve a budget for the execution of the inquiry;

2. OBJECTIVE/PURPOSE

To provide the Board and Shareholder with an assessment of the current state of Eskom and in particular to determine the reasons for the current lack of, and inconsistency/unreliability of supply of electricity to customers; to determine the causes of engineering

failures, delays and cost overruns; to review primary energy sources, costs and quality of supply; to review the financial solvency, liquidity and the cost of funding of Eskom; and to provide recommendations with regard to possible actions.

The inquiry must be free of all influence or interference and shall be so structured as to ensure that independence is seen to exist.

3. APPROACH

The inquiry shall be subject to the oversight of a retired judge to ensure that the inquiry is free of influence and is objective.

The inquiry will be managed by a project coordinator who shall be responsible for the delivery of the mandate and who shall propose to the subcommittee terms of reference and a short-list of possible service providers to execute the mandate, to be approved by the subcommittee.

The inquiry shall focus separately on technical, commercial and financial facets of the Company. Each will be performed under separate inquiry teams selected having regard to their particular skills and independence.

4. TIMING

The inquiry shall commence on the 23rd March 2015 and shall provide its final report and recommendations to the Board not later than 19th June 2015

5. RESOURCES

- 5.1. The inquiry teams shall have access to all documentation and other data belonging to the Company as deemed by the inquiry teams to be necessary and shall be permitted to interview and receive information from any employee and supplier as necessary.
- 5.2. Each team and the inquiry coordinator shall have access to all premises of the Company at all reasonable time and upon reasonable notice;
- 5.3. The internal audit department will provide assistance as agreed from time to time with the Head of Internal audit department.
- 5.4. The Board subcommittee shall provide appropriate and necessary assistance to the inquiry teams as requested from time to time.
- 5.5. Board and board committee agenda packs and minutes shall be available to each team on request.
- 5.6. The Company shall provide a meeting room sufficient to house 6 persons and shall provide access as required to interview rooms.
- 5.7. All prior inquiries and reports in connection with matters included in this scope shall be made available to the inquiry.
- 5.8. The inquiry shall be permitted to establish an independent reporting "hot-lines" enabling internal and external people to provide anonymous input to the inquiry.
- 5.9. The respective teams comprising the inquiry shall meet on a fortnightly basis to ensure coordination.

6. SCOPE OF INQUIRY

The scope below may be limited in consultation with the Board subcommittee having regard to the budget and time available save that this may only be limited on the basis of what the teams' deem in their discretion to be "material" in the circumstances of the information available.

6.1. Technical

- 6.1.1. In respect of all generating plants' (+/-87), benchmark maximum output capacity, planned capacity and actual output for the immediate past 36 months;
- 6.1.2. Review current status of all generating plants and provide opinion on the causes and contributory factors for sub optimum output (in excess of 33 require major repair);
- 6.1.3. Review all major incidents at plants and their causes and any avoidable factors not acted upon (including communications between plant and executive);
- 6.1.4. Review maintenance requirements of all generating plants assessing actual vs planned maintenance and review all contracts and service level agreements and compliance to the same as well as costs relative to plan. Have particular regard to all unplanned failures and review in context of maintenance conducted/not conducted;
- 6.1.5. Review all 3rd party electricity supply available to the grid (including proposals received but not acted on) and compare to actual supply connected to the grid for the past 36 months. Provide an opinion on the technical reasons and cost implications for not having connected when possible. Review all information including correspondence, negotiations and contracting with regard to that supply and reasons for less than optimum connected supply. In addition, consider the available potential of supply from foreign countries and determine any reasons for supply (from time to time) less than that potential and consider any reasons thereof;
- 6.1.6. Specifically enquire into the principal causes of failure at Majuba and Duvha and make recommendations as necessary. In so doing have regard to management reports and independent insurance/assessor reports and determine the degree of transparency of reporting to the Board and have regard to the reasons for any late submissions of these reports to the Board.
- 6.1.7. Conduct high level reviews of the new builds at Medupi and Kusile and determine the principal causes and contributory factors to the overruns of cost and time.
 - 6.1.7.1. The degree of depth of this report to be agreed between the subcommittee and the inquiry team bearing in mind the time available.
 - 6.1.7.2. To determine whether appropriate contingency plans were in place and acted upon at the earliest possible instance;
- 6.1.8. In collaboration with the Financial and Commercial inquiry teams to the review the supply of primary energy (coal, diesel, gas, water) to all plants over the past 36 months and determine whether supplies met specification, quality and delivery requirements (also have regard to any incorrect specifications provided).

- 6.1.9. Review the causes of disruption of power to two Rand Water pumps at Rand Water in September 2014 paying special attention to any lack of proactive or reactive management response i.e. were there warning and how effectively did we react;
- 6.1.10. To consider the impact of weather on the performance of any of the plants and to provide an opinion as to whether these risks could have been mitigated;
- 6.1.11. To review risk management and contingency plans to determine that such are sufficient to negate any generation risk, and at times of plant failure and whether such were implemented effectively.

6.2. Commercial

- 6.2.1. Review all procurement and other contracts for capital projects, primary energy supplies and operational services (exceeding R1 million or such figure as varied with agreement with the subcommittee) for the past 48 months and determine adherence to supply chain policy and business case approvals. Have special regard to any contracts and payments made but not matched to specification (cost, time and quality). Have regard to any rolling or renewed contracts that have cumulative value above the threshold;
- 6.2.2. Review all contracts related to Medupi and Kusile from inception. Review these in context to the original business case and adherence to tender and supply chain requirements. The focus to be on commercial matters and not technical. The team to coordinate their inquiry with the Technical and financial teams.
- 6.2.3. Review employee and contractor contracts and payments made to employees and contractors and identify any that bear *prima facie* concern.
- 6.2.4. Undertake electronic assessment of all company email correspondence, identifying certain key words to be proved by the subcommittee, for the last 24 months, and where appropriate undertake interviews with internal and external parties to probe where indicated.
- 6.2.5. Review a random sample of internal correspondence between project leaders and plant/project management on Medupi, Kusile, Majuba and Duvha and identify whether plant management foresaw problems and communicated risk upwards. Review management reactions;
- 6.2.6. Similarly (plants as per above) review all correspondence between suppliers and company in which disputes are debated. Interview suppliers as necessary.
- 6.2.7. Review new posts created over past 36 months and provide a schedule of position and TCC.
- 6.2.8. Review all executive and Board reports pertaining to new builds and summarise material implications and decisions.
- 6.2.9. Review contracts and recruitments of employees with TCC >R1.5m per annum for last 24 months;
- 6.2.10. Review a sample of senior employee suspensions, disciplinary hearings and dismissals (and reinstatements) of employees last 36 months (filter those earning >R1 000 000 p.a.).
- 6.2.11. Review summaries of internal audit reports over the last 36 months and management responses and any action taken on material risks identified;
- 6.2.12. Review internal audit programs – schedule of audits and risk analysis and review Internal audit reports of the same and review actions taken;

- 6.2.13. Review draft external audit reports for the past 3 years (2012-2014) and identify risks noted and not in final reports and determine reasons for such
- 6.2.14. Interview sustainability executive for insight to risks not identified;
- 6.2.15. Review correspondence from insurers of major claims submitted (to be objectively assessed by the team) and premium adjustments for those and reasons for them for past 36 months.
- 6.2.16. To review the organisational model and consider the implication on the performance of the company and make recommendations as required.
- 6.2.17. To consider the implementation of any policy decisions and their impact on the performance of the Company. To coordinate with Financial and Technical inquiry teams to ensure appropriate consideration by each.
- 6.2.18. Review company policies to determine compliance of good governance, transformation and conflict of interest.
- 6.2.19. Review whistle-blower reports for past 36 months and provide an opinion of the satisfactory follow-ups thereof.

6.3. Financial

- 6.3.1. Review the approved financial statements of the Company as at 30th September 2014 and provide a summarised “red flag” report on material concerns. Review the current management report forecast for the year ending March 2015 and provide similar comments and in particular to any variations not anticipated in September 2014.
- 6.3.2. Review material funding facilities/contracts /bonds of any nature and provide an opinion of the terms relative to the market and the company’s risk.
- 6.3.3. Review all steps taken by the Company to recover unpaid “government/municipal” debt (debtors) currently estimated at R4.7 billion. Provide commentary on the impact on the financial standing of the company on such unpaid debt.
- 6.3.4. Review all non- government trade debtors (customers) and provide a similar review and in particular to steps taken to secure payment;
- 6.3.5. Conduct (together with Commercial team) a review of all primary energy supplies over the past 36 months and determine the cost implications of any contracts “not for value”;
- 6.3.6. Determine the lost revenue and/or penalty cost implications of all non-implemented 3rd party electricity supply opportunities.
- 6.3.7. Determine the net wasted cost (and reasons therefore) of payments made to primary energy suppliers for materials not received but paid for over the past 36 months.
- 6.3.8. Review all non-government major electricity-user sales contracts (together with their business cases) and determine the value of lost revenue over time and, together with commercial, provide an opinion on the proprietary/commercial wisdom of such contracts at the time.
- 6.3.9. Review all contracts and payment of pre-sold electricity “buy-backs” and access the cost/benefit of such decisions.
- 6.3.10. Together with Technical teams provide an estimated cost to the company of the cost (increased costs) and time (lost revenue) overruns at Medupi and Kusile;
- 6.3.11. To consider asset management policies and practices;

6.3.12. To provide a high level financial protection for the next 3 years.

6.4. Coordination

6.4.1. The inquiry coordinator shall:

6.4.1.1. Draft terms of reference for the scope of the inquiry.

6.4.1.2. Consider suitable persons to fill the positions provided for in this terms of reference and to make recommendations to the subcommittee;

6.4.1.3. shall ensure that each of the teams have access to each other so as not to create overlaps and gaps;

6.4.1.4. have responsibility for the delivery of the scoped work of each inquiry team and of the final consolidated report;

6.4.2. The coordinator shall access to the interim work of each team and to provide comment and guidance to each team as he deems appropriate.

7. REPORTING

7.1. Each inquiry team to provide the inquiry coordinator with a weekly and monthly summary of their activities and material (including preliminary) findings for presentation to the subcommittee;

7.2. The program coordinator to recommend possible reinstatement of suspended executives as soon as inquiries are complete and risks mitigated.

7.3. At the end of the inquiry, present to the Board Committee a report.

7.4. The final report to include a summary of material finding and recommendations.

8. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

In the exercise of its authority as delegated by the Board, the Audit Committee has appointed.....to assist with
..... team of the inquiry.

9. FEES

9.1. The respective service providers will negotiate and agree the fees that Eskom will pay to the service provider.

Signed at _____ on this the day _____ 2015

For and on behalf of Eskom

Signature

Name of Signatory

Designation of Signatory

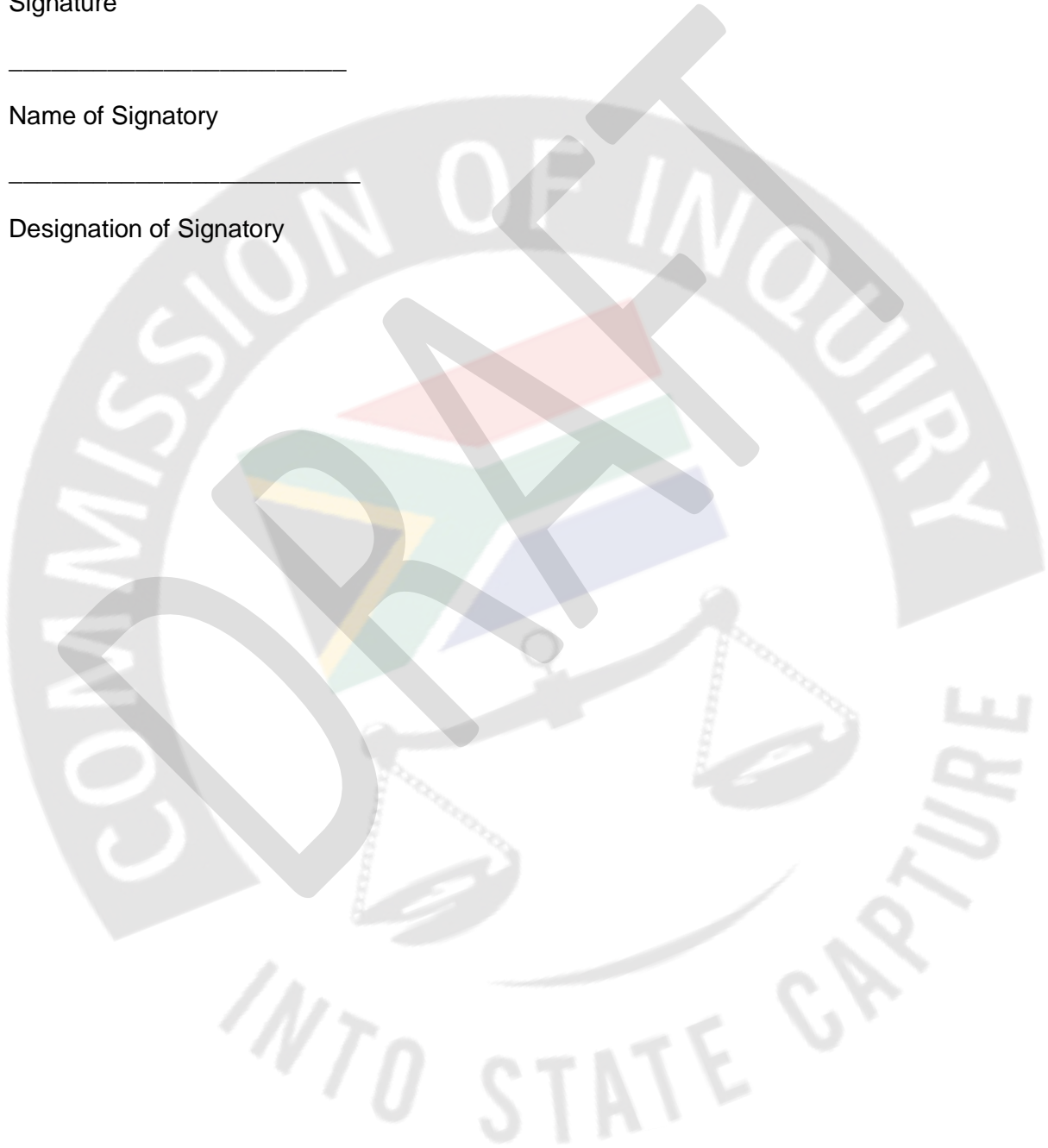
For and on behalf of

[Service Provider]

Signature

Name of Signatory

Designation of Signatory



ESKOM SOC

PRESS RELEASE

THE BOARD ENQUIRY

On Wednesday 11th March 2015, the Chairperson of the Board Mr Zola Tsotsi released a media statement and held a media conference announcing the Board's decision to mandate an inquiry in the current state of the Company.

Understandably there has been considerable interest in the inquiry and much expectation created. There have also been numerous media reports variedly reporting the enquiry and this has led to some confusion.

The purpose of this communication is to provide the public with further details on the inquiry and to lessen the space for further confusion.

Firstly, this initiative that has been taken by the Board has the complete support of our shareholder Minister Lynn Brown.

The purpose of the inquiry is:

"To provide the Board and Shareholder with an assessment of the current state of Eskom and in particular to determine the reasons for the current lack of, and inconsistency/ unreliability of supply of electricity to customers; to determine the causes of engineering failures, delays and cost overruns; to review primary energy sources, costs and quality of supply; to review the financial solvency, liquidity and the cost of funding of Eskom; and to provide recommendations with regard to possible actions.

The board further resolved that the inquiry must be free of all influence or interference and shall be so structured as to ensure that independence is seen to exist.

To that end the Board delegated the oversight of the inquiry to the Board Audit and Risk Committee. However so as to ensure that even this was not perceived as having influence, the terms of reference provide for a number of important checks and balances.

1. The appointment of a retired judge to ensure that the inquiry is free from influence and bias.
2. The appointment of industry and professional experts in specific fields to undertake the work defined in the scope of the inquiry.
3. The appointment of a person outside the company who shall coordinate the various aspects and be accountable to the board subcommittee for the timely delivery of the objectives.

The subcommittee has considered the proposed terms of reference and scope of the inquiry prepared by the inquiry coordinator and has asked that these be put to a number of professional persons or entities that we believe have the capacity and expertise to complete this mandate in the time allowed.

Once the various professional teams have been appointed the Board will provide the public with details of the following:

1. The appointed retired judge;
2. The professional teams appointed;
3. The terms of reference.

In appointing the professional teams we will have regard to fact that the public must have confidence in the people undertaking this task. That they are competent and that the possibility of interference would be improbable. We shall do this as it is right and to ensure complete transparency and confidence in the process.

Some speculation has arisen as to the overlap of the Board's inquiry and what might appear parallel initiatives. The ministerial "war room" has a very specific mandate to consider the strategic issues and to seek ways of eliminating structural bottlenecks. The "energy committee" is looking at a very specific part of the future energy needs and options. The board's inquiry focuses a fact gathering exercise – the product of which will be shared with both these committees. However the board's inquiry is focused on internal matters that have affected our performance and identify some key remedial actions that might be identified.

As a Board we are certain that this is in the best interest of the Company and the nation. We cannot readily recognise any concerns as to why this should not happen. For some time both the Government and the public had demanded such an inquiry. We now have it.



IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES, (NATIONAL ASSEMBLY), [CORPORATE GOVERNANCE IN ESKOM]

SUBMISSION BY NICHOLAS HUGH LINNELL

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IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES, (NATIONAL ASSEMBLY), [CORPORATE GOVERNANCE IN ESKOM]

AFFIDAVIT

I, the undersigned,

NICHOLAS HUGH LINNELL

do hereby make oath and say;

1. I provided a number of written statements the Evidence Leader in November 2017. The purpose of this affidavit is to depose my statement under oath and to place it as a single document. I stand by the factual content of those statements as read together.
2. I am a director and shareholder in CT&A Project Management Pty Ltd (trading as *The Project Office*) and employed there since 2001/2. We provide business improvement services across a number of disciplines.
3. I hold BL. LLB law degrees from the University of Zimbabwe and a B.Com (Honours) degree from University of Cape Town. I have been engaged in business activities within corporates and in consulting services for 35 odd years.
4. Context
 - 4.1. During the period leading up to the events covered in this deposition in early 2015, the country was experiencing rolling power outages and there were commentaries suggesting they would get worse before they got better. These included views that a complete outage was possible and that should that happen it would potentially take weeks to begin to bring the network up again. During such a period there would be no power at all. Business has since estimated that these failures cost the economy billions and billions of Rands. The troubles at Eskom must also have weighed on the minds of the rating agencies.
 - 4.2. There were continuing media articles alleging corrupt or improper commercial activities at Eskom with some executives being publically named.



- 4.3. Public statements by Minister (Brown) that she was not receiving credible information from Eskom must have further concerned stakeholders.
- 4.4. There was a national crisis at this time.
- 4.5. The powers-that-be could not even publically agree whether the situation could be termed a "crisis" or not a "crisis".
- 4.6. There were public calls for an in depth enquiry into Eskom.
5. I was contacted on 6th March 2015 by Ms Dudu Myeni and asked to travel the same day to Pretoria to attend an urgent meeting with the President.
6. At that time I was well known to Ms Myeni who had been a client of mine from time to time over a number of years on various projects in her representative capacity at Mhlathuze Water Board and South African Airways. At this time I was engaged in a major project at SAA, similar but on a smaller scale to what would become the subject of this deposition.
7. On arrival at the Presidency sometime after midday I met with Ms Myeni. No one else attended that meeting.
8. While the SAA matter might also have been discussed, in the context of this deposition, Ms Myeni informed me that the President was concerned about the state of Eskom and wanted an in-depth investigation into its affairs. She had recommended to the President that I would be suitable for that role.
9. Ms Myeni proceeded to brief me on the background for an enquiry. Included in this discussion was reference to some documentation that Ms Myeni had.
10. The President did not join that meeting as I understood he was unexpectedly otherwise engaged.
11. To the best of my recollection it was then agreed that I would need to travel to Durban on Sunday the 8th March to meet with the President to complete this briefing and mandate.
12. I left with an understanding that I would be asked to conduct the enquiry into Eskom and I ought to prepare for that.
13. Prior to the 6th March I did not know who the Chairman of Eskom was nor had I ever met or heard mention of Mr Tsotsi.
14. During the following day, Saturday 7th March Mr Tsotsi either called me or I was provided his contact number but I requested from him company documents and policies which would be required for proposing the enquiry and its terms. During that exchange it was evident he would also be at the meeting in Durban on the Sunday 8th March 2015.



15. I attended the meeting in Durban on Sunday 8th March 2015. When I arrived at the Presidency Mr Tsosti and Ms Dudu Myeni were there. In attendance was also Ms Myeni's son and another person introduced as "Jabu". At that time I knew nothing of Jabu's role at large.
16. While Ms Myeni's son played no active role in the meeting, Jabu provided information about the state of Eskom including allegations of wrongdoing and reasons for business failure, some of which was in the public domain.
17. To the best of my recollection Jabu had a number of documents that dealt with alleged events at Eskom. These were largely from unidentified sources and unverified content. These were things that an investigation would identify and were background in context, but in part some of the allegations did provide some value in scoping an approach to the investigation.
18. When preparing for this enquiry in November 2017 (nearly 3 years later), I located one document loaded to my computer on that same 8th March titled "Eskom Energy crisis 2". I reviewed the properties of this document to identify its source. It pertained to the Westinghouse/Areva/Koeberg matter and appeared to be a document written months earlier.
- 18.1. The properties indicate that the document was originally created on a computer whose Microsoft licence was registered to the company "Toshiba". The document was last amended and saved on a computer named as "Univer Capital".
- 18.2. I conducted a google search for "Univer Capital" and identified a Linkin association for a "Jabu Maswanganye" referred to a Director of Univer Capital Johannesburg. CIPC has no record of a company by that name.
19. The group at the meeting referred to above discussed the intended enquiry, how it would take place and what it would seek to achieve.
20. After a period we joined the President.
21. The President was clearly familiar with the purpose of the meeting and we provided a summary of what was proposed (arising from the earlier discussions referred to above). This included a number of key principles.
- 21.1. For the enquiry to have credibility it needed to be open, independent and comprehensive. It needed to be free from internal interference.
- 21.2. It needed to be quick as lengthy previous enquiries in other state entities led to greater harm than good.
- 21.3. It needed the capacity and capability of the best investigators across commercial, financial and technical disciplines. It was therefore not suitable for one entity to conduct it.

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- 21.4. It needed to be seen to be credible. Sound communications with stakeholders and the public were necessary.
- 21.5. I cannot now recall whether my proposal for a retired judge to oversee the enquiry was mentioned during this discussion. However it was always my contention that an independent role was necessary.
- 21.6. The Board and the Minister (Brown) must be in agreement and supportive and seen to be so.
- 21.7. I discussed implications of board and PFMA approvals.
- 21.8. The matter of suspension of top executives was discussed. The rationale supporting suspensions was that;
- 21.8.1. If investigators were going to have the freedom to follow the evidence there needed to be an environment free from fear or intimidation. These conditions do not have to be "active" to exist and the passive presence of key people can inhibit openness. These were precautionary suspensions and those included would be counselled on that point as would the media release.
- 21.8.2. The risk to the business of suspensions of key people would be managed by appointment of capable subordinates. A strong communication strategy would convince stakeholders and the public that this was a positive not negative approach.
- 21.8.3. The enquiry would be limited to 3 months.
- 21.9. My own role would be to act as a coordinator and interface with the Board.
22. The President listened to these views and asked one or two questions then he agreed. He undertook to speak with the Minister and Mr Tsotsi would speak with the Board.
23. As the matter was urgent I would travel to Johannesburg the following day and be available to the board as and when required on the Monday 9th March 2015.
24. That evening I drafted a proposed Board memorandum, proposed resolutions and forwarded these to Mr Tsotsi. The email also provided process guidance notes for Mr Tsotsi for the board meeting. This note emphasised the need to inform the board of the President's role and the key requirements of the proposed enquiry. **(Attached Reference pages 15-21.)**
25. Between Monday 9th March and 11th March, I took formal legal advice on the proposed suspensions. This included the opinion that the proposed suspensions were not inconsistent with the Eskom disciplinary code or prevailing case law. **(Attached Reference page 22).**
26. I prepared an aide memoire detailing the process of the suspension discussions together with draft suspension letter which were reviewed, amended and finalised by the senior labour

attorney consulted and these were forwarded in writing to Mr Tsotsi on the 11th March.
(Attached Reference pages 23-28)

27. I went to Megawatt Park in anticipation of being called by the Board. I took with me the senior labour lawyer consulted and his associate to deal labour law matters if requested by the Board. We were however later told the Board was not in agreement and we left. In part I considered that that might be the end of the matter.
28. On Wednesday 11th I was again called by the Chairman to Megawatt Park. On this occasion I was called into the board meeting.
- 28.1. Clearly the matter had already been discussed and agreed to. I was asked to introduce myself and there were a number of questions. These included the proposed suspensions.
- 28.2. We also discussed how the communication aspect of these should be managed. It was critical to take the public into the board's confidence and say what the Board was doing and why. Experience dictates that transparency is critical to credibility.
- 28.3. During that meeting I had the impression that the Minister of Public Enterprises had immediately prior to that meeting addressed the Board on the matter. I was not privy to those discussions or the Chairman's presentation.
- 28.4. It was quite clear to me that the board approved the enquiry and processes to implement that were discussed and agreed.
29. After that meeting there was a press conference attended by a number of the Directors at which the Chairman stated publically that there would be an in-depth enquiry, it would be speedy and was urgent. My appointment as coordinator was announced.
30. The media announcement created significant interest which was not immediately negative but there was a credibility risk in the media narrative. This is important in the context of the following week's ratings announcement.
31. I met with Ms Mabude (chosen to lead the Board committee overseeing the enquiry) and we discussed the scope and principles of terms of reference. I suggested matters such as the need for an independent whistle-blower facility to allow people to give anonymous tip-offs and meeting the executive team. Their input would be critical but more importantly their trust in the process was critical. I also met with the Senior General Manager: Assurance and Forensic Office of the Chief Executive and discussed the approach and IA involvement.
32. Ms Mabude and Mr Naidoo (Board Recovery and Build Programme Review Committee (BRBPR) chair) and I met with the Executive (about 30 executives). Mr Naidoo introduced me as having been appointed by the board to coordinate the enquiry. I was asked to provide a brief overview of the enquiry and the purpose of the interaction with them – being to obtain input for the

scope. It was agreed that they would provide this input to, I think head of legal, and these would be forwarded to me to have considered in the proposed scope.

33. The enquiry was firmly in progress with Board and Minister's approval, the executive and the public informed and the enquiry in motion.
34. Following that I received a number of communications from Eskom including an invitation from Mr Naidoo, a director, to join the Board Recovery and Build Programme Review Committee (BRBPR) workshop the following week. His communication with that committee included reference to the Board's intention to commit to a "deep dive" investigation. This is relevant to the recognition that the enquiry was underway.
35. I received an invitation to attend a Board A & R subcommittee (delegated board authority to oversee the enquiry) meeting to be held on the 19th and then again on the 23rd March.
36. On the 12th March Minister Brown released a media statement endorsing the Board's decision to hold an in depth enquiry.
37. I was about that time required to provide my proposed draft terms of reference to Malesela Phukubje the company secretary by Sunday 15th 6pm.
38. It was my view that it would be impossible to have a single entity undertaking the whole enquiry and that streams were necessary with separate entities having the best skills and capacity undertaking aspects best suited for them. They ought not have done advisory work for Eskom that might conflict the enquiry.
39. Over the next few days I made enquiries with legal and accounting firms seeking those which had capacity, capability and no prior conflicts (previous advice to Eskom).
 - 39.1. I met with ENS and received from them a written "CV". I considered them for the commercial forensic investigation stream.
 - 39.2. I had telephonic discussions and email communication with Grant Thornton for the financial stream. Other leading accounting firms had previous advisory experience with Eskom.
 - 39.3. I canvassed potential names for the retired judge role and compiled a list with a preferred candidate. This candidate would without any doubt have been welcomed by all stakeholders and the public as providing the right oversight. That candidate was never approached nor been made aware of his candidature as subsequent events interrupted that process.
 - 39.4. I spoke with industry experts as to potential candidates for the technical stream. While this never developed further there was the formation of two teams for this area (it being hugely complex and difficult to scope). One team would be an overseas technical



entity and the other, a group of acknowledged South Africa technical experts (group of "wise men/women"). The advantage would be that they would have "local" knowledge and be able to assist with directing focus for the overseas entity.

40. I emailed the first draft terms of reference to Ms Mabude and the company Secretary on Sunday 15th at 7.05pm.
41. On the evening of Monday 16th I had a discussion with Ms Mabude regarding the terms of reference which I had submitted. That discussion was brief. I was concerned that Ms Mabude now refused to allow me access to the input received from the executives (see above). There was a notable cooling of enthusiasm. That conversation ended with an agreement that I would meet Ms Mabude the following morning at around midday (17th).
42. At 4.50 am on the 17th March I received an email from a Mr Thulo Selele copied to the Company secretary purporting to inform me that the Board Audit, Risk and Compliance Committee would now be handling the Forensic Fact Finding Enquiry (I assumed to be referring to the enquiry I was preparing for). I was informed that I was no longer required to attend meeting previously arranged.
43. The time (4.50am) of this email struck me as peculiar. It was also contrary to the previous evening's parting understanding with Ms Mabude. My perception was there had been an intervening event.
44. Upon making some enquiries concerning this abrupt change of events I received information that a number of members of the board and some of the suspended executives had attended a late night private meeting during the night of Monday 16th. I assumed that this was linked to the early morning email cancelling my appointment.
45. Although recognising the factual implication of that notification, I did not regard that notice as being a formal communication and continued preparing the terms of reference and interfacing with the chairman.
46. On Wednesday 18th I forwarded to the Chairman of Eskom and Ms Mabude, a final draft of the terms of reference, the proposed media release and a version of a draft TOR recommended to me from the company secretary (for purposes of comparison to that submitted by myself) (Attached Reference pages 42-56).
- 46.1. The terms of reference included the appointment of a retired judge – it would have credible independent oversight;
- 46.2. It provided for independent professional streams to the enquiry with entities having particular skills for each stream.
- 46.3. It was comprehensive in its terms – it was an in depth enquiry.

47. In the covering email, I strongly recommended that the media statement be released urgently – by midday same day (18th) as it was important to maintain a positive endorsement through the press – public and stakeholder opinion was critical.
48. The media release ensured transparency and made similar reference to:
- 48.1. a retired judge;
 - 48.2. informed the public that the terms of reference would be communicated publically;
 - 48.3. the enquiry would commence the following Monday, on the 23rd March.
49. At the same time. 18th March 2015, I also emailed a report to Ms Myeni, being the intermediary of the President. This included copies of the same terms of reference and the proposed media release being sent to the Chair and Ms Mabude. It also included a briefing document updating on progress which included reference to the considerations of a retired judge. **(Attached Reference pages 29-41).**
50. I emailed the same terms of reference to both ENS and Grant Thornton, both being considered for the respective commercial and financial streams. **(Attached Reference pages 57 and 58)**
51. I never received any response to this email from Ms Mabude.
52. However the Chairman contacted me and informed me that he had spoken to Ms Mabude and she had undertaken to come to his house as soon as she was able to discuss the documents sent. He asked that I also attend.
53. By midmorning there was no further response from Ms Mabude and I called the chairperson and suggested I visit him as the media were asking for comment.
54. Communication was now urgent and without clarity the company was beginning to receive negative publicity. What was intended to be a positive intervention was evaporating. I was keen to have information in the public domain and receive informed commentary in the press the following day.
55. The Chairperson informed me that the Minister had called him and instructed him to ensure a media report was issued due to the poor press – it was now a week after the announcement and there had been no further media release and the public was already sceptical of Eskom.
56. The Chairman agreed to the media release and instructed me to forward it directly to the company secretary and manager in his office. The instruction was that it should follow the normal process and be copied to all directors and the minister but it be released immediately. **(Attached Reference pages 59-62).**



57. Later I realised it was never released and upon enquiry I was informed by Mr Tsosti that the Minister of DPE and certain directors had objected to the press release and he had told the company secretary not to release it.
58. He also informed me that the Minister's office stated (hearsay) that protocol does not allow the Board to appoint a retired judge without the President's authority. I stated that to my knowledge that is not true. Effectively this aspect of the TOR was being rejected.
59. Later that evening (Wednesday 18th) I received a call around 6pm from the Chairman asking me to come to his house as the Ms Mabude had arrived. The three of us met and we first reviewed the media statement. In effect the Ms Mabude wanted all the references to the scope and approach including the retired judge and the use of three independent forensic teams to be excised.
60. I provided reasons why I disagreed with that view and none of these reasons were pointedly challenged by Ms Mabude. The response was simply "the committee does not want this". When I asked for reasons why the committee would have a different view Ms Mabude did not provide any. At this time the Chairman intervened as he did not like the adversarial tone that the discussion had taken on.
61. Ms Mabude then suggested that I attend a meeting of A&R the next day – Thursday 19th in the evening and present my arguments to them. I subsequently received a formal meeting invite to that planned meeting.
62. However that meeting was subsequently cancelled and my attendance not required. Instead an urgent board meeting was called, I think for the Friday 20th.
63. Following that meeting with Ms Mabude and the Chairman on the 18th, I immediately on the 19th March communicated in writing to both ENS and Grant Thornton that there was a hold on the enquiry until further notice. In the case of ENS I included reference to my own frustration and purpose at that time. (Attached Reference pages 63 -4 and 65 -67)
64. I was later informed that Mr Tsosti that members of the Board had met with the Minister on Friday 20th March concerning Mr Tsotsi's role in the enquiry and that he was to appear before a Board disciplinary hearing.
65. I was subsequently asked by his legal representatives to provide a statement of my and Mr Tsosti's roles in the matter for his disciplinary hearing, which I did. The content of that statement to his legal representatives is substantially identical to this affidavit as it was a contemporaneous record of events and formed a useful reference in preparing this document.
66. On the 21st March I drafted a letter for Mr Tsotsi to be addressed to Minister Brown complaining about the Board's role in terminating the enquiry. The purpose was twofold – it addressed the Board's attempt to remove Mr Tsotsi (said to be directly related to setting up the enquiry) and it



addressed the Board role to terminating the enquiry as contemplated. (Attached Reference pages 68-71).

67. Earlier that week I had advised Mr Tsotsi to also brief the Chairperson of the Portfolio Committee on Public Enterprises (the same committee undertaking the current enquiry) on the obstruction to the enquiry. On the 22nd March 2015 I forwarded to the then Chairperson of the Portfolio Committee on Public Enterprises the terms of reference as rejected by the Board and drew her attention to what I considered the Board's role in terminating the enquiry. (Attached reference page 72)

68. I subsequently saw a press release from Eskom stating that I had been removed from the enquiry.

69. I now wish to deal with aspects that appear to have concerned the Committee and which directly impact my involvement in this matter.

70. My role

70.1. At the time I believed that the President had the intention of mandating an enquiry as contemplated above and that he had the legitimacy of doing so;

70.2. This perception of mine has since been indirectly confirmed by the Constitutional Court and the Public Protector which have held that the President is constitutionally obliged to exercise his executive authority over the Executive, in furtherance of effective governance of state affairs. I believe his intervention as understood by me would have befitted that obligation;

70.3. The reasons for the enquiry given me at that time were in my view sound and much was in the public domain at the time;

70.4. In my correspondence to the Board on the 8th March, proposing the approach, I referred to the President's intervention and support for the enquiry.

70.5. When I attended the Board meeting on the 11th March the Board knew full well that the President had instructed this intervention. It was also evident that so did the Minister.

70.6. I believed (and remain so) that the suspensions as contemplated were reasonable, justified and lawful and I took formal legal opinion prior to their suspension that that was so.

70.7. I provided a progress report to Ms Myeni as intermediary of the President on the 18th March, which included the terms of reference, the media release and the list of preferred retired judges.



70.8. I drafted the letter to Minister Brown making clear the Board's obstruction with the enquiry as contemplated.

70.9. I also informed the Chairperson of the Parliamentary Committee of Public Enterprise of the same obstruction.

70.10. I caused the instruction to release the media statement. Had it been released as intended it would have brought the public into the confidence of the scope and purpose of the enquiry and would have been committed the Board to its full execution.

70.11. From my first engagement my position was that I would do it if it was open, independent (and seen to be so), having proper credible oversight, with skilled and credible resources. That was never challenged until rejected by the Board. That position was contemporaneously, then privately, disclosed to the ENS representative in an email appended here.

70.12. I am of the opinion that all these actions, contemporaneous to events during the first two weeks of March 2015, demonstrate that I had a bona fide and reasonable belief and intent to conduct a befitting enquiry for the benefit of the company.

71. The suspensions

71.1. The precautionary suspensions were considered during the meeting of the 8th March. Precautionary suspensions would have been a standard approach that I would have considered.

71.2. At the time public allegations of mismanagement and wrongdoing were rife and the escalating power outages were a major economic concern.

71.3. I rationalised that if these conditions existed then the top management to whom all activities and people ultimately report ought to have had knowledge of them.

71.4. This has subsequently been borne out in the Public Protector Report and the GuptaLeaks that already at this time very serious acts of misconduct had occurred and were continuing. In fact the first Tegeta contract was agreed and formally executed prior to the suspensions.

71.5. I would have considered key areas of the business that the enquiry would focus on and also whether anyone in those areas may have a propensity to interfere or have such a presence as to create a perception of potentially impeding the investigation.

71.6. I would not have known the identity of the individuals beforehand but at the meeting of the 8th we had identified the roles and names of three executives and these were named by me in the board briefing document that I drafted and sent to the chairman that same evening (8th).



71.7. Mr Matona (CEO), Mr Marokane (Group Capital) and Mr Koko (Commercial and Technology) were named in the suspension briefing memorandum that I forwarded to Mr Tsosti prior to the Board meeting on the 11th March. I cannot recall when the 4th executive was added. Ms Molefe had not been part of my initial proposal.

71.8. I believe that staff below these executives, generally have knowledge of activities but feel inhibited with the perceived or real presence of senior executives to come forward. An example of this type of fear and direct interference has since been alleged during the disciplinary hearing of Mr Koko.

71.9. While there was unverified information that the three might have had previously been perceived to impede an investigation of their areas of responsibility, it was made clear that no direct aspersions or allegations were intended or contemplated at that stage. That was the task of the investigation.

71.10. The executives were to be individually counselled regarding that point and this was publicly stated to staff and the through the media. The suspensions were precautionary to allow the investigation to proceed quickly and free from any perceived influence while acknowledging that if wrongdoing was found then some accountability rests with top management.

71.11. These suspensions were proportionate to the severity of the crisis and were inextricably linked to the investigation and in accordance with the law and the Eskom disciplinary policy (see later)

72. Subsequent events related to the suspensions;

72.1. On the 17th April 2015 (one month after my removal and prior to the appointment of Dentons), Minister Brown announced the appointment of Mr Molefe as acting CEO.

72.2. Minister Brown is reported in the media to have commented that she wished Mr Molefe would remain for at least a year and should Mr Matona come back they would look for another position for him.

72.3. Such an intended move would have been in conflict with the legal justification contemplated in my recommendations at the time of the suspensions.

72.4. The board entered into exit settlement agreements with three of the executives at an early stage after their suspensions and certainly prior to the Denton's first interim report (June 2015).

72.5. Given that Dentons reportedly showed no wrongdoing by the three, it needs to be questioned why they were not then reinstated rather than exited.



- 72.6. The one executive that the Board did reinstate has since faced a disciplinary enquiry for alleged wrongdoing.
- 72.7. The question has been posed whether the suspension of the executives on the 11th March directly resulted in the downgrade of Eskom the week following the suspensions.
- 72.8. The risk of the downgrade was contemplated at the time.
- 72.9. However it warrants further enquiry whether it was the suspensions *per se* that triggered the downgrade or by the hiatus and confusion caused by cancellation of the enquiry the week immediately before the downgrade.



NICHOLAS HUGH LINNELL

I certify that:

- I. The Deponent acknowledged to me that:
- A. He knows and understands the contents of this declaration;
 - B. He has no objection to taking the prescribed oath; and
 - C. He considers the prescribed oath to be binding on his conscience.
- II. The Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God."
- III. The Deponent signed this declaration in my presence on the 9th day of March 2018


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BAATJIES AJ W/O

COMMISSIONER OF OATHS

Signed on 09th March 2018 at Cape Town

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Sunday, 08 March 2015 6:37 PM
To: 'ztsotsi@liquifire.biz'
Subject: Board memorandum and resolutions 9th March 2015.docx
Attachments: Board memorandum and resolutions 9th March 2015.docx

Dear Chair

Please find a copy of the memorandum and proposed resolutions. If you are happy I would suggest that you require the company secretary to adapt to any format standards used by Eskom.

Could you also review the substance of the this to ensure that you feel it makes the point adequately.

This document would be circulated together with a notice of an urgent meeting for the Board to attend at 9am or 10am(if you believe it will give members more time to attend).

It is critical that the company secretary communicates this notice both in email and verbally confirming that he has delivered the notice to each director.

At the meeting it will be important to record the directors who are not present, whether they received the notice. We need to have at least 7 members present.

Once you get the green light please call each director providing them with context

1. The President has engaged both you as chairman and the minister regarding the current status of Eskom. It is his view that the effect on the economy is massively understated.
2. He believes that the Board is obliged to address the weaknesses and challenges facing the company. In order to do that the board must be certain that it has the accurately facts to hand. Once it has these facts it should act decisively and with conviction. The current manner in which this crisis is managed is untenable.
3. An independent enquiry is possibly the best approach as that has the capacity to act urgently and potentially has an independent and objective approach. It will also be seen to be more transparent.
4. You have also had a conversation with the Minister who has concurred with the initiative proposed by the President and formulated by yourself and the approach proposed. As this affects the national interest you request the Board to address this positively as the eyes of the nation are on us.
5. The proposed approach requires that a small board committee oversee the enquiry team. This investigation team must have the unfettered access to all information without any influence of the executive. There must not be any counter-productive influences.
6. You would like an indication of their support.
7. Stress the matter is extremely sensitive and no communication may be made to any outside party and most particularly the press.

Please call me if you need more information

Kind regards

Nick

Nick Linnell



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cell: 083 488 1000

tel: 021 447 0154

fax: 086 272 1456

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Directors: N H Linnell | M Green

Postal Add PO Box 15813 | Panorama | 7506



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ESKOM SOC

9TH MARCH 2015**Memorandum**

The Company has implemented rolling restricted supply to all areas for a number of months. Notwithstanding the integration of Medupi unit 1, continued maintenance and unscheduled shut downs have and will inevitably cause ongoing planned and unplanned outages. The CEO is on public record as having forecast that these will continue for as much as 5 years.

Medupi and Kusile are years behind schedule and tens of billions over budget.

Lost revenue as a result of lost sales arising from supply not meeting demand runs into billions.

Escalating funding shortfalls have increased the interest carrying cost beyond prudential limits.

Eskom has been obliged to seek increasing funding from treasury. The forward forecast anticipates that funding shortfalls will continue.

The Company has also been subjected to public embarrassment relating to tender and other expenditure disputes -some of which have become litigious. These compound current negative perceptions of Eskom.

The impacts of these failings are numerous and the consequential risk extends far beyond the Company to all South Africans. Economic capacity is being severely restricted across all sectors and curtailed foreign and domestic investments postponed or cancelled outright. These in turn create a spiral effect with increasing unemployment and pressure on the fiscus.

The past response by Eskom has been to offer the public little insight to the causes and little guidance to the future. Public announcements are often uninformative or silent. The perception is that there has been a tendency to deny and defend. As a consequence neither business nor the man-in-the -street has any notion of what the future holds. That perception extends to a belief that - "neither does Eskom". This Board is duty bound to establish the facts and to address the causes and implications.

Until this moment the Board has been entirely reliant on the Executive for information pertaining to these challenges. It is abundantly clear that this in itself is part of the problem. This Board has no independent and objective insight into the extent that some of our failings might be caused or exacerbated by management failure. Given the abnormal risks facing the Company and its obligations to the public, this board must know the facts - as unpalatable as they might be.

The Board is also in an unenviable position as it is known that the Executive relationship with the shareholder can at times be more engaging than it is with the Board. While this Board can have no quibble with close shareholder relationship this may not be a substitute for proper and sound corporate governance.



Given the severe risk of further outages and little independent understanding of the facts, there it is critical that the Board act immediately - to establish first-hand the causes of these challenges

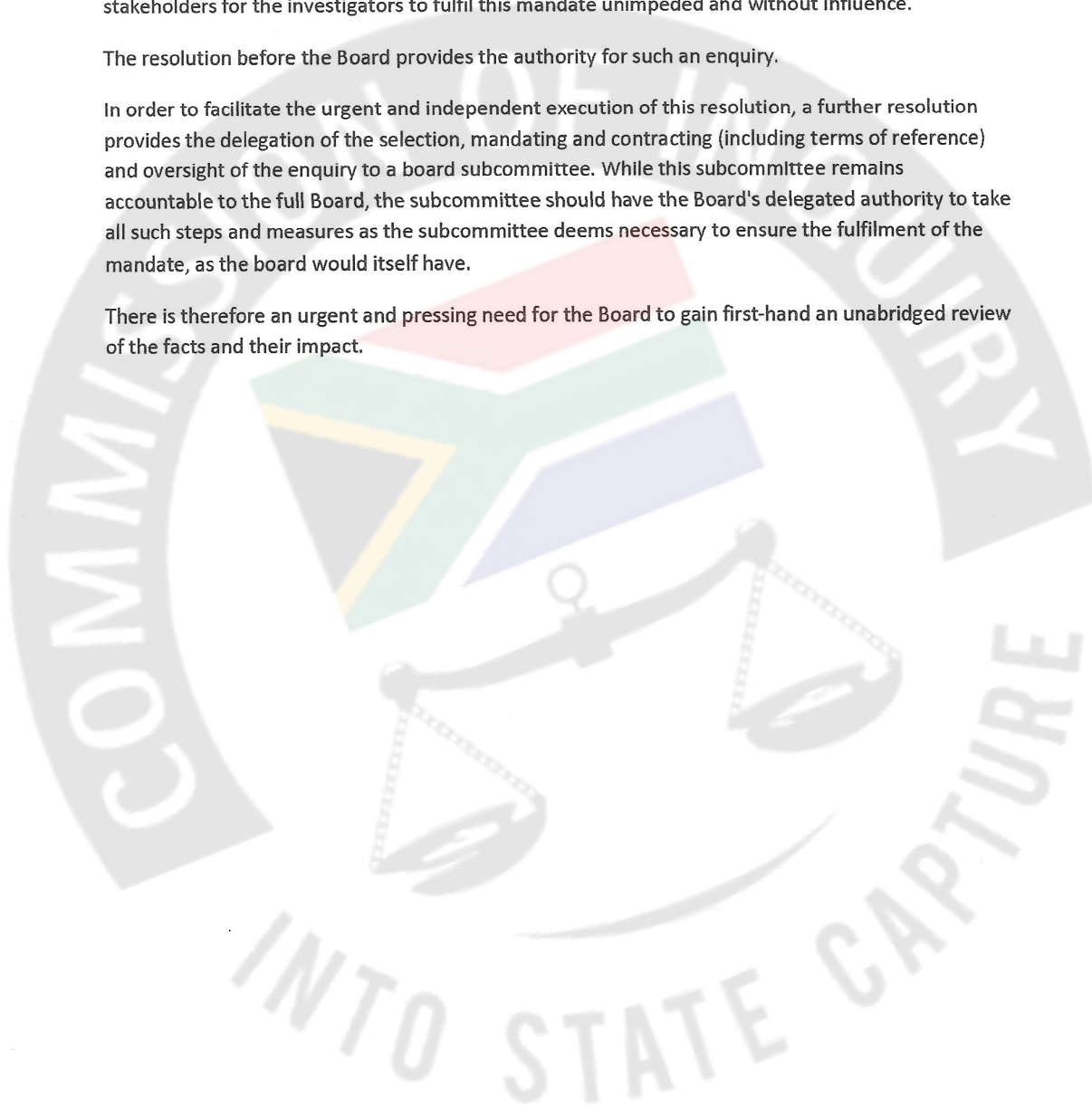
It is recommended that the Board urgently authorise and mandate an independent, external enquiry to establish the facts of the current difficulties. This enquiry must be unfettered by management and the Board and other policy stakeholders. It must be seen to be credible and objective. It must have a mandate to be penetrating and unhindered.

The Board must ensure that it creates the space and environment within the company and amongst stakeholders for the investigators to fulfil this mandate unimpeded and without influence.

The resolution before the Board provides the authority for such an enquiry.

In order to facilitate the urgent and independent execution of this resolution, a further resolution provides the delegation of the selection, mandating and contracting (including terms of reference) and oversight of the enquiry to a board subcommittee. While this subcommittee remains accountable to the full Board, the subcommittee should have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the fulfilment of the mandate, as the board would itself have.

There is therefore an urgent and pressing need for the Board to gain first-hand an unabridged review of the facts and their impact.



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ESKOM SOC

DECISION RECORD OF THE BOARD
9TH MARCH 2015

Resolution

1. That this Board resolves that there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors. Ordinarily notice of at least 7 days is required. Due to these exceptional circumstances (recorded in the memorandum) this Board resolves to accept short notice and to receive and consider the notice and resolutions of this meeting.
2. That this Board resolves that an external and independent enquiry be set up to investigate and determine the facts relating to the current technical, commercial and structural status and any acts and/or omissions that have contributed to the current deficiency of generating and distribution capacity of Eskom.
3. That the Board resolves to appoint a Board subcommittee comprising Zola Tsotsi, Chairperson of the Board, Ms Chwayita Mabude, Chairperson of Audit and Risk Committee and Zethembe Khoza, Chairperson of People and Governance Committee, mandated with delegated authority of the Board to determine the terms of reference of the enquiry; the selection, mandating and contracting of the independent investigators; and the oversight of the enquiry. The subcommittee shall have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the unfettered fulfilment of this mandate, as the board itself would have such power and authority, and further, without limitation, to ensure that the environment within the Company does not hinder or create a perception of hindering the enquiry and to take all such necessary steps to ensure such.
4. That the Board authorises the Chairperson in consultation with the Minister and the Minister of Finance to approve expenditure sufficient and necessary to fund this enquiry.
5. That this enquiry shall be required to present its final report to the Board, the Minister and the Presidency no later than the 30th June 2015.
6. That the subcommittee shall have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary given the target to complete the investigation within 3 months (urgency) and to appoint such persons or entities to conduct the enquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have any effect on the enquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations.



Resolution 1

| Approved

☐

Not Approved

☐

Resolution 2.

| Approved

☐

Not Approved

☐

Resolution 3.

| Approved

☐

Not Approved

☐

Resolution 4

| Approved

☐

Not Approved

☐

Resolution 5

| Approved

☐

Not Approved

☐

Resolution 6

| Approved

☐

Not Approved

☐

Conditions / Follow-up Actions:

[Signature]

[Signature]

Members:	Signature:
1. Zola Tsotsi	
2. Tshediso Matona	
3. Tsholofelo Molefe	
4. Ms Chwayita Mabude	
5. Norman Tinyiko Baloyi	
6. Dr Pathmanathan Naidoo	
7. Venele Klein	
8. Nazia Carrim	
9. Romeo Kumalo	
10. Mark Vivian Pamensky	
11. Zethembe Khoza	
12. Dr Baldwin Sipho Ngubane	
13. Devapushpum Viroshini Naidoo	



Nick Linnell

From: Fritz Malan <fmalan@ensafrica.com>
Sent: Wednesday, 11 March 2015 11:09 AM
To: Nick Linnell
Subject: RE: suspension briefing notes f (Eskom).docx

Hi Nick,

I am looking at your briefing note on the suspension and have almost finalised my (limited) comments. I am happy that the proposed approach is not inconsistent with paragraph 3.4 of the disciplinary code or the prevailing case law on suspension. I will also look at the letter of suspension and comment. I do not have the resolution you refer to in my possession – could you mail me a copy?

Kind regards,
Fritz

From: Nick Linnell [<mailto:nickl@theprojectoffice.com>]
Sent: 11 March 2015 09:25 AM
To: Fritz Malan
Subject: suspension briefing notes f (Eskom).docx

Hi Fritz

My information is that the Board meets this morning and a decision will be out by say 11am.

The suspension discussions will follow immediately thereafter

Could you:

1. Review the resolution provided the other day and be satisfied that the subcommittee will have the power to suspend
2. Review the attached – and turn upside down if you need. This forms an aide memoire to the subcom in these discussion.
3. We need to do it right
4. Review the letter of suspension and correct as necessary
5. Advise on any other risk as you feel fit

Many thanks
Nick

Fritz Malan
director
employment
tel: +27 11 269 7600
cell: +27 83 258 8832
email: fmalan@ENSAfrica.com
offices: [ENSAfrica locations](#)

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ENSAfrica.com

level 2 BBBEE rating
Edward Nathan Sonnenbergs Incorporated (registration number 2006/013100/211)

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Briefing notes for pre-suspension hearing – aide memoire

Background

1. The suspension is not a disciplinary tool. It is known as a precautionary suspension as its purpose is to ensure that the investigation is carried without interference or influence from the employee. In this case the Company believes that the presence of the employee might jeopardise any investigation. It does not indicate any judgement on any allegations and does not infer any guilt.
2. Any labour measure must adhere to the basic principles of fairness. This requires:
 - 2.1. The employee must be informed of the allegations against him within a reasonable period of time prior to the hearing (see later)
 - 2.2. The employee must understand the nature of the allegations against him
 - 2.3. He must have an opportunity to hear the allegations and test them
 - 2.4. He must have the opportunity to counter them and provide his version
 - 2.5. The employer must consider both versions and make a decision based on the facts and law without any prejudgement. It cannot have made up its mind beforehand.
3. A pre-suspension hearing is exactly that – it is a hearing to decide whether to suspend or not. It must follow the principles above;
4. The hearing is an internal hearing. The employee is not entitled to any outside representation. He may not invite his lawyer.
5. The employee must attend the hearing if instructed to do so. He cannot refuse
6. An outcome of the meeting may if appropriate and satisfactory to the employer result in the employee agreeing to take paid leave at his/her own volition to limit any risk to his/her reputation – which is not an intended outcome for the employer. This may then be communicated as a decision either of the employee or an agreement with the employee to step aside for the period of investigation to enable the investigation to proceed without any perception of potential influencing of the investigation by the employees.

Pre-suspension hearing

1. The Chairperson to lead the discussion. All three members of the subcommittee must be present.
2. Either a detailed note or a recording of the conversation should be made.
3. Inform the individuals that the Board has considered the need for an enquiry to investigate the organisation as a whole and the causes of its current circumstances and identify any acts/omissions associated with serious negligence or wilful acts/omissions that contributed to this.
4. Restate points above points 2-6 under “Background”
5. Inform the each that this session now constitutes a hearing to determine whether he should be suspended or not pending the completion of the investigation. Stress that no decision has been taken to suspend – it is a proposal and would only be decided after having heard his input.
6. If so determined then this would be a precautionary suspension.



- 6.1. It would not indicate fault or wrongdoing - that would be left to the investigation to consider.
- 6.2. Any precautionary suspension would be on full pay and benefits
- 6.2.1. Stress that these are only allegations and that the Board has not come to any conclusion as to their truth or otherwise.
- 6.3. The proposal to place him/them on paid suspension is not made lightly but it is suggested in the interests of fairness to both him/them and the Board and in the interests of the Company.
7. Explain to the individual(s) that:
- 7.1. The Board has considered that there may be a risk to the investigation being properly conducted with the employees [each treated individually not as a group] at work and there is a risk of interference – whether deliberate or not. The Board believes that the presence of the employees, and particularly given the positions which they occupy, might jeopardise the investigation into the alleged misconduct or pose a potential risk to the Company.
- 7.2. A major principle of this enquiry is that it is independent and free from influence (active or passive) of any persons who may be implicated and who has the situational influence to inhibit the enquiry and fact gathering.
- 7.3. The board is considering suspension of certain employees and need to consult with each to determine whether this is an appropriate approach.
- 7.4. Stress in this situation suspension does not imply guilt or wrong doing. It is precautionary in nature.
- 7.5. The subcommittee is of the view that the following persons might reasonably be considered for precautionary suspension:
- 7.5.1. Tshidiso Matona
Chief Executive
372 Jutlander Road
Beaulieu
- 7.5.2. Dan Marokane
Group Executive
Group Capital
4 Sunset Villas
5 Vickey Avenue
Morningside
2196
- 7.5.3. Matshela Koko
Group Executive
Commercial and Technology
325 Spoonbil Way
Zanadu Residential Estate
Hartbeespoort
- 7.6. The “allegations” or requirements that need to be addressed are:



- 7.6.1. The totality of the enquiry is to determine whether there have been any wilful, or negligent or corrupt/wrongful acts or omissions on the part of any employee or service provider that has given rise to or contributed to any failure of Eskom to distribute the energy output that Eskom is capable of producing and distributing;
- 7.6.2. The three are heads of critical service delivery departments and in the case of the CEO of the organisation as a whole. In the event that any wrongful conduct or mismanagement is established it is probable that some of these are established in departments under their control and that they will have ultimate accountability in relation to such wrongful conduct or mismanagement.
- 7.6.3. It is important that they not be present at work during the investigation as it is a possibility and there is likelihood or a perception or fear held by employees that their careers might be at risk if they provide information that might reflect badly either on the organisation, its leadership or the individual executives concerned.
- 7.6.4. In the event that serious and material wrong-doing by the three executives, or conduct which they ought to have been aware of in their areas of responsibility and failed to detect it (negligent), or were wilful in participation or cover up of is uncovered by the enquiry serious additional business risks may have accrued to the organisation during the period of the investigation. In any of these conceivable circumstances the executives might reasonably be also be expected to suppress or cause others to suppress the exposure of such information.
- 7.6.5. Should they be in office there is a reasonable risk that their presence will inhibit the gathering of evidence, the freedom of people to come forward and provide information and also inhibit suppliers from freely sharing information pertinent to the investigation.
- 7.6.6. There are also specific instances in relation to the ToR of the investigation that illustrates the risks involved.
- 7.6.6.1. In respect to the CEO there is an allegation that he has covered up certain alleged wrongdoings of Mr Marokane and Mr Koko. If correct this demonstrates a propensity to cover up matters of wrongdoing
- 7.6.6.2. In the case of Mr Dan Marokane an allegation that he interfered with security investigating wrongdoing that occurred on the company premises involving Mr Koko. At the time Mr Marokane was acting CEO. This is an allegation which has come to light and requires investigation and will form part of the ToR. In the event that it is true it demonstrates his ability and propensity to interfere with an investigation.
- 7.6.6.3. In respect of Mr Koko there is an allegation that also requires investigation and shall form part of the ToR that he wrongfully suspended Mr Sekhasimbe for ulterior motives which might include an attempt to cause a division between the Chairperson and the Board. This if true would show a propensity to wrongfully use his position to achieve an improper outcome.
- 7.6.6.4. These instances lend weight to the risk of executives interfering in this investigation.



8. Ask him to consider what you have said and invite him to give reasons why a precautionary suspension would not be in the interests of Eskom in the light of the need to conduct an enquiry.
9. Tell him that should he require some more time he is welcome to give it some thought before you resume and you suggest 1 hour and set a time to continue. Ask him not to leave the office. You leave him there and you come back.

On resumption of the meeting

1. On resumption, note that this is a continuation of the earlier session and summarise what has happened:
 - 1.1. The Board wishes to investigate allegations of serious misconduct.
 - 1.2. The matter by its nature but also is serious due to his pivotal role in leading the organisation and it is urgent as the company must urgently address its future.
 - 1.3. He has had an opportunity to consider the allegations and to consider reasons for the board not to suspend him.
 - 1.4. Stress the Board has not yet made any decision to suspend.
2. Ask him for reasons why he feels that he ought not to be suspended.
 - 2.1. These must relate to the suspension and not the enquiry
 - 2.2. If he wants to argue that he is not guilty of anything then reassures him that a suspension would not imply any fault and is precautionary.
 - 2.3. Whatever reasons are given by him should be considered and he must be told whether they are acceptable or not.
 - 2.3.1. The issue is only is there a reasonable risk of him interfering with the investigations.
 - 2.3.2. If you are able to respond to any of his reasons you should do so
 - 2.4. After this discussion is exhausted, ask him whether he has anything more to say.
 - 2.5. If not, ask him to wait outside for a time while the Board considers the matter.
 - 2.6. After considering, if you as a Board subcommittee remain convinced that there is a reasonable risk of interference then you may suspend.
 - 2.7. Call him back in and inform him of your decision.
 - 2.8. Hand him the attached suspension letter and ask him to sign.
 - 2.9. Stress the following:
 - 2.9.1. Suspension shall be until further notice
 - 2.9.2. He shall continue to receive full pay and benefits
 - 2.9.3. He may not contact or be in contact with any employee of the Company and may not enter any company premises unless expressly authorised to do by the Chairperson.
 - 2.9.4. He may not contact any persons who might reasonably be considered a potential witness.



Letterhead of Eskom

Mr [insert]

11th March 2015

Dear Mr [insert]

YOUR SUSPENSION AS [insert]

1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence- free requirement of the enquiry.
4. These concerns have been discussed with you.
5. I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly.
6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.
7. In order for the investigation to proceed as expeditiously as possible, it would not be appropriate for you to remain at work whilst such investigation is in place. You will be advised of the outcome of the enquiry as soon as possible.
8. At that time the subcommittee will consider the enquiry report before considering the matter further.
9. You are instructed to remain in telephonic contact with me during the period of your suspension. We expect you to be contactable in the event that it is necessary for you to attend at the company premises during normal working hours for the purposes of assisting with such investigation. You are further directed not in any manner to approach any member of the company staff, its clients or any third party with whom the company presently has or has had



- dealings in the past (including the media) without obtaining my prior written permission. You are also directed not to attend at the company's premises during the period of your suspension.
10. The company will regard any contravention of the above instructions in a serious light and further disciplinary steps may be instituted against you in respect of such contravention. You are in addition requested to hand over all work tools issued to you including but not limited to access cards, cell phone, laptop and the like. You are not to make use of the company's information technology hardware and software such as intranet and internet facilities during your suspension.
 11. You are requested to surrender your company access card, office keys, laptop and any other company property, documents, computer disks and the like in your possession, with immediate effect.
 12. Should you feel uncertain about any aspect of the contents of this letter, you are requested to contact me telephonically.

Yours faithfully

Duly authorised:

For and on behalf of the Board

Zola Tsotsi
Chairperson

I acknowledge receipt of this notification:

Signature: _____ Date: _____ Time: _____

Insert name

Signature _____ Date: _____ Time: _____

Zola Tsotsi

In the event that the employee refuses to sign:

Declaration of witness: I confirm that I have witnessed that this form has been handed and explained to the above named employee.

Signed _____ Position _____ Date _____

RS

L

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: 18 March 2015 07:19 AM
To: 'skillsdm@mweb.co.za'
Subject: Update
Attachments: Draft Terms of reference - Eskom 18032015.docx; Media release 18032015.docx; Eskom briefing.docx

Tracking:	Recipient	Read
	'skillsdm@mweb.co.za'	Read: 2015/03/18 12:38 PM

Hi D

Please find

1. Briefing document
2. Terms of reference – to be confirmed
3. Media statement – to be confirmed

Chat now

Regards

nick

Nick Linnell

The PROJECT Office
Business Development Solutions

email: nickl@theprojectoffice.com

cell: 083 488 1000

tel: 021 447 0154

fax: 086 272 1456

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Directors: N H Linnell | M Green

Postal Add PO Box 15813 | Panorama | 7506

Eskom

Briefing

1. Background

- 1.1. A week ago on the 11th March the board approved the commissioning of an independent inquiry into the status of the company.
- 1.2. Since then there has been some difficulty in settling the terms of reference and appointing the key service providers. This now appears to be resolved
- 1.3. During the week there has been much media speculation. In principle most people are pleased that government has taken this action but sections of the press have looked to find some conspiracy.

2. Current position

2.1. Terms of reference. These have been agreed with the chairman of the board and are presently being sent to the member of the oversight committee (A&R committee). Following some obstruction over the past few days we anticipate this will be cleared.

2.2. The members of the inquiry team.

2.2.1. We will appoint an independent retired judge to ensure that no conflict of interest or undue influence is introduced. It will be a reactive role where any allegations of improper influence that arise will be referred to him to assess and report to the Board and shareholder. Suggestions:

- 2.2.1.1. Former Chief Justice Sandile Ngcobo (preferred)
- 2.2.1.2. Justice Zak Yacoob
- 2.2.1.3. Justice Myberg
- 2.2.1.4. Justice Robert Nugent
- 2.2.1.5. Justice Meyer Joffe

2.2.2. Professional service providers

- 2.2.2.1. Commercial forensics – preferred – Edward Nathan Sonnenbergs
- 2.2.2.2. Financial- preferred Grant Thornton
- 2.2.2.3. Technical - under consideration



3. Media

3.1. We propose to release the attached press release. It will spell out the process, the independence and the fact that media releases will provide full details. This more clearly acknowledges the current failings at Eskom

4. Timetable

4.1. 18th March – press release

4.2. 18th March confirmation of Terms of Reference

4.3. 19th March appointment of professional teams and further media statement

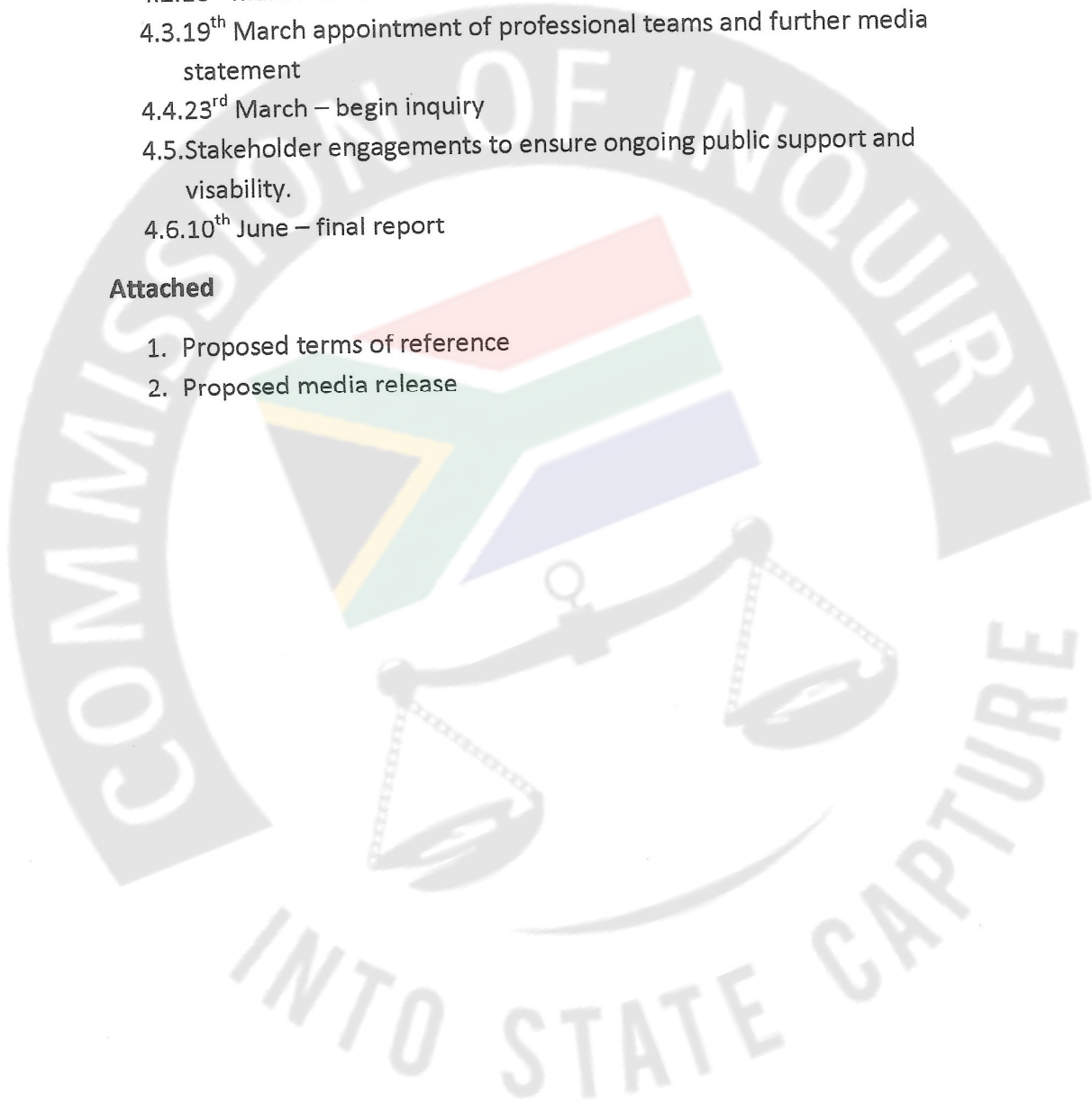
4.4. 23rd March – begin inquiry

4.5. Stakeholder engagements to ensure ongoing public support and visibility.

4.6. 10th June – final report

Attached

1. Proposed terms of reference
2. Proposed media release



A handwritten signature in black ink, appearing to be 'ST'.

A handwritten signature in black ink, appearing to be 'L'.

DRAFT

TERMS OF REFERENCE FOR A FACT FINDING INQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

The Board has received complaints and concerns raised by various sources, both internal and external to Eskom with regards to, inter alia, sufficiency and reliability of supply of electricity; escalating build project costs; escalating maintenance costs; high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently.

These together with the Board's own review, make it clear that the Company has failed to fulfil its mandate of providing electricity to meet the needs of business and the public. To the extent that we have failed, this must be fixed. We accept this reality and resolve to urgently and effectively work towards restoring the service and the performance (financial and operational) of Eskom to where it is expected to be.

We are committed to rooting out all misconduct and inefficiency. We will pursue these twin challenges with vigour. We will determine what is wrong, what needs to be done and we will begin to fix it. Misconduct will be stopped and some inefficiency will be righted immediately. Some of the major infrastructural and systemic issues may take time but the process of improvement will start immediately and will be sustained. We are committed to this improvement. It is our mandate.

To achieve this we need to be clear about where to start. To identify what is wrong and what it will require to fix. We recognise that this must be seen to be believed. The process and our actions must be transparent.

The Board has therefore recognised the need for independent assessment of the state of the company's capability and performance. To ensure this proceeds quickly and without hindrance or interference we have taken a number of steps.

The Board of Directors has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of reference. The terms of reference will provide for sound and transparent governance and these will be made public.



Included in the authority to institute this inquiry is also the authority to:

- To consider and approve the terms of reference as proposed by the project coordinator;
- To consider and appoint a retired judge to oversee the independence of the inquiry from amongst a panel recommended by the inquiry coordinator;
- To consider and appoint services providers for the three separate areas of inquiry from a panel proposed by the inquiry coordinator;
- To receive and consider the interim and final reports and provide comments to the inquiry teams as necessary;
- To ensure that the scope of work as defined in the terms of reference are delivered within prescribed time lines;
- To approve a budget for the execution of the inquiry;

2. OBJECTIVE/PURPOSE

To provide the Board and Shareholder with an assessment of the current state of Eskom and in particular to determine the existence of misconduct and inefficiency; the reasons for the current lack of, and inconsistency/ unreliability of supply of electricity to customers; to determine the causes of engineering failures, delays and cost overruns; to review primary energy sources, costs and quality of supply; to review the financial solvency, liquidity and the cost of funding of Eskom and the poor operational performance and to provide recommendations with regard to required actions.

The inquiry must be free of all influence or interference and shall be so structured as to ensure that independence is seen to exist.

3. APPROACH

The inquiry shall be subject to the oversight of a retired judge to ensure that the inquiry is free of influence and is objective.

The inquiry will be managed by a project coordinator who shall be responsible for the delivery of the mandate.

The inquiry shall focus separately on technical, commercial and financial facets of the Company. Each will be performed under separate inquiry teams selected having regard to their particular skills and independence.

4. TIMING

The inquiry shall commence on the 23rd March 2015 and shall provide its final report and recommendations to the Board not later than 19th June 2015.

5. RESOURCES

- 5.1. The inquiry teams shall have access to all documentation and other data belonging to the Company as deemed by the inquiry teams to be necessary and shall be permitted to interview and receive information from any employee and supplier as necessary.
- 5.2. Each team and the inquiry coordinator shall have access to all premises of the Company at all reasonable time and upon reasonable notice;



- 5.3. The internal audit department will provide assistance as agreed from time to time with the Head of Internal audit department.
- 5.4. The Board subcommittee shall provide appropriate and necessary assistance to the inquiry teams as requested from time to time.
- 5.5. Board and board committee agenda packs and minutes shall be available to each team on request.
- 5.6. The Company shall provide a meeting room sufficient to house 6 persons and shall provide access as required to interview rooms.
- 5.7. All prior inquiries and reports in connection with matters included in this scope shall be made available to the inquiry.
- 5.8. The inquiry shall be permitted to establish an independent reporting "hot-lines" enabling internal and external people to provide anonymous input to the inquiry.
- 5.9. The respective teams comprising the inquiry shall meet on a fortnightly basis to ensure coordination.

6. SCOPE OF INQUIRY

The scope below may be limited in consultation with the Board subcommittee having regard to the budget and time available save that this may only be limited on the basis of what the teams' deem in their discretion to be "material" in the circumstances of the information available.

6.1. Technical

- 6.1.1. In respect of all generating plants' (+/-87), benchmark maximum output capacity, planned capacity and actual output for the immediate past 36 months;
- 6.1.2. Review current status of all generating plants and provide opinion on the causes and contributory factors for sub optimum output (in excess of 33 require major repair);
- 6.1.3. Review all major incidents at plants and their causes and any avoidable factors not acted upon (including communications between plant and executive);
- 6.1.4. Review maintenance requirements of all generating plants assessing actual vs planned maintenance and review all contracts and service level agreements and compliance to the same as well as costs relative to plan. Have particular regard to all unplanned failures and review in context of maintenance conducted/not conducted;
- 6.1.5. Review all 3rd party electricity supply available to the grid (including proposals received but not acted on) and compare to actual supply connected to the grid for the past 36 months. Provide an opinion on the technical reasons and cost implications for not having connected when possible. Review all information including correspondence, negotiations and contracting with regard to that supply and reasons for less than optimum connected supply. In addition, consider the available potential of supply from foreign countries and determine any reasons for supply (from time to time) less than that potential and consider any reasons thereof;
- 6.1.6. Specifically enquire into the principal causes of failure at Majuba and Duvha and make recommendations as necessary. In so doing have regard to management reports and independent insurance/assessor reports and



determine the degree of transparency of reporting to the Board and have regard to the reasons for any late submissions of these reports to the Board.

- 6.1.7. Conduct high level reviews of the new builds at Medupi and Kusile and determine the principal causes and contributory factors to the overruns of cost and time.

6.1.7.1. The degree of depth of this report to be agreed between the subcommittee and the inquiry team bearing in mind the time available.

6.1.7.2. To determine whether appropriate contingency plans were in place and acted upon at the earliest possible instance;

- 6.1.8. In collaboration with the Financial and Commercial inquiry teams to the review the supply of primary energy (coal, diesel, gas, water) to all plants over the past 36 months and determine whether supplies met specification, quality and delivery requirements (also have regard to any incorrect specifications provided).

- 6.1.9. Review the causes of disruption of power to two Rand Water pumps at Rand Water in September 2014 paying special attention to any lack of proactive or reactive management response i.e. were there warning and how effectively did we react;

- 6.1.10. To consider the impact of weather on the performance of any of the plants and to provide an opinion as to whether these risks could have been mitigated;

- 6.1.11. To review risk management and contingency plans to determine that such are sufficient to negate any generation risk, and at times of plant failure and whether such were implemented effectively.

6.2. Commercial

- 6.2.1. Review all procurement and other contracts for capital projects, primary energy supplies and operational services (exceeding R1 million or such figure as varied with agreement with the subcommittee) for the past 48 months and determine adherence to supply chain policy and business case approvals. Have special regard to any contracts and payments made but not matched to specification (cost, time and quality). Have regard to any rolling or renewed contracts that have cumulative value above the threshold;

- 6.2.2. Review all contracts related to Medupi and Kusile from inception. Review these in context to the original business case and adherence to tender and supply chain requirements. The focus to be on commercial matters and not technical. The team to coordinate their inquiry with the Technical and financial teams.

- 6.2.3. Review employee and contractor contracts and payments made to employees and contractors and identify any that bear *prima facie* concern.

- 6.2.4. Undertake electronic assessment of all company email correspondence, identifying certain key words to be proved by the subcommittee, for the last 24 months, and where appropriate undertake interviews with internal and external parties to probe where indicated.

- 6.2.5. Review a random sample of internal correspondence between project leaders and plant/project management on Medupi, Kusile, Majuba and Duvha and identify whether plant management foresaw problems and communicated risk upwards. Review management reactions;

- 6.2.6. Similarly (plants as per above) review all correspondence between suppliers and company in which disputes are debated. Interview suppliers as necessary.
- 6.2.7. Review new posts created over past 36 months and provide a schedule of position and TCC.
- 6.2.8. Review all executive and Board reports pertaining to new builds and summarise material implications and decisions.
- 6.2.9. Review contracts and recruitments of employees with TCC >R1.5m per annum for last 24 months;
- 6.2.10. Review a sample of senior employee suspensions, disciplinary hearings and dismissals (and reinstatements) of employees last 36 months (filter those earning >R1 000 000 p.a.).
- 6.2.11. Review summaries of internal audit reports over the last 36 months and management responses and any action taken on material risks identified;
- 6.2.12. Review internal audit programs – schedule of audits and risk analysis and review Internal audit reports of the same and review actions taken;
- 6.2.13. Review draft external audit reports for the past 3 years (2012-2014) and identify risks noted and not in final reports and determine reasons for such
- 6.2.14. Interview sustainability executive for insight to risks not identified;
- 6.2.15. Review correspondence from insurers of major claims submitted (to be objectively assessed by the team) and premium adjustments for those and reasons for them for past 36 months.
- 6.2.16. To review the organisational model and consider the implication on the performance of the company and make recommendations as required.
- 6.2.17. To consider the implementation of any policy decisions and their impact on the performance of the Company. To coordinate with Financial and Technical inquiry teams to ensure appropriate consideration by each.
- 6.2.18. Review company policies to determine compliance of good governance, transformation and conflict of interest.
- 6.2.19. Review whistle-blower reports for past 36 months and provide an opinion of the satisfactory follow-ups thereof.

6.3. Financial

- 6.3.1. Review the approved financial statements of the Company as at 30th September 2014 and provide a summarised “red flag” report on material concerns. Review the current management report forecast for the year ending March 2015 and provide similar comments and in particular to any variations not anticipated in September 2014.
- 6.3.2. Review material funding facilities/contracts /bonds of any nature and provide an opinion of the terms relative to the market and the company's risk.
- 6.3.3. Review all steps taken by the Company to recover unpaid “government/municipal” debt (debtors) currently estimated at R4.7 billion. Provide commentary on the impact on the financial standing of the company on such unpaid debt.
- 6.3.4. Review all non- government trade debtors (customers) and provide a similar review and in particular to steps taken to secure payment;
- 6.3.5. Conduct (together with Commercial team) a review of all primary energy supplies over the past 36 months and determine the cost implications of any contracts “not for value”;



- 6.3.6. Determine the lost revenue and/or penalty cost implications of all non-implemented 3rd party electricity supply opportunities.
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- 6.3.10. Together with Technical teams provide an estimated cost to the company of the cost (increased costs) and time (lost revenue) overruns at Medupi and Kusile;
- 6.3.11. To consider asset management policies and practices;
- 6.3.12. To provide a high level financial protection for the next 3 years.

6.4. Coordination

6.4.1. The inquiry coordinator shall:

- 6.4.1.1. Draft terms of reference for the scope of the inquiry.
- 6.4.1.2. Consider suitable persons to fill the positions provided for in this terms of reference and to make recommendations to the subcommittee;
- 6.4.1.3. shall ensure that each of the teams have access to each other so as not to create overlaps and gaps;
- 6.4.1.4. have responsibility for the delivery of the scoped work of each inquiry team and of the final consolidated report;

6.4.2. The coordinator shall access to the interim work of each team and to provide comment and guidance to each team as he deems appropriate.

7. REPORTING

- 7.1. Each inquiry team to provide the inquiry coordinator with a weekly and monthly summary of their activities and material (including preliminary) findings for presentation to the subcommittee;
- 7.2. The program coordinator to recommend possible reinstatement of suspended executives as soon as inquiries are complete and risks mitigated.
- 7.3. At the end of the inquiry, present to the Board Committee a report.
- 7.4. The final report to include a summary of material finding and recommendations.

8. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

In the exercise of its authority as delegated by the Board, the Audit Committee has appointed.....to assist with
..... team of the inquiry.



9. FEES

9.1. The respective service providers will negotiate and agree the fees that Eskom will pay to the service provider.

Signed at _____ on this the day _____ 2015

For and on behalf of Eskom

Signature

Name of Signatory

Designation of Signatory

For and on behalf of

[Service Provider]

Signature

Name of Signatory

Designation of Signatory

Failure of the mandate

Financial and operational failure

Root out misconduct and inefficiency

What wrong what needs to be done and

083 3885480 Bernard van der Walt

Bjorn



ESKOM SOC**PRESS RELEASE****THE BOARD ENQUIRY**

On Wednesday 11th March 2015, the Chairperson of the Board Mr Zola Tsotsi released a media statement and held a media conference announcing the Board's decision to mandate an inquiry in the current state of the Company.

Understandably there has been considerable interest in the inquiry and much expectation created. There have also been numerous media reports variedly reporting the enquiry and this has led to some confusion.

The purpose of this communication is to provide the public with further details on the inquiry and to lessen the space for further confusion.

The status quo

Firstly, as a Board we acknowledge that the company has not fulfilled its mandate to the South African public. Maladministration, operational and financial inefficiencies and poor decision-making are evident for all to see. We are determined that these will be rooted out.

What has failed must be fixed. What is wrong must be put right. Where misconduct and inefficiency exists it will be rooted out. Organisational weakness will be corrected. If these are not done with determination and effectiveness the status quo will continue. We will work towards restoring the service and the performance (financial and operational) of Eskom to where it is expected to be.

Some of the major infrastructural and systemic issues may take time but the process of improvement will start immediately and will be sustained. We are committed to this improvement. It is our mandate.

The inquiry

To achieve this we need to be clear about where to start. To identify what is wrong and what it will require to fix. We recognise that this must be seen to be believed. The process and our actions must be transparent.

The Board has therefore recognised the need for independent assessment of the state of the company's capability and performance. To ensure that this proceeds quickly and without hindrance or interference we have taken a number of steps.

The Board of Directors has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of



reference. The terms of reference will provide for sound and transparent governance and these will be made public.

The purpose of the inquiry is:

"To provide the Board and Shareholder with an assessment of the current state of Eskom and in particular to determine the existence of misconduct and inefficiency; the reasons for the current lack of, and inconsistency/ unreliability of supply of electricity to customers; to determine the causes of engineering failures, delays and cost overruns; to review the cost and quality of primary energy supply; to review the financial solvency, liquidity and the cost of funding of Eskom and the poor operational performance and to provide recommendations with regard to required actions.

The inquiry must be free of all influence or interference and shall be so structured as to ensure that independence is seen to exist.

The scope and structure

The Board delegated the oversight of the inquiry to the Board Audit and Risk Committee. However so as to ensure that even this was not perceived as having influence on the inquiry, the terms of reference provide for a number of important checks and balances.

1. The appointment of a retired judge to ensure that the inquiry is free from influence and bias. The eminent person will not run the inquiry but will have oversight of its governances.
2. The appointment of industry and professional experts in specific fields to undertake the work defined in the scope of the inquiry. These entities/people will be credible and capable.
3. The appointment of a person outside the company who shall coordinate the various aspects and be accountable to the Board subcommittee for the timely delivery of the objectives.

The subcommittee has approved the terms of reference and scope of the inquiry and has put to a number of professional entities that we believe have the capacity and expertise to complete this mandate in the time allowed. These will be selected carefully so as to avoid any risk of conflict of interest.

The Board will provide the public with details of the terms of reference and those persons engaged to undertake the inquiry. We shall do this before the end of Friday 20th March. The inquiry will begin on Monday the 23rd.

The Board has attracted some criticism regarding this inquiry from various sectors. We believe that is more due to a failure to adequately engage our many and varied stakeholders. For this inquiry to have credibility we need to convey what is it we are doing to every stakeholder and to continuously seek their views and opinions.

If we do this right only good will flow from it.

Some speculation has arisen as to the overlap of the Board's inquiry and what might appear parallel initiatives. The ministerial "war room" has a very specific mandate to consider the strategic issues and to seek ways of eliminating structural bottlenecks. The "energy committee" is looking at a very specific part of the future energy needs and options. The board's inquiry focuses a fact gathering exercise – the product of which will be shared with both these committees. However the board's



inquiry is focused on internal matters that have affected our performance and identify some key remedial actions that might be identified.

This initiative has the complete support of our shareholder Minister Lynn Brown.

Finally we need to refer to the request to certain senior executives to step aside during this inquiry.

This inquiry is about identifying what is wrong with this organisation. We need to create the space for the inquiry teams to have unfettered access to the company, its people, its systems and its suppliers. In any organisation, its executive has situational influence just through their presence – they would not be leaders otherwise. We have asked them to acknowledge this and we believe that they do. The speculation around their absence from the business is without cause. This inquiry is not about them but about this organisation as a whole. It has a single purpose to restore this company's ability to meet its mandate. What is found to be wrong along the way will be put right.



A handwritten signature in black ink, appearing to be 'D'.

A handwritten signature in black ink, appearing to be 'L'.

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Wednesday, 18 March 2015 9:22 AM
To: Chwayita Mabude (MabudeC@eskom.co.za); ztsotsi@liquifire.biz
Subject: Board enquiry
Attachments: Media release 18032015.docx; Draft Terms of reference - Eskom 18032015.docx; Legal Dept input DRAFT TORS INQUIRY 15 MARCH 2015 (3).docx

Importance: High

Dear Chair and Chwayita

Yesterday I worked further on the terms of reference and the sourcing potential professional service providers. Late last evening I also received from Neo Tsholanku a draft of his ToR. I have attached both my draft and his for your consideration.

I also spent much time yesterday reviewing the media commentary on the enquiry and clearly there is public concern about a lack of information and also of a concern that this will not be independent (see Business Day).

As I understand it from her public comments, the Minister has endorsed the enquiry, has stated that it must be comprehensive and that it must be seen to be independent. Anything short of that now will lack credibility.

The attached draft terms prepared by myself provides for a comprehensive enquiry with very clear independence. It includes independent oversight from a retired judicial officer. It provides for the appointment of credible service providers.

Attached also is a draft media release. It is my suggestion that this and the terms of reference are approved before midday. Failing that there will be further media scrutiny tomorrow which will be to the detriment of the company.

I believe we have a small window in which to put the company's clear purpose and approach before the public.

I am available at any time to meet with you to discuss this morning.

Kind regards
Nick

Nick Linnell



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tel: 021 447 0154
fax: 086 272 1456

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Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

DRAFT

TERMS OF REFERENCE FOR A FACT FINDING INQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

The Board has received complaints and concerns raised by various sources, both internal and external to Eskom with regards to, inter alia, sufficiency and reliability of supply of electricity; escalating build project costs; escalating maintenance costs; high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently.

These together with the Board's own review, make it clear that the Company has failed to fulfil its mandate of providing electricity to meet the needs of business and the public. To the extent that we have failed, this must be fixed. We accept this reality and resolve to urgently and effectively work towards restoring the service and the performance (financial and operational) of Eskom to where it is expected to be.

We are committed to rooting out all misconduct and inefficiency. We will pursue these twin challenges with vigour. We will determine what is wrong, what needs to be done and we will begin to fix it. Misconduct will be stopped and some inefficiency will be righted immediately. Some of the major infrastructural and systemic issues may take time but the process of improvement will start immediately and will be sustained. We are committed to this improvement. It is our mandate.

To achieve this we need to be clear about where to start. To identify what is wrong and what it will require to fix. We recognise that this must be seen to be believed. The process and our actions must be transparent.

The Board has therefore recognised the need for independent assessment of the state of the company's capability and performance. To ensure this proceeds quickly and without hindrance or interference we have taken a number of steps.

The Board of Directors has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of reference. The terms of reference will provide for sound and transparent governance and these will be made public.



Included in the authority to institute this inquiry is also the authority to:

- To consider and approve the terms of reference as proposed by the project coordinator;
- To consider and appoint a retired judge to oversee the independence of the inquiry from amongst a panel recommended by the inquiry coordinator;
- To consider and appoint services providers for the three separate areas of inquiry from a panel proposed by the inquiry coordinator;
- To receive and consider the interim and final reports and provide comments to the inquiry teams as necessary;
- To ensure that the scope of work as defined in the terms of reference are delivered within prescribed time lines;
- To approve a budget for the execution of the inquiry;

2. OBJECTIVE/PURPOSE

To provide the Board and Shareholder with an assessment of the current state of Eskom and in particular to determine the existence of misconduct and inefficiency; the reasons for the current lack of, and inconsistency/ unreliability of supply of electricity to customers; to determine the causes of engineering failures, delays and cost overruns; to review primary energy sources, costs and quality of supply; to review the financial solvency, liquidity and the cost of funding of Eskom and the poor operational performance and to provide recommendations with regard to required actions.

The inquiry must be free of all influence or interference and shall be so structured as to ensure that independence is seen to exist.

3. APPROACH

The inquiry shall be subject to the oversight of a retired judge to ensure that the inquiry is free of influence and is objective.

The inquiry will be managed by a project coordinator who shall be responsible for the delivery of the mandate.

The inquiry shall focus separately on technical, commercial and financial facets of the Company. Each will be performed under separate inquiry teams selected having regard to their particular skills and independence.

4. TIMING

The inquiry shall commence on the 23rd March 2015 and shall provide its final report and recommendations to the Board not later than 19th June 2015.

5. RESOURCES

5.1. The inquiry teams shall have access to all documentation and other data belonging to the Company as deemed by the inquiry teams to be necessary and shall be permitted to interview and receive information from any employee and supplier as necessary.

5.2. Each team and the inquiry coordinator shall have access to all premises of the Company at all reasonable time and upon reasonable notice;



- 5.3. The internal audit department will provide assistance as agreed from time to time with the Head of Internal audit department.
- 5.4. The Board subcommittee shall provide appropriate and necessary assistance to the inquiry teams as requested from time to time.
- 5.5. Board and board committee agenda packs and minutes shall be available to each team on request.
- 5.6. The Company shall provide a meeting room sufficient to house 6 persons and shall provide access as required to interview rooms.
- 5.7. All prior inquiries and reports in connection with matters included in this scope shall be made available to the inquiry.
- 5.8. The inquiry shall be permitted to establish an independent reporting "hot-lines" enabling internal and external people to provide anonymous input to the inquiry.
- 5.9. The respective teams comprising the inquiry shall meet on a fortnightly basis to ensure coordination.

6. SCOPE OF INQUIRY

The scope below may be limited in consultation with the Board subcommittee having regard to the budget and time available save that this may only be limited on the basis of what the teams' deem in their discretion to be "material" in the circumstances of the information available.

6.1. Technical

- 6.1.1. In respect of all generating plants' (+/-87), benchmark maximum output capacity, planned capacity and actual output for the immediate past 36 months;
- 6.1.2. Review current status of all generating plants and provide opinion on the causes and contributory factors for sub optimum output (in excess of 33 require major repair);
- 6.1.3. Review all major incidents at plants and their causes and any avoidable factors not acted upon (including communications between plant and executive);
- 6.1.4. Review maintenance requirements of all generating plants assessing actual vs planned maintenance and review all contracts and service level agreements and compliance to the same as well as costs relative to plan. Have particular regard to all unplanned failures and review in context of maintenance conducted/not conducted;
- 6.1.5. Review all 3rd party electricity supply available to the grid (including proposals received but not acted on) and compare to actual supply connected to the grid for the past 36 months. Provide an opinion on the technical reasons and cost implications for not having connected when possible. Review all information including correspondence, negotiations and contracting with regard to that supply and reasons for less than optimum connected supply. In addition, consider the available potential of supply from foreign countries and determine any reasons for supply (from time to time) less than that potential and consider any reasons thereof;
- 6.1.6. Specifically enquire into the principal causes of failure at Majuba and Duvha and make recommendations as necessary. In so doing have regard to management reports and independent insurance/assessor reports and



determine the degree of transparency of reporting to the Board and have regard to the reasons for any late submissions of these reports to the Board.

- 6.1.7. Conduct high level reviews of the new builds at Medupi and Kusile and determine the principal causes and contributory factors to the overruns of cost and time.
 - 6.1.7.1. The degree of depth of this report to be agreed between the subcommittee and the inquiry team bearing in mind the time available.
 - 6.1.7.2. To determine whether appropriate contingency plans were in place and acted upon at the earliest possible instance;
- 6.1.8. In collaboration with the Financial and Commercial inquiry teams to the review the supply of primary energy (coal, diesel, gas, water) to all plants over the past 36 months and determine whether supplies met specification, quality and delivery requirements (also have regard to any incorrect specifications provided).
- 6.1.9. Review the causes of disruption of power to two Rand Water pumps at Rand Water in September 2014 paying special attention to any lack of proactive or reactive management response i.e. were there warning and how effectively did we react;
- 6.1.10. To consider the impact of weather on the performance of any of the plants and to provide an opinion as to whether these risks could have been mitigated;
- 6.1.11. To review risk management and contingency plans to determine that such are sufficient to negate any generation risk, and at times of plant failure and whether such were implemented effectively.

6.2. Commercial

- 6.2.1. Review all procurement and other contracts for capital projects, primary energy supplies and operational services (exceeding R1 million or such figure as varied with agreement with the subcommittee) for the past 48 months and determine adherence to supply chain policy and business case approvals. Have special regard to any contracts and payments made but not matched to specification (cost, time and quality). Have regard to any rolling or renewed contracts that have cumulative value above the threshold;
- 6.2.2. Review all contracts related to Medupi and Kusile from inception. Review these in context to the original business case and adherence to tender and supply chain requirements. The focus to be on commercial matters and not technical. The team to coordinate their inquiry with the Technical and financial teams.
- 6.2.3. Review employee and contractor contracts and payments made to employees and contractors and identify any that bear *prima facie* concern.
- 6.2.4. Undertake electronic assessment of all company email correspondence, identifying certain key words to be proved by the subcommittee, for the last 24 months, and where appropriate undertake interviews with internal and external parties to probe where indicated.
- 6.2.5. Review a random sample of internal correspondence between project leaders and plant/project management on Medupi, Kusile, Majuba and Duvha and identify whether plant management foresaw problems and communicated risk upwards. Review management reactions;



- 6.2.6. Similarly (plants as per above) review all correspondence between suppliers and company in which disputes are debated. Interview suppliers as necessary.
- 6.2.7. Review new posts created over past 36 months and provide a schedule of position and TCC.
- 6.2.8. Review all executive and Board reports pertaining to new builds and summarise material implications and decisions.
- 6.2.9. Review contracts and recruitments of employees with TCC >R1.5m per annum for last 24 months;
- 6.2.10. Review a sample of senior employee suspensions, disciplinary hearings and dismissals (and reinstatements) of employees last 36 months (filter those earning >R1 000 000 p.a.).
- 6.2.11. Review summaries of internal audit reports over the last 36 months and management responses and any action taken on material risks identified;
- 6.2.12. Review internal audit programs – schedule of audits and risk analysis and review Internal audit reports of the same and review actions taken;
- 6.2.13. Review draft external audit reports for the past 3 years (2012-2014) and identify risks noted and not in final reports and determine reasons for such
- 6.2.14. Interview sustainability executive for insight to risks not identified;
- 6.2.15. Review correspondence from insurers of major claims submitted (to be objectively assessed by the team) and premium adjustments for those and reasons for them for past 36 months.
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9. FEES

9.1. The respective service providers will negotiate and agree the fees that Eskom will pay to the service provider.

Signed at _____ on this the day _____ 2015

For and on behalf of Eskom

Signature

Name of Signatory

Designation of Signatory

For and on behalf of

[Service Provider]

Signature

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Failure of the mandate

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083 3885480 Bernard van der Walt

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To achieve this we need to be clear about where to start. To identify what is wrong and what it will require to fix. We recognise that this must be seen to be believed. The process and our actions must be transparent.

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The scope and structure

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This initiative has the complete support of our shareholder Minister Lynn Brown.

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DRAFT

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

- 1.1. For the past 2 (two) years, the Office of the Chairman and the Eskom Board of Directors (both the new and the old Boards) have been inundated with complaints and concerns raised by various sources internal and external to Eskom with regards to the unreliable power supply, escalating build project costs, escalating maintenance costs, high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. To this end, the Board of Directors have resolved to institute an enquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute this enquiry to the Audit and Risk Committee under the Chairmanship of Ms Chwayita Mabude. Included in the authority to institute this enquiry, is also the authority to:

- Appoint a service provider
- Manage the costs of executing the enquiry, and
- Ensuring that the service provider delivers on its mandate within the prescribed time lines.

2. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

- 2.1. In the exercise of its authority as delegated by the Board, the Audit Committee has appointed.....to assist with the enquiry.

3. SCOPE OF THE INVESTIGATION

The Service Provider will investigate and report on the following:

- 3.1. the integrity of the procurement processes and their compliance with legislation as well as Eskom's procurement policies;
- 3.2. management of price escalations in contracts as well as the cost of contract modifications with specific references to causes of delays in contract implementation, and the penalty costs arising therefrom;
- 3.3. the capacity within Eskom to manage implementation of the contracts;

- 3.4 security failures and accountability at Eskom as a key national point;
- 3.5. capacity for fleet maintenance and reasons therefor;
- 3.6. the effectiveness of Eskom Board oversight and its ability to exercise oversight over management;
- 3.7. primary energy, with focus on coal and diesel, such as but not limited to costs related thereto
- 3.8. Unreliable power supply, including unnecessary load shedding
- 3.9. Cost escalations of the build program and continuous extension of deadlines
- 3.10 Review of processes of raising bonds and reporting thereof
- 3.11 Recommendations on identified shortcomings and strong points

4. **PROCESS**

The Service Provider will follow the guidelines below in conducting the investigation:

- 4.1. Conduct interviews with employees in its investigation.
- 4.2. In addition to employees, mentioned in terms of clause 4.1 above, the Service Provider may further conduct interviews with any other party/ies or person/s who may have information regarding this enquiry.
- 4.3. Obtain and analyse, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by an employee or any other person interviewed in accordance with 4.1 to 4.2 above.
- 4.4. At the end of the enquiry, present to the Audit and Risk Committee a report.

The aforementioned report will contain the following:

- 4.4.1. Documents relied upon during the investigation,
- 4.4.2. Details of evidence submitted by the Parties and/ or employees interviewed,

4.4.3. Analysis of the evidence and documentation referred to in 4.3 above as presented by the Parties and/ or employees, and

4.4.4. Conclusion/s and recommendation/s.

6. DURATION OF THE ENQUIRY

6.1. The enquiry will be concluded in a period of three (3) months commencing no later than two (2) days after the signing of these terms of reference by the Party signing last.

6.2. Notwithstanding the provisions of clause 4.4 above, the Service Provider will provide to the Audit and Risk Committee a progress report every two weeks. The first progress report will be due two weeks from the date of the signing of these terms of reference by the Party signing last.

7. THE OUTCOME OF THE ENQUIRY

7.1. The conclusion/s and recommendation/s in the report will be final I.

8. FEES

8.1 The Parties will negotiate and agree the fees that Eskom will pay to the Service Provider, which fees will take into account the imperatives of the Business Productivity Programme that Eskom is presently embarking on.



Signed at _____ on this the day _____ 2015

For and on behalf of Eskom

Signature

Name of Signatory

Designation of Signatory

For and on behalf of
[Service Provider]

Signature

Name of Signatory

Designation of Signatory




Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Wednesday, 18 March 2015 1:06 PM
To: spowell@ensafrica.com
Subject: Draft Terms of reference - Eskom 18032015.docx
Attachments: Draft Terms of reference - Eskom 18032015.docx

Hi Steven

Here are draft terms and scope. We would like you to consider the commercial stream.
Could you let us know if that is ok and your normal terms and conditions

Thanks

Nick



Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Wednesday, 18 March 2015 4:27 PM
To: 'bernard.vanderwalt@za.gt.com'
Subject: Draft Terms of reference - Eskom 18032015.docx
Attachments: Draft Terms of reference - Eskom 18032015.docx

Dear Bernard

Thanks for taking my call.

As discussed would you be kind enough to review the attached and let us know if you are able in principle to undertake this assignment. If you would have regard to any conflicts, capacity and ability to start almost immediately.

Many thanks

Nick

Nick Linnell



email: nickl@theprojectoffice.com

cell: 083 488 1000

tel: 021 447 0154

fax: 086 272 1456

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The Project Office

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Directors: N H Linnell | M Green

Postal Add PO Box 15813 | Panorama | 7506

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Wednesday, 18 March 2015 12:02 PM
To: 'leo.dlamini@eskom.co.za'; Malesela Phukubje (PhukubM@eskom.co.za);
'zola.tsotsi@eskom.co.za'
Subject: Media release
Attachments: Media release 18032015. v3docx.docx

Dear Leo/Malesela

The Chair has asked that this media release (to be formatted as you would normally do) be sent to you with the request that it be released immediately. Could you also send it to all Board members and to the Minister.

Kind regards

Nick

Nick Linnell



email: nickl@theprojectoffice.com

cell: 083 488 1000

tel: 021 447 0154

fax: 086 272 1456

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ESKOM SOC**PRESS RELEASE****THE BOARD ENQUIRY**

On Wednesday 11th March 2015, the Chairperson of the Board Mr Zola Tsotsi released a media statement and held a media conference announcing the Board's decision to mandate an inquiry into the current state of the Company.

Understandably there has been considerable interest in the inquiry and much expectation created. There have also been numerous media reports variedly reporting the enquiry and this has led to some confusion.

The purpose of this communication is to provide the public with further details on the inquiry and to lessen the space for further confusion.

The status quo

Firstly, as a Board we acknowledge that the company has not fulfilled its mandate to the South African public. Maladministration, operational and financial inefficiencies and poor decision-making are evident for all to see.

What has failed must be fixed. What is wrong must be put right. Where misconduct and inefficiency exists it will be rooted out. Organisational weaknesses will be corrected. If these are not done with determination and effectiveness the status quo will continue. We will work towards restoring the service and the performance (financial and operational) of Eskom to where it is expected to be.

Some of the major infrastructural and systemic issues may take time to fix but the process of improvement will start immediately and will be sustained. We are committed to this improvement.

The purpose of the inquiry is:

"To provide the Board and Shareholder with an assessment of the current state of Eskom and in particular to eradicate any misconduct and inefficiency that might exist; to determine the reasons for the current lack of, and inconsistency/ unreliability of supply of electricity to customers; to determine the causes of engineering failures, delays and cost overruns; to review the cost and quality of primary energy supply; to review the financial solvency, liquidity and the cost of funding of Eskom and to provide recommendations with regard to required actions.

The inquiry must be free of all influence or interference and shall be so structured as to ensure that independence is seen to exist.



The structure and approach

To achieve this purpose we need to identify what is wrong and what it will require to fix it. We recognise that this must be credible if it is to be effective. The process and our actions must be transparent.

The Board has therefore recognised the need for independent assessment of the state of the company's capability and performance. To ensure that this proceeds quickly and without hindrance or interference we have taken a number of steps.

The Board of Directors has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process.

There will be three distinct areas of enquiry.

A commercial forensic enquiry led by a reputable and leading legal forensic entity. Their scope will inter alia be to review all commercial transactions.

A financial enquiry led by a large accounting firm. They will consider a wide range of financial performance issues more fully detailed in their scope of work.

A technical enquiry led by an engineering team which will also be recognised for its capacity to do the job. This will review the operational performance of the company and also enquire into some of the major failures that we have experienced.

The Board has also decided to appoint a retired judge to ensure that the inquiry is free and importantly seen to be free from influence and bias. This eminent person will not run the inquiry but will have oversight of its governance and will have the authority to investigate any complaints of interference or bias and report these to the board.

The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of reference. He will effectively project manage the inquiry. We have already appointed a business consultant Mr Nick Linnell to fulfil this role.

Scope

The terms of reference have been drafted and are currently being negotiated with the entities which will be appointed to lead the three streams of the inquiry. The scope is wide and it shall be as deep as the enquiry teams deem material and necessary to pursue. At risk is the danger of scope creep and an extended inquiry. We will manage this on the basis of risk and importance and should certain issues require further attention the Board will authorise further inquiry. However there will be a report within three months.

The Board will provide the public with details of the terms of reference and those persons engaged to undertake the inquiry. We shall do this before the end of Friday 20th March. The inquiry will begin on Monday the 23rd.



Some speculation has arisen as to the overlap of the Board's inquiry and what might appear to be parallel initiatives. The Board's inquiry focuses on operational matters that have affected our performance and to identify some key remedial actions.

The executive role

Finally we need to refer to the request by the Board to certain senior executives to step aside during this inquiry.

This inquiry is about identifying what is wrong with this organisation. We need to create the space for the inquiry teams to have unfettered access to the company, its people, its systems and its suppliers. In any organisation, its executive has situational influence - just through their presence. They would not be leaders otherwise. We have asked them to acknowledge this and we believe that they do. The speculation around their absence from the business is without cause. This inquiry is not about them but about the organisation as a whole. It has a single purpose to restore this company's ability to meet its mandate. Any culpability regardless of a person's position will be dealt with appropriately.

General

The Board has attracted some criticism regarding this inquiry from various sectors. We believe that is more due to a failure to adequately engage our many and varied stakeholders. For this inquiry to have credibility we need to convey to every stakeholder what we are doing. We will ensure regular and meaningful updates of progress.

If we do this right only good will flow from it.

This initiative has the complete support of our shareholder, Minister Lynn Brown.



Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Thursday, 19 March 2015 10:38 AM
To: spowell@ensafrica.com
Subject: Eskom

Hi Steven

Developments overnight

1. I met with the chairman and the Chair of A&R last night
 - a. A&C refuse to agree to the ToR – do not want independent oversight and do not want 3 companies undertaking the inquiry – they want 1 company reporting directly to the committee. The Chair of A&C was not able to advance a single reason for their position but simply that was their position.
 - b. I made it clear to both that I do not believe that is in the best interests of the company or the public at large. I said I could not agree to the changes;
 - c. It was agreed that I would present my argument to the full A&R committee Thursday evening but I also said that as I had been appointed by the full board I would provide a full report to the board if the A&R committee persisted in limiting the scope and transparency.
2. Overnight the media release was published in IOL news online
 - a. I had earlier forwarded the release to the Eskom Company Sec and communications head copying the chairman who had approved the release. The chairperson had also in my presence called both and instructed them to release the media statement immediately on receipt from me. I asked them to give prior copies to the full board and the Minister
 - b. The minister immediately pushed back saying that only the President could on the recommendation of the minister of Justice approach a retired judge – some nonsense but nonetheless.
 - c. Various members of the A&R then asked the Chairman not to release it
 - d. This was inevitably leaked – now copied to a host of people. However the leak is somewhat garbled as it contains information not in the release and also announces Grant Thornton as leading the commercial stream!! It also appears to target the Chairperson as saying he is running the investigation.
3. Where are we?
 - a. The powers that be must determine what they want today.
 - b. There are clearly vested interests with one side wanting a narrow and secret/closed inquiry and the other wanting a broad and open inquiry.
 - c. My position is that I agreed to do it on the basis that it would be meaningful and properly conducted. I have no doubt you would feel the same.
 - d. I think this will now be a battle of political will and not my space to play. It will be decided one way or the other today as the A&C is now compromised by the expose in the media that a judge will oversee it with independent investigators.

For interest we should not confuse a transparent inquiry (ToR and independent investigators published) with a confidential report to the Board. We have not said that the report would be made public – that would depend of the Board at the time. But the process must be subject to scrutiny.

Could you keep this confidential – you would need to mention it to Michael

I'll be in touch
Kind regards
Nick

Nick Linnell



email: nickl@theprojectoffice.com

cell: 083 488 1000

tel: 021 447 0154

fax: 086 272 1456

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Directors: N H Linnell | M Green

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[Handwritten signatures]

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Friday, 20 March 2015 11:10 AM
To: 'Bernard van der Walt'
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Tracking: **Recipient** **Read**
 'Bernard van der Walt' Read: 2015/03/20 11:12 AM

Hi Bernard

We have a problem with mandates and authority - could we hold for a while

Thanks

nick

Nick Linnell



email: nickl@theprojectoffice.com

cell: 083 488 1000

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fax: 086 272 1456

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From: Bernard van der Walt [mailto:Bernard.vanderWalt@za.gt.com]

Sent: 20 March 2015 08:10 AM

To: Nick Linnell

Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Hi Nick,

Yes please, phone me on my mobile, 083 388 5480.

Many thanks,

Bernard

Bernard van der Walt | Partner

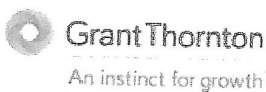
Grant Thornton Cape

6th Floor, 119 Hertzog Boulevard Foreshore, Cape Town, 8001

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F +27 (0)21 417 8700

E bernard.vanderwalt@za.gt.com | www.gt.co.za



From: Nick Linnell [mailto:nickl@theprojectoffice.com]
Sent: 19 March 2015 10:40 PM
To: Bernard van der Walt
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Dear Bernard

There have been some developments that have impacted our earlier intentions - may I revert to you for an explanation

Kind regards

Nick

From: Bernard van der Walt [mailto:Bernard.vanderWalt@za.gt.com]
Sent: 19 March 2015 03:55 PM
To: Nick Linnell
Cc: Imtiaaz Hashim; Fayaz Mohamed
Subject: RE: Draft Terms of reference - Eskom 18032015.docx


Dear Nick,

Thank you for the update. We have been meeting with our sector experts for most of today. We are busy putting all the CVs and experience together and will have this for you tomorrow.

Can we meet tomorrow at 12 or have a conference call to discuss the plan of action?

Many thanks and kind regards,
 Bernard

Bernard van der Walt | Partner
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 E bernard.vanderwalt@za.gt.com | www.gt.co.za

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 An instinct for growth



From: Nick Linnell [mailto:nickl@theprojectoffice.com]
Sent: 19 March 2015 10:34 AM
To: Bernard van der Walt
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Dear Bernard

Many thanks

When we spoke on the phone I mentioned the request was for you to consider the "financial" stream but I notice that I neglected to mention that in the email to you. I see there is a press article saying that you were appointed to do the commercial forensics. Not sure where that came from but the board would be considering Grant Thornton for the financial stream.

Kind regards

Nick

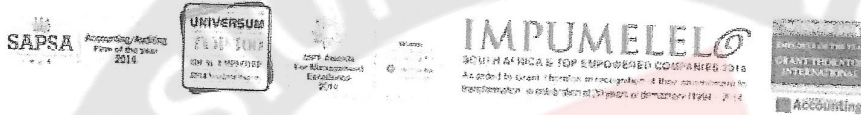
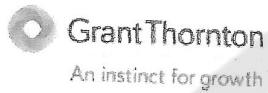
From: Bernard van der Walt [<mailto:Bernard.vanderWalt@za.gt.com>]
Sent: 18 March 2015 06:56 PM
To: Nick Linnell
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Dear Nick,

Thank you for the email. Our team has started working on this and we will revert asap.

Many thanks,
Bernard

Bernard van der Walt | Partner
Grant Thornton Cape
6th Floor, 119 Hertzog Boulevard Foreshore, Cape Town, 8001
T (direct) +27 (0)21 417 8799 | T (office) +27 (0)21 417 8800
F +27 (0)21 417 8700
E bernard.vanderwalt@za.gt.com | www.gt.co.za



From: Nick Linnell [<mailto:nickl@theprojectoffice.com>]
Sent: 18 March 2015 04:27 PM
To: Bernard van der Walt
Subject: Draft Terms of reference - Eskom 18032015.docx

Dear Bernard

Thanks for taking my call.

As discussed would you be kind enough to review the attached and let us know if you are able in principle to undertake this assignment. If you would have regard to any conflicts, capacity and ability to start almost immediately.

Many thanks
Nick

Nick Linnell



email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

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Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Saturday, 21 March 2015 9:47 PM
To: ztsotsi@liquifire.biz
Subject: document

Chair a suggested letter

Dear Minister

At the emergency Board meeting held in the evening of Thursday 19th, to which I received a late and unexpected notice, the Board asked me to recuse myself during which the remaining members held a private discussion regarding my tenure as a Director and Chairman of the Board.

The Board then informed me that they would be meeting you shortly to ask that I be suspended.

That meeting with you took place on Friday 20th and I was subsequently informed that it had been agreed that a further special Board meeting would be called at which my ongoing role would be discussed. I assume that this was with your approval.

Firstly, in so far as these meetings are concerned I regard them as being irregular in terms of the Companies Act and the MOI and otherwise improper.

Secondly, I would respectfully wish to address with you the background to these meetings.

On the 11th March the Board resolved to commission an enquiry referred to above. A coordinator was appointed by the Board and he provided a draft terms of reference and a proposed approach and governance as instructed by the A&C on Sunday 15th.

I am informed that on the following night, Monday night 16th certain board members met with the suspended executive. In the early hours of the following morning (Tuesday) an email was sent to the coordinator stating "Please note that Board Audit, Risk and Compliance Committee will be attending to the matter relating to the Forensic Fact Finding Inquiry, as per advice" This cancelled a scheduled meeting that he had been invited to attend. His further involvement apparently no longer required.

Clearly the meeting between the suspended executives and the Board members was highly irregular. Further a decision of this meeting directly led to the termination of the coordinator's function. It is unfathomable and shocking that the suspended executives were permitted by these Board members to have a role in such a decision.

The A&R thereafter failed to act with regard to the terms and conditions of the enquiry. On Wednesday morning 18th the coordinator ignoring the apparently termination of his function emailed a further draft of the Terms of Reference to both me and the Chairperson of A&R. Upon receipt thereof I attempted to arrange a meeting with the A&R chair. By midday and having received information regarding the earlier night time meeting referred to above, I had a media statement drafted and sent to the company Secretary to distribute with copies to the Board and yourself.

That evening I met with the Chair of R&A and the coordinator. The Chair of A&R was not at all happy about the press release or the terms of reference. There followed a lengthy discussion regarding the principles of the enquiry. The chair of A&R opposed both on the basis that "the A&R committee does not want that to happen". Presumably such a decision having been made at the Monday night meeting with the suspended executives.



The next day the emergency Board meeting was called and the events described above then followed.

It is clear to me that the Board is intent of frustrating the need for an open and independent enquiry and is acting in consort with certain suspended executives.

In the light of the foregoing, the decisions arising from your meeting on Friday with the board are therefore of considerable concern. Clearly there is gross misconduct and the motives behind these are cause for greater concern.

I would urge you to afford me the right to respond to the allegation made and to ask you to ensure the conduct of both members of the Board and the suspended executives are properly investigated. I feel that this in itself is reason enough to require that the enquiry is not under the control of those involved in activities above.

Yours faithfully





The Honourable Ms Lynne Brown, MP
Minister of Public Enterprises
Private Bag X15
HATFIELD
0028

Date:
22 March 2015

Enquiries:
Tel +27 11 800 8111

Dear Minister Brown

At the emergency Board meeting held in the evening of Thursday 19 March 2015, to which I received a late and unexpected notice, the Board asked me to recuse myself and continued with the Board meeting. The Board then informed me that they would be meeting you shortly. When I enquired about the reason for the meeting with you I was informed that the Board reserved its right not to inform me. I considered that response improper and has the makings of conspiratorial conduct.

That meeting with you took place on Friday 20 March 2015 and I was subsequently informed that it had been agreed that a further special Board meeting would be called at which I would be informed of the outcome of your meeting with the Board. I assume that this was with your approval. As I write this letter I have not received this feedback.

Firstly, in so far as these meetings are concerned I regard them as being irregular in terms of the Companies Act and the Memorandum of Incorporation (MOI). Secondly, I would respectfully wish to address with you the background to these meetings.

On the 11 March 2015 the Board resolved to commission an inquiry referred to above. I informed the Board that there was a coordinator that could assist the Board with the inquiry. The coordinator drafted terms of reference and a proposed approach and governance as instructed by the Audit and Risk (A&R) on Sunday 15 March 2015.

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PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za

Eskom Holdings SOC Limited Reg No 2002/015527/08

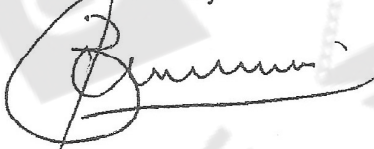
I am informed that on the night of Monday 16 March 2015 certain Board members met with some of the suspended executives. In the early hours of the following morning an email was sent to the coordinator stating "Please note that Board Audit and Risk will be attending to the matter relating to the Forensic Fact Finding Inquiry, as per advice" This cancelled a scheduled meeting that the coordinator had been invited to attend – his further involvement was apparently no longer required. Clearly the meeting between the Board members and the suspended executives was highly irregular, which meeting led to the termination of the coordinator's function.

The Audit and Risk (A&R) Committee thereafter failed to act with regard to the terms and conditions of the enquiry. On the morning of Wednesday 18 the coordinator, ignoring the apparent termination of his function, emailed a further draft of the Terms of Reference to both me and the Chairperson of A&R. Upon receipt thereof I attempted to arrange a meeting with the A&R chairperson. By midday and having received information regarding the earlier night time meeting referred to above, I had a media statement drafted and sent to the company Secretary to distribute with copies to the Board and yourself.

That evening I met with the Chairperson of A&R and the coordinator. The Chairperson of A&R was not happy about the press release, specifically the reference to the terms of reference, which she alleged were not in accordance to the A&R committee. The next day a special Board meeting was called and the events described above then followed. It is clear to me that the Board is intent on frustrating the need for an open and independent enquiry and is acting in consort with certain suspended executives.

Clearly there is gross misconduct and the motives behind this behavior is of even greater concern. In the light of the forgoing I have come to the conclusion that the Board is dysfunctional and not serving the best interests of the company. Consequently, I urge you to consider the dissolution of this Board forthwith.

Yours sincerely



Zola Tsotsi
Chairman

CC: His Excellency President Jacob Zuma



Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Sunday, 22 March 2015 10:14 PM
To: 'letsatsi.duba@gmail.com'
Subject: Eskom
Attachments: chairperson of the Porfolio committee.docx; Draft Terms of reference - Eskom 18032015.docx

Dear Honourable Chairperson

I communicated earlier this week to let you know that the Chairperson would be contacting with regard to an update on the enquiry.

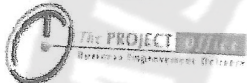
I believe he has now made an appointment to see you urgently.

Please see the attached background to the meeting

Also attached is the draft proposed terms of reference which is not supported by the A&R committee

Kind regards
Nick

Nick Linnell



email: nickl@theprojectoffice.com

cell: 083 488 1000

tel: 021 447 0154

fax: 086 272 1456

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Directors: N H Linnell | M Green

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From: Nick Linnell <linnell@iafrica.com>
Sent: Thursday, 27 August 2020 19:26
Cc: Rohan R. Hiles; Tshego T. Mahlangu-Yiwombe
Subject: FW: Zola
Attachments: Statement by.docx

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: 29 March 2015 10:16
To: 'Tabeth' <tabeth@nmaattorneys.co.za>; 'Nick Linnell' <nickl@theprojectoffice.com>
Cc: 'John Ngcebetsha' <john@nmaattorneys.co.za>; 'ncassim@law.co.za' <ncassim@law.co.za>
Subject: RE: Zola

Dear Tabeth

Please find my statement as requested. Please note that we would need to agreed that I would in fact be witness or that the contents can be used in the hearing.

Kind regards

Nick

Nick Linnell



email: nickl@theprojectoffice.com

cell: 083 488 1000

tel: 021 447 0154

fax: 086 272 1456

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Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500

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From: Tabeth [<mailto:tabeth@nmaattorneys.co.za>]

Sent: 27 March 2015 02:58 PM

To: 'Nick Linnell'

Cc: 'John Ngcebetsha'; ncassim@law.co.za

Subject: RE: Zola

Dear Nick

Duly Noted. We await receipt of the documents tomorrow morning.

Our landlines are working and the numbers are as follows:

- 011 784 0043/45; or
- 011 784 5057

Regards

Tabeth

From: Nick Linnell [<mailto:nickl@theprojectoffice.com>]
Sent: 27 March 2015 12:41 PM
To: tabeth@nmaattorneys.co.za
Subject: Zola

Dear Tabeth

Your office kindly followed up with regard the letter this morning – unfortunately I am now only getting the information in the morning (Saturday) I will have it with you before lunch tomorrow - sorry about that but awaiting this information.

Kind regards

nick

PS – I think your office landline not working?

Nick Linnell



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Statement by

Nicholas Hugh Linnell

1. I am an adult male residing at 10 Parade Crescent Constantia Hills Cape Town.
2. I am a business consultant employed at CT&A Project Management Pty Ltd trading as The Project Office
3. I was introduced to Mr Zola Tsosti, the Chairman of Eskom SOC on or about the week before the 9th March 2015
4. He was aware that I had led an investigation into allegations of wrongdoing at South African Airways.
5. He informed me that there might be a similar need for an investigation at Eskom and we discussed whether I would be interested in leading that at Eskom.
6. I explained my standard approach and how I would go about this and he appeared comfortable with this approach. This approach includes the appointment of forensic investigators having particular knowledge and skill in the areas within the scope of the inquiry.
7. I was given to understand that the requirement was for an in-depth comprehensive inquiry across the whole company being technical, finance and commercial. He stated that it was necessary that it be independent and should be also being seen to be independent. This would also necessitate ensuring that the executive were not seen to have influence.
8. I concurred that the top executives who had situational influence should be considered for precautionary suspension. We spoke about who these might be and I subsequently conducted public research into media and Eskom website sources to determine who they might be.
9. I was informed that I would need to meet the board and the Board would appoint a subcommittee to oversee the inquiry.
10. I was asked to be available on Monday 9th March to appear before the Board.
11. In further preparation for that meeting I prepared standard aide memoire for precautionary suspension for reasons of ensuring that situational influence was removed. I also prepared standard letters of suspension. These were blank without names as the actual decision as to which executives would be considered for suspension would be for the Board to determine.
12. I also began preparations for what the proposed approach would be and the scope of the inquiry might be. It's amount of advance preparation would be common in consulting circles and one would never pitch for a contract without first having a very solid idea of the preferred approach.
13. On Monday 9th I consulted Fritz Malan of ENS labour department to review the preparations that I had made to ensure that I was on sound ground. On the 9th I went to Megawatt Park and was informed by the Chairman that the Board had not decided to proceed with the inquiry. At that point I was of the mind that that was the end of the opportunity.
14. Possibly the next day the chairperson contacted me to say the Board was to reconsider the matter again on Wednesday and I ought to be available.
15. On Wednesday 11th the chairperson asked me to come to Megawatt Park – I think around 10am or thereabouts. When I arrived I went to the executive suite and waited until asked to join the board meeting.
16. The Chairman introduced me briefly and asked that I introduce myself to the Board and tell them what I do.

17. During that discussion I had the impression that the board had decided to hold the inquiry, that it would consider suspending the executives and had appointed me to coordinate the inquiry.
18. There was a lengthy discussion regarding the suspensions and I stressed the point that these were precautionary and to ensure there was no situational influence exerted by them. We spoke of the option of putting it to them that they voluntarily take leave of absence. We discussed the need to provide the opportunity to consider the reasons why the Board wished them to be suspended and the need to consider their responses before determining whether or not to do so. We also discussed a proposed media statement and the need for internal communications
19. There was a discussion regarding the appointed subcommittee and an acting CEO in the event of the suspensions.
20. During that meeting I had the impression that the Minister of Public Enterprises had immediately prior to that moment addressed the Board on the matter and had provided guidance to the board that the board ought to mandate the inquiry to proceed.
21. After that meeting there was a press conference attended by a number of the Directors at which the Chairman stated publically that the board had appointed me as the coordinator.
22. After the press briefing I met with the chairperson of the Audit and Risk committee and we discussed the scope and terms of reference. She required that these be determined as soon as possible. I advised that it would be a good idea to provide an opportunity to the executive for their input. Firstly they knowing the business well might have some valuable suggestions but as importantly they would "buy-into" the inquiry more if they considered it inclusive.
23. We also spoke about the need for an independent whistle-blower facility to allow people to give anonymous tip-offs.
24. The Chairperson of A&R then introduced me to the Molefi Nkhabu Senior General Manager: Assurance and Forensic Office of the Chief Executive and the three of us discussed the approach and IA involvement. It was agreed that IA would send me certain IA reports. The first of these were subsequently sent to me via email.
25. At about 3pm Ms Mabude (A&R chair) and Mr Naidoo (Board Recovery and Build Programme Review Committee (BRBPR) chair) and I met with the executive. Mr Naidoo introduced me to the executive as having been appointed by the board to coordinate the enquiry. I was asked to explain the purpose of the interaction with them – to obtain suggestions for the scope. It was agreed that they would provide the – I think head of legal, with all their suggestions and these would be forwarded to me to have included in the proposed scope.
26. I then left Megawatt Park.
27. Over the following days I received a number of communications from Eskom.
 - 27.1. An invitation from Mr Naidoo, a director, to join the Board Recovery and Build Programme Review Committee (BRBPR) workshop the following week
 - 27.2. A requirement to provide my proposed draft terms of reference to Malesela Phukubje the company secretary by Sunday 15th 6pm which was copied to Ms Mabude
 - 27.3. Invitation to attend a A&R subcommittee meeting to be held on the 19th and then again on the 23rd march.
28. I provided the draft terms of reference to Ms Mabude and the company Secretary on Sunday 15th at 7.05pm copied to Ms Mabude, Chair of the A&R.
29. At 4.50 am on the 17th March I received an email from Mr Thulo Selele copied to the Company secretary informing me that I was no longer required to attend the BRBPR meeting as the A&R subcommittee would now be handling the inquiry. This struck me as peculiar as at about

8pm the previous evening (Monday 16th) I had had a discussion with Ms Mabude regarding the terms of reference which I had submitted. That discussion was for a duration of about 8 minutes, part of which concerned Ms Mabude refusing to allow me access to the input received from the executives (see para 24 above) which had been previously agreed that I would have access to. This was somewhat strange as it had been agreed that these were for my purpose to draft the terms of reference. That conversation ended with an agreement that I would meet Ms Mabude the following morning at around midday (17th).

30. Upon making some enquiries concerning this abrupt change of events I received information that a number of members of the subcommittee and other Board members attended a private meeting during the night of Monday 16th together with some of the suspended executives. This might have coincided with the timing of my call the previous evening (see above para 28).
31. My perception is that prior to that meeting of some of the board members and the executives on the night of the 16th, the Board and particularly Ms Mabude acted as though the Board had in principle appointed me. Following that meeting there was a distancing although not a complete termination of contact.
32. I should make the point that contracting for my services had not and has still not taken place as this was in fact part of the process of the terms of reference. Clearly that would form the basis of what was required of me. My perception that I had been authorised to proceed was tacit from the actions of the board and the Chair of the subcommittee which had the delegated authority to oversee the inquiry and more express from the various pieces of correspondence exchanged with Eskom executives, copied to Board members.
33. On Wednesday 18th at 9.21 am I forwarded a copy of my terms of reference and proposed media release to the Chairman of Eskom and the chair of the A&R committee. In addition to the attachments, I noted that I strongly recommended that the media statement be released urgently – by midday same day (18th) as it was important to stem the negative media reporting and to better inform the public of the nature and process of the inquiry.
34. I never received any response to this email from the chairperson of A&R. however the chairperson contacted me and informed me that he had spoken to the chair of A&R and she had undertaken to come to his house as soon as she was able to discuss the documents sent. He asked that I also attend.
35. By midmorning there was no further response and I called the chairperson and suggested I visit him as the media were asking for comment and without it the company was beginning to receive negative publicity. I know that press releases issued after midday are less likely to receive adequate commentary the following day and by the next day would be old news.
36. I reviewed the media statement with the Chairperson and informed him that I had not received any response from the chair of A&R to my earlier email with attachments. He informed me that the Minister had called him and instructed him to ensure a media report was issued due to the poor press. He agreed to the release and asked that I forward it directly to the company secretary and manager in his office. The instruction was that it follows the normal standard and be copied to all directors and the minister.
37. Later I realised it was never released and upon enquiry by me to the chairman I was informed that the minister and the DPE and certain directors had objected to the press release and he had told the company secretary not to release it. He informed me that the minister's office stated that protocol does not allow the Board to appoint a retired judge without the President's

authority. To my knowledge that is not true as I have had retired judges appointed as arbitrators etc before and never invoked anyone else's permission.

38. Later that evening (Wednesday 18th) I received a call from the Chairman asking me to come to his house as the Chair of A&R had arrived. This was around 6pm. The three of us met and we first reviewed the media statement. In effect the chair of A&R wanted all the references to the scope and approach including the retired judge and the use of three independent forensic teams to be excised. I provided reasons why I disagreed and none of these were challenged other than the statement "the committee does not want this". When I asked for reasons why the committee would have a different view the chair of A&R did not provide any. At this time the Chairman intervened as he did not like the adversarial tone that the discussion had taken on.
39. The chair of A&R then suggested that I attend a meeting of A&R the next day – Thursday 19th in the evening and present my arguments to them. I subsequently received a formal meeting invite to that planned meeting but it was subsequently cancelled. Instead an urgent board meeting was held.
40. At this point my perception was that I was still "working" with Eskom and the subcommittee. This was notwithstanding the previous email received in the early hours of the morning of the 17th March.
41. I have been provided with a copy of a notice of directors meeting in terms of which the board proposed to invoke S71(3)(b) of the Companies Act and to allow the Chairman to make representations why he should not be removed from the board on grounds of misconduct including dishonesty.
42. The first charge (1.1) relates to the procurement of the services of me without following the prescribed processes.
43. To the extent that my services have been procured it would require my agreement. In so far as my agreement would be applicable it was implied from my meeting with the whole Board of Eskom and the express and implied conduct of the Board and the subcommittee to engage my, at least to begin the inquiry. To my knowledge the chairman would have been part of that collective. I have no direct agreement with him. Rather he proposed my services to the board.
44. In so far as the prescribed procurement processes are concerned, I had provided the chairperson with a set of proposed board resolutions in the event that they engaged my services and one of these included the Board's waiver of the internal procurement processes. The simple logic being the executive departments conduct those processes and not the Board and if they were to be followed the executive would play the determining role in that selection. The other logic is that the board has the legal right to determine these matters without following their own policies.
45. Besides that the Board has a number of legally trained persons and corporate governance persons on it and as it was quite clear the board was engaging me they ought to have made objections during that meeting on the 11th or any other time following that through to the 18th when I was invited to attend a subcommittee meeting to discuss the work that I had done.
46. While this is a legal issue that would be argued by the right people it does reflect my understanding of what I was proposing and was accepted by the Board.
47. The second charge (1.2) relates to me having started work without the other directors being informed. Clearly that is not true and is evidenced above. At all times the work that I did was with the knowledge of the chairperson of the A&R committee who was the delegated person to interface with me.

48. The aspect of there being no contract is equally incorrect in that the board as a whole was aware that I had begun and the A&R committee was clearly aware of my work of the terms of reference and the chair of A&R was aware of that and my terms of reference. I also understand that this was the subject of the private discussions held on the night of Monday 16th.
49. As to the company having been exposed to non-compliance it would appear to me that the whole board having been in the sequence of meetings from the meeting with the minister, the Board meeting that followed and my appearance before it that were as aware as anyone as to what compliance had taken place. Neither during that meeting nor thereafter was I ever given any indication that the board had not approved my engagement to commence. To the extent that to this day there has been formalisation of my contract of engagement I would acknowledge that my services are limited to what the subcommittee required me to work on immediately.
50. The third charge (1.3) is a matter that the chairman and the board would need to determine. However in so far as I was concerned I had provided a copy of the proposed press release to both the Chair of the A&R and the chairman of the Company by about 9.30 am before it was thereafter approved for release by the chairperson. To my knowledge the media release was not issued by the Company.
51. I would make the point that since the press conference on the 11th I have monitored the press reports with regard to this matter. These are a matter of public knowledge and most have been internal leaks to the press as they have tended to quoted "sources" or a "member of the Board".
52. With regard to the reputation of the Board and the damage done one would have reference to the media reports since the 11th march to determine the causes of the damage if any.
53. Given the nature of the work that I was anticipating been engaged to do, I have since the 11th been receiving information from anonymous sources that might be relevant to an inquiry of this nature. Amongst these were:
- 53.1. That the CEO had been given advance warning of his possible suspension prior to the 11th.
- 53.2. That the Minister met privately with some of the Board members prior to the formal meeting on the 11th.
- 53.3. That the Minister had previously cancelled a scheduled board meeting on the 29th February as it had come to her knowledge that the board wished to raise the issue of no confidence in the Chairman. This was presumably well before the inquiry was ever mooted.
- 53.4. That the Board in fact informed the Minister on the 20th of their determination to remove the Chairman
- 53.5. That the Minister was reported having told the Portfolio Committee on the 26th or thereabouts that she was expecting a "formal" letter with regard to the Board intention to remove the Chairman.

STATEMENT BY VENETE KLEIN TO THE COMMISSION OF INQUIRY INTO STATE CAPTURE

INTRODUCTION

1. I have been approached by the Commission of Inquiry into State Capture ("the Commission") to provide input in respect of matters which form the focus of the Commission's inquiry into state capture ("the Inquiry"). I have volunteered to provide a statement in respect of the relevant matters, in the interests of fully ventilating such matters and assisting the Commission in the execution of its mandate. Although I have endeavoured to address all such matters as comprehensively as possible, this statement should not be construed as being conclusive of my position on the issues in question, nor should my failure to deal with any item in this statement be construed as a waiver of my rights in that regard, which rights remain reserved.
2. I have endeavoured to address all relevant matters (as conveyed to me by the Commission) thematically, and in a generally chronological manner. In order to deal fully with one theme at a time, this has required me occasionally to jump forwards and backwards in time when moving from one theme to another. I believe that this is the most efficient way in which to set out my statement.
3. By designation, at the relevant time, I was a Chartered Director (CD) SA and have graduated from various international executive programmes, including the Senior Executive Programme at Harvard University and the Executive Development Programme at the New School, in New York. In addition, I hold several international qualifications from MIT, INSEAD, IMD and Wits.
4. I have served as an Executive Director and Non-Executive Director on various Boards, including the Barclays Group Ltd, the Reserve Bank and Old Mutual Wealth. Until recently, I served as the Chairperson of The Institute of Directors Southern Africa. I have



garnered various achievements and awards as a result of my recognised performance in my career, including but not limited to the Business Woman of the Year Award, The Barclays International & Commercial Bank Leadership Award, the Nedcor People's Bank Top Managerial Performer Award and the Association of Black Investment & Securities Professionals Award.

5. For a full description with regards to my qualifications and employment background, I refer to my *Curriculum Vitae* ("CV") as well as my abridged CV, copies of which are annexed hereto marked "VK1" and "VK2" respectively.

APPOINTMENT TO THE ESKOM BOARD

6. I was nominated by Lionel Ricardo Adendorf to be appointed to the Eskom Board of Directors ("the Board"). I signed and dated the nomination form on 02 October 2014, a copy of which is annexed hereto marked "VK3". The nomination was made in line with the prescripts as set out in the advert that appeared in the Business Times of Sunday, 28 September 2014.
7. On 11 December 2014, I was appointed by the then Minister of Public Enterprises, Lynne Brown ("the Minister") to serve as a non-executive member on the Board. A copy of the appointment letter from the Department of Public Enterprises ("the DPE") is annexed hereto marked "VK4".
8. Eskom was at that point in dire straits, having faced going concern difficulties and with the country having been subjected to stage 3 load shedding. I felt impelled to make myself available to serve on the Board in order to lend my expertise to the cause of addressing the crisis facing Eskom and the country as a whole. I took up this position without any thought of financial gain.
9. I am unaware as to the process that the DPE followed leading up to my final appointment to the Board but would assume that it went through all the normal checks and balances.



APPOINTMENT AS THE CHAIRPERSON OF THE PEOPLE AND GOVERNANCE COMMITTEE

10. Given the sheer enormity and complexity of the business, the Board's function is largely discharged through the efforts of various standing Board sub-committees, such as the Audit and Risk Committee ("ARC"), the People and Governance Committee ("P&G Committee") and the Board Tender Committee ("BTC") etc. Each of the board subcommittees has its own chairperson, delegation of authority and terms of reference, which guide the functioning of the sub-committees in conjunction with Eskom's Memorandum of Incorporation ("MOI"), Board Charter, the King III and IV codes on Corporate Governance and applicable legislation, including both the Companies Act 71 of 2008 ("the Companies Act") and the Public Finance Management Act 1 of 1999 ("PFMA").
11. A consequence of the aforesaid is that many matters falling within the delegated authority of the various sub-committees would not necessarily serve before the full Board. Only matters which meet the specified threshold in terms of the relevant materiality framework will serve before the Board. For example, the authority to approve contracts with a value up to R750 million is fully delegated to the executive, while the authority to conclude contracts with a value of over R750 million up to "Investment Decision" or "Budget level" is fully delegated to the BTC. As a result, only contracts with a value of above "Investment Decision" or "Budget level" will come before the full Board for approval. This means that multiple substantial contracts could be approved and concluded on the authority of the executive and the BTC, without the balance of the Board ever coming to know thereof.
12. As a result, members of the Board are required to trust that the checks and balances provided by the corporate governance structures are adhered to and adequately ensure the rigour of all decision-making processes. In addition to the above, the Board members rely heavily on the institutional knowledge and guidance received from the executive in relation to all such decision-making processes, including decisions made by the Board. This reliance is in accordance with the Companies Act. This, however, can result in difficulties from a corporate governance perspective, especially when decisions are



taken based upon information and guidance received from the executive, only to discover subsequently in the media that pertinent information was omitted or inaccurately submitted to the Board.

13. In early 2015, I was first appointed as Chairperson of the Social Ethics and Sustainability Committee, at which time I also served as a member of the Investment & Finance Committee and the P&G Committee. I later became the Chairperson of the P&G Committee and a member of the ARC.
14. During the first few months of the tenure of the new board there were a number of rotations of Board members within the Board sub-committees. This was due to the rotation of Board members as a result of one Board member taking up an executive role.
15. During the course of these rotations and after the suspension of 4 executives (I address the issue in relation to these suspensions below), Mr Zethembe Khoza became Acting Chief Executive Officer and I was moved to chair the P&G Committee.
16. I am not certain of the exact date of my appointment as Chairperson of the P&G Committee, but believe it was on or about 15 March 2015. Later, in about June 2015, I was replaced as Chairperson of the P&G Committee by Ms Chwayita Mabude, only to later be reinstated as Chairperson in or about August 2015.
17. The instability regarding the members of the committees also contributed to the governance issues, as Board members were always working with new people who were not familiar with the challenges that the Board faced.
18. Furthermore, the Board struggled with not having all the required information at hand when submissions were presented. It now appears that many of the submissions that were considered in my time contained misleading information or completely omitted critical information. What compounded matters even further for me, is that there are now differing versions of matters that I previously thought that I fully understood.
19. I believed that I was part of a success story in that we went from stage 3 load shedding at a cost of *circa* R434 million per day to the economy to no load shedding in my tenure



on the Board. I regarded this as one of my finest moments in terms of contributing to the country, which, after all, was my only motivation for agreeing to serve on the Board.

20. I understand my appointment to the position of Chairperson of the P&G Committee to have been motivated by the substantial experience I have acquired in this particular field of corporate governance during the course of my career, as demonstrated above. The primary mandate of the P&G Committee is to assist the Board in dealing with the nomination and remuneration of directors, senior executives, human resources strategies and policies. The P&G Committee is also the custodian of corporate governance to the benefit of Eskom. Following my re-appointment as Chairperson of the P&G Committee in August 2015, I served in that capacity until my resignation from the Board on Friday, 12 May 2017.
21. As chairperson of the P&G Committee, I was frequently called upon to mediate at executive level when matters could not be resolved. I always endeavoured to deal with these matters as discreetly as possible in the interests of the people concerned and the organisation as a whole. Similarly, I was called upon to deal with a number of "people management" issues that were escalated to the chairman of the Board, and which I handled with the same discretion. I attended to all of my functions as Chairperson of the P&G Committee with the rigour and efficiency demanded of anyone occupying a position of that importance.

MEETINGS LEADING TO THE DENTONS INQUIRY

22. I now describe the sequence of events in terms of the Board meetings that were scheduled for the period January 2015 – March 2015. At the outset, I note that I was informed of all the meetings, as described below, by the Company Secretary.
23. The Board Induction meeting was held on 16 January 2015 and was arranged by the Company Secretary, Malesela Phukubje. The agenda items included, amongst others, a "war room"¹ update, selective demand curtailment, a financial status update,

¹ The "war room" was a crisis management body (which was being run by the then Deputy President of the Republic of South Africa and supported by a number of high ranking government officials) established to oversee




consideration of Board committee handover reports, a media communication review, risk register consideration, debt management, turnaround strategy, Eskom fleet, panel of experts/International advisory committee and the PFMA section 51 indemnity. I recall having left this meeting feeling rather concerned both by the enormity of the challenges which had correctly been highlighted by the Minister and by the fact that Eskom did not appear to have concrete strategies in place to address these concerns.

24. A meeting was also scheduled by Mr Phukubje, to take place on 26 February 2015, but was later cancelled and did not take place. The reason given was that the DPE had advised that the meeting should not proceed. I raised objections to the cancellation of this meeting in terms of section 52 of the PFMA and Treasury Regulation 29. An email dated 27 February 2015, detailing my objections is annexed hereto marked "VK5".
25. On Sunday, 08 March 2015 the Board received a request to attend a Board meeting on Monday, 09 March 2015 in order to make decisions in accordance with a Board memorandum dated 08 March 2015. The memorandum and resolutions are annexed hereto, marked "VK6". I found it concerning that we had been called to a critical meeting on less than 12 hours' notice. In any event, I had a prior engagement and I duly declined the invitation.
26. I understand that the issues raised at the meeting by Mr Zola Tsotsi, in his capacity as Chairman of the Board, were of such a nature (for example, regarding an independent investigation into Eskom) that those who attended wanted the entire Board as well as the shareholder representative, Minister Lynne Brown to be present. The meeting was therefore rescheduled for 11 March 2015. Since I had not attended the meeting on 09 March 2015, I had to rely on the minutes of this meeting, annexed hereto marked "VK7".

the implementation of the 5-point plan Government had introduced to address load-shedding, which consisted of:

- i. 30-day emergency measures;
- ii. Co-generation production;
- iii. Gas imports;
- iv. Independent Power Providers (IPPs); and
- v. Demand-side management.)



27. In terms of the memorandum, the Board was requested by Mr Tsotsi to take a resolution to commission an inquiry into the technical, commercial and structural status, as well as any acts and/or omissions which had contributed to the deficiency of generating and distribution capacity, of Eskom. Mr Tsotsi also proposed that this inquiry should be completed within a period of 3 months and that the Board subcommittee delegated to spearhead this inquiry should appoint an independent investigator, free of any influence or suspicion.
28. I found it concerning when reading the minutes of 09 March 2015 that the Chair referred to the Presidency having expressed concern, presumably to the Chair, regarding the performance of Eskom. The meeting agreed to invite the Minister to address the issues as articulated by the Chairman. I have seen two sets of the minutes of this meeting, the original unsigned minute (annexed as "VK7") mentions the Presidency, whereas the signed set of these minutes had mentions of the Presidency removed.
29. At the meeting of 11 March 2015, the erstwhile Group Chief Executive Officer, Mr Tshediso Matona, again outlined the problems facing Eskom, which included:
- a. Departures of senior executives through resignations and retirements, which required him to reshuffle the team;
 - b. Engagement with labour as staff morale was a big challenge;
 - c. Gaps in information provided to the "war room";
 - d. Unlikelihood of savings targets being met for the financial year due to serious leakage in primary energy costs;
 - e. The liquidity buffer of R20 billion had decreased to R4.9 billion as 2 expected loan amounts had not been received; and
 - f. The non-payment of substantial amounts owing by Municipalities.



30. The Minister also addressed the Board that day, once again expressing her concern around the Board getting a handle on the business. The Minister conceded that she had no right to instruct the Board on any matter regarding the conduct of Eskom's business.
31. The Minister did note a number of issues:
- a. She was aware that the Board may have been feeling that it had fallen by the wayside given the activities of the "war room";
 - b. Concern regarding the interest rates which Eskom had negotiated and agreed to in the market;
 - c. The inequality of coal price purchases, with some companies being paid more than others;
 - d. Mismanagement of the load shedding process;
 - e. The purchasing of diesel "on the hoof";
 - f. The appointment of the Board did not bring about any problems and the process ran smoothly; and
 - g. The ARC may procure the services of an independent, credible forensic investigator to undertake the inquiry proposed by Mr Tsotsi and not someone who had previous dealings with Eskom or whose independence may be in doubt.
32. The activities of the "war room" were particularly concerning as I was of the view that they were potentially instructing the Board. For example, the "war room" took the decision that the Board should not proceed with the mooted voluntary severance package process as started by the previous Board. The minutes of the meeting highlighting this are annexed hereto and marked as "VK8".



33. After the Minister left, the Board convened a Board in-committee meeting where Mr Tsotsi again presented his memorandum proposing an inquiry into corporate governance issues at Eskom and sought the Board's support in that regard. It was agreed that:
- a. A forensic inquiry would be established, and would be driven by the P&G Committee and the ARC; and
 - b. The ARC would be the custodian of the inquiry and would engage with other committees as and when necessary.
34. Mr Tsotsi proposed that those Executive Committee members who were heading up the divisions where the inquiry would take place step down during such inquiry. Mr Tsotsi (at the 11 March 2015 Board in-committee meeting) assured the Board that he had compiled a report that supported the establishment of an inquiry (I deal later with Mr Tsotsi's subsequent admission at the 19 March 2015 meeting, that such report never existed). However, the Board was concerned about the continuity challenges this would occasion, especially given the fragility of the company at the time. The members agreed that there was a trust deficit between the Board and the Executive Committee members involved in the matters forming the focus of the inquiry and that it would therefore be in the best interest of the inquiry if they were asked to step aside for the period of the inquiry in order for it to be concluded within the proposed 3 month period.
35. The Board members expressed the view that they would prefer to do a fact-finding exercise before asking the relevant executives to step aside. There was concern that acting with haste may result in Eskom finding itself in a position where it has to fight cases in the Labour Court. Mr Tsotsi explained that this would slow down the inquiry and that a lot of work had already been undertaken and that he could provide the Board with a report as per the work that had been done previously.
36. Based on that, Mr Tsotsi then advised that the Group Executive: Commercial & Technology, Group Executive: Group Capital, Financial Director & Group Chief Executive should be suspended. The reasons provided by Mr Tsotsi were, *inter alia*, that the



Financial Director had met with tenderers during a tender process, while in respect of the Group Executive: Commercial & Technology there was an allegation of misconduct which included another staff member. The minutes of the 11 March 2015 meeting are annexed hereto marked as "VK9".

37. Mr Tsotsi had recommended that Mr Malesela Sekhasumbi act as Group Executive Commercial & Technology. I found this recommendation to be concerning as Mr Sekhasumbi was on suspension and Mr Tsotsi did not share this with the Board when he made his recommendation. Later, this was one of the items that the Board charged Mr Tsotsi with prior to his removal from the Board. A letter from the attorney representing Eskom to Mr Tsotsi's attorneys regarding this issue is annexed hereto and marked as "VK10".
38. The Board, at the 11 March 2015 meeting, resolved as follows regarding the inquiry and suspensions:
- a. An inquiry shall be instituted into the affairs of Eskom and that the duration of the inquiry shall be three months. The Board envisaged that, upon completion, this inquiry would provide it with an independent view of reasons for the following:
 - i. The poor performance of Eskom's generation plant;
 - ii. Delays in bringing the new generation plant on-stream;
 - iii. High costs of primary energy;
 - iv. Eskom's financial challenges;
 - v. Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies;



- vi. Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general; and
 - vii. Security failures and accountability at Eskom as a Key National Point.
- b. The ARC shall take custodianship of the inquiry and that the P&G Committee and other committees assist where necessary and report to the Board. The ARC is mandated to draft the Terms of Reference ("ToR"). The P&G Committee was mandated to provide support; and
- c. The key executives be put on suspension for the duration of the inquiry.
39. A meeting of the P&G Committee was convened immediately after the Board meeting to deal with the decision to suspend the executives whose areas of responsibility would be investigated for the duration of the inquiry.
40. The P&G Committee accepted the identified four executives to be suspended as:
- a. Tshediso Matona, Chief Executive Officer;
 - b. Tsholofelo Modise, Financial Director;
 - c. Dan Morokane, Group Executive: Group Capital; and
 - d. Matshela Koko, Group Executive: Technology and Commercial.
41. While on the topic of the mooted suspensions, I interpose to note the potential roles of Ms Suzanne Daniels and Mr Salim Essa in the suspensions. Ms Daniels, in her testimony before the Parliamentary Inquiry noted that she met Mr Essa on 09 March 2015 when attending a meeting with Mr Koko. Ms Daniels testified that, at this meeting, Mr Essa questioned what it would take to have employees suspended. Ms Daniels claims to have advised Mr Essa that she was a contract expert and not an employment expert.
42. At this point in time, and in line with her testimony, Ms Daniels was a senior manager, not the head of legal and the company secretary. She was only appointed as Group



Company Secretary on 01 October 2015, well after the suspensions had taken place. Yet the metadata of the pre-suspension letters for the four Executives, illustrates that Ms Daniels authored the letters and that they were last modified by Mr Essa on 10 March 2015, who she allegedly had her first encounter with the day prior. I discovered this when considering the letters for purposes of preparing this statement. The pre-suspension letters and printouts of the corresponding metadata of each letter are annexed hereto marked "VK11", "VK12", "VK13", and "VK14".

43. This is of particular concern to me as Ms Daniels, by her own admission, was at a relatively low level and should not have been drafting suspension letters. In my view this should have been done by Neo Tsholanku, the Head of Legal at the time. Of even greater concern, and frankly horrifying, is the fact that the letters were provided to and modified by Mr Essa the very day after he had enquired from Ms Daniels what it would take to have employees suspended. Mr Essa had no legitimate reason to be involved in Eskom internal processes let alone the drafting of suspension letters in respect of senior executives.
44. Returning to the process of the suspensions, the relevant executives were called into the P&G meeting (which was convened immediately after the 11 March 2015 Board meeting), chaired by Zola Tsotsi, individually and were informed of the Board's decision to launch an inquiry. They were further advised of the Board's view that their presence could hamper the said inquiry.
45. The P&G Committee, under the chairmanship of Mr Tsotsi, then gave each executive an opportunity to give the meeting any reasons as to why their presence would not hamper the inquiry. After this process was followed, the said executive were each asked to recuse him/herself in order to allow the P&G Committee to deliberate on the information and reasons provided by said executive and then make a final decision on his/her possible suspension.
46. In the cases of all four executives, the P&G Committee found that the reasons presented were not strong enough and proceeded with the suspensions. The suspensions were



deemed necessary in order to give effect to the Board's decision to proceed with the inquiry in an unfettered manner and to ensure same was concluded within the agreed three-month timeframe.

47. To my understanding, none of the suspended executives were given reasons for their suspensions. Instead, they were simply told that they were required to step aside in order for the inquiry to be speedily concluded and that they were not being formally charged.
48. It is worth remembering that none of the suspended executives were ever charged with specific wrongdoing – the reason for their suspension was purely as guided by Mr Tsotsi, namely that they might have interfered with the inquiry.
49. Besides Mr Matona and Mr Koko, I was advised that the remaining executives (namely, Mr Morokane and Ms Molefe) approached Eskom with the intention of settling, in terms of which they would resign from their respective positions and accept an exit package.
50. The Board considered these settlement requests and delegated the Acting Chairman, Dr Ngubane, myself and Mr Kumalo to enter into negotiations with the four suspended executives around their exit from Eskom and in relation to their respective exit packages.
51. The authorization provided for:
- a. The Acting Chairman, Dr Ngubane, myself and Mr Kumalo to enter into exit negotiations with each of Mr Matona, Ms Molefe, Mr Koko and Mr Morokane;
 - b. That any settlement should be within the following parameters:
 - i. The financial package to be negotiated shall not exceed a maximum amount of up to 12 months' total package;
 - ii. Any benefits due to the affected executives as per the standard conditions of employment shall be implemented according to the relevant Eskom policies and procedures; and



- iii. Settlement agreements shall set out the terms and conditions of the exit and include the relevant provisions relating to confidentiality.
- c. That the Chairperson of the P&G Committee be authorised, with the power to delegate further, to take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary or related thereto.
52. To the best of my recollection, I recall that all settlement figures were provided for by Anton Minnaar, the Executive Support Manager at the time.
53. Mr Morakane requested an exit discussion, which was handled by Messrs Khumalo and Khoza.
54. Various meetings were held with Ms Molefe, some of which I was a part of, however her final exit agreement was handled by Mr Khoza.
55. Mr Matona referred his matter to the Labour Court, Johannesburg for an order to set aside his suspension and allow him to return to work. This application was brought on an urgent basis and was opposed by Eskom. At the same time, Mr Matona had lodged an unfair labour practice dispute with the Commission for Conciliation, Mediation and Arbitration ("CCMA"). The Labour Court found that there was no basis for urgency and dismissed the application in this regard. It nonetheless found in favour of Mr Matona in respect of procedural fairness of the suspension and referred the matter to the CCMA for proper handling of the issues prior to it being heard at the Labour Court.
56. My reason for supporting Mr Matona's departure was that he did not appear to have a handle on the turnaround of the organisation, which was particularly critical at that point in time. Dr Ngubane met with him and discussed his possible departure from Eskom. An agreement was subsequently reached with Mr Matona and he exited the services of Eskom.



57. With regards to Mr Koko, I was present at a meeting with him. He was the one executive who was not interested in leaving the employ of Eskom. He indicated that he wanted his job back. Upon objecting to this, I was mandated by the Board to engage with a senior partner of Dentons in order to establish whether or not Mr Koko had been, by way of the inquiry, found guilty of any wrongdoing.
58. In this regard, I contacted Mr Noor Kapdi of Dentons, who indicated that they had not found any evidence of wrongdoing by any of the suspended executives. In order to address my discomfort, I decided to engage with Mr Jerry Kaapu of Bowman Gilfillan, who advised that Eskom could not keep someone on suspension if the inquiry did not find any evidence of wrongdoing. Dentons also provided a letter confirming the above.
59. As far as I am aware, Mr Koko was reinstated in early July 2015. I refer to the 1 July 2015 meeting and minutes thereof where it is written that the fourth executive (Mr Koko) should be reinstated. This meeting was chaired by Ms Mabude. The minutes of this meeting are annexed hereto marked "VK15".
60. During this time, one of the Board members acted as Interim Chief Executive with effect from 12 March 2015 and Mr Brian Molefe was subsequently seconded to Eskom from Transnet as Acting Chief Executive. As per the Secondment Agreement between Transnet and Eskom, the duration of secondment was three months, until July 2015.
61. Acting arrangements were approved by the P&G Committee and the following executives were appointed:
- a. Edwin Mabelane (Acting Group Executive: Technology and Commercial);
 - b. Nonkululeko Velei (Acting Finance Director);
 - c. Abram Masango (Acting Group Executive: Group Capital); and
 - d. Zethembe Khoza (Interim Chief Executive).



62. The said executives were called in by the Board during a P&G Committee meeting on 12 March 2015 (chaired by Mr Khoza) and were informed of their acting positions.
63. The next relevant meeting was the Board in-committee meeting of 19 March 2015, which Mr Nick Linnell attended, as the independent consultant. I now note that the Board was introduced to Mr Linnell at the 11 March 2015 meeting (and not this meeting of 19 March 2015, which was previously my recollection). Mr Tsotsi, the Chairman, informed the Board that the consultant he had appointed (Mr Linnell) had been referred to him from higher up, in the Presidency. It was of concern to the Board that no proper process was followed to engage Mr Linnell's services. The Board accordingly expressed discomfort with the engagement of Mr Linnell. Moreover, the Board felt that the Mr Tsotsi's actions had compromised the Board as well as the integrity of the inquiry. The minutes of the 19 March 2015 meeting are annexed hereto marked "VK16".
64. Further, during this meeting, Mr Tsotsi admitted that the report he had referred to earlier (at the 11 March 2015 meeting) in support of the inquiry did not exist.
65. With regards to issues relating to the media statement that he had released earlier in March 2015, Mr Tsotsi explained that during the preparation of the media statement, he intended for it to be distributed for input by the Board and the DPE. Thereafter, it would be issued. However, and according to Mr Tsotsi, the draft media statement had unfortunately leaked to two media houses and was distributed in the public domain without receiving approval from the Board. Further, the contents of the ToR which had been prepared by the Chairman of ARC were contradicted by the contents of the media statement in that the Board had never resolved to appoint Mr Linnell or a retired judge to oversee the inquiry. The draft Terms of Reference and the media statement are annexed hereto marked "VK17" and "VK18", respectively.
66. The original ToR were sent to the Board by the Company Secretary and were then further unpacked by the ARC.




67. The Board unanimously agreed at the Board in-committee meeting on 19 March 2015 that it had lost confidence in the chairman (i.e. Mr Tsotsi) and would recommend his removal as a director due to:
- a. His failure to seek or obtain Board approval for the appointment of a consultant (i.e. Mr Linnell);
 - b. His actions in terms of the suspensions; and
 - c. Preparing and distributing a media release without Board approval.
68. This information was shared with Mr Tsotsi on his return to the meeting of 19 March 2015. Furthermore, the Board had resolved to inform the Minister regarding this breakdown between the Board and the Chairman.
69. At the meeting of 19 March 2015, the Board elected Dr Baldwin Ngubane, who at a later stage became the Chairman of the Board, to act as chairperson until we had communicated our resolution with the Minister.
70. The Board communicated its resolution to the Minister at a meeting on 20 March 2015. It was also indicated that the Board had requested the meeting in order to consult with the Minister regarding removal of a director in terms of the MOI.
71. The Board indicated that the Chairman of the Board had performed certain actions which rendered his continued directorship untenable. In the main, the actions were the following:
- a. Engagement of an external consultant (Mr Linnell, who appears from the metadata thereof, to have been responsible for drafting the resolutions that were sent to the Board for consideration on 08 March 2015) to provide services to Eskom without following Eskom's procurement processes or informing the Board of his actions;



- b. Misrepresenting to the Board that there was a Report which had been prepared by the consultant and which contains findings about misconduct by certain executives;
 - c. Preparing a media statement to be issued in the name of the Board, which contained inaccurate information as well as information which named third parties and had the potential to prejudice Eskom's interests; and
 - d. The additional charge of Mr Tsotsi misleading the board when he tried to bring Mr Sekhasumbi back from suspension to take up an executive role.
72. It was clarified at the 19 March 2015 meeting that the Board was required to act in accordance with its fiduciary duties and that if the statement had mentioned that the Board had presided over an organization fraught with corruption, fraud and other maladies, it would bring Eskom into disrepute. The Board confirmed that it was unanimous in its view regarding the steps which were to be taken against the Chairman, and the consultation with the Minister.
73. The Board felt that the suspension was further necessitated by its discomfort of where Mr Tsotsi's instructions were coming from; there were underlying tones of influence on the Board from the Presidency and the 'war-room' as described above.
74. The Minister supported the views of the Board in accordance with the MOI. The Board elected to proceed with the suspension, in accordance with the MOI, and after its consultation with the Minister.
75. The Minister was kept apprised of the developments in removing Mr Tsotsi as Chairman, at a meeting held with Eskom Board Members and the Minister on 01 April 2015, at which I was present. The minutes of the 01 April 2015 meeting are annexed hereto marked "VK19". We informed the Minister that the following steps were taken in this regard:



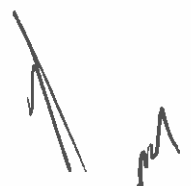
- a. A Notice of Meeting was sent to Mr Tsotsi on 22 March 2015, calling him to a meeting with the Board on Wednesday, 25 March 2015. The Notice outlined that the Board had lost confidence in him and that he was required to present representations to persuade the Board to reconsider its position.
- b. The meeting commenced at 18:00 on 25 March 2015 and was attended by the full Board. Mr Tsotsi was also present and was represented by Ngcebetsha Madlanga Inc Attorneys, who had briefed Mr Nazeer Cassim SC as counsel in the matter. Through his counsel, Mr Tsotsi requested a postponement of the meeting on the grounds that the notice given to him was short. They stated that, in effect, they had been given one day's notice which, for a matter as serious as that under consideration, was not fair.
- c. The Board acceded to their request and it was agreed that the meeting would reconvene on Monday, 30 March 2015 at 20:00.
- d. On 30 March 2015 at 17:00 the Board was advised through Eskom's attorneys that Mr Tsotsi had once again not had adequate time to prepare as he had spent the weekend of 27-29 March 2015 in Cape Town on Eskom business. Consequently, Mr Tsotsi's attorneys requested another postponement.
- e. The Board took the position to proceed with the meeting in Mr Tsotsi's absence as it was of the view that he was delaying the process. This was communicated to his counsel.
- f. At 20:00 the meeting commenced, and Mr Tsotsi was in attendance with his legal team. Together with his counsel, Mr Tsotsi presented his version in response to the allegations which had been made against him.
- g. After conclusion of the presentation, Mr Tsotsi asked the Board to consider the impact his removal from the Board would have on his life and on his family, as well as on his ability to earn a living. He was then asked to recuse himself so that the Board could consider everything that had been presented.



- h. After significant deliberation – after which it became clear that the Board was still of the same view of no longer having confidence in Mr Tsotsi – the Board decided that it would engage Mr Tsotsi directly in terms of how it ought to disengage, being cognisant of his request to consider his interests.
- i. Two Board members were nominated to have an offline discussion with Mr Tsotsi – expressing the Board's view and encouraging him to disengage/resign rather than put this matter to a vote. After a lengthy dialogue, Mr Tsotsi addressed the full Board together with his legal representatives and advised the Board that:
- i. He had decided to resign with immediate effect as both Chairman of the Board and as a non-executive director;
 - ii. He wished to be afforded a few days to empty out his office of personal belongings;
 - iii. He wished to be supported with payment for his legal representatives – which was standard practice at Eskom at the time; and
 - iv. He wished to be paid an amount equivalent to 3 months' board fees, taking into account that his tenure would have ended at the AGM.
- j. The Board accepted points i – iii but pointed out that point iv would require consultation with the Minister and her approval. I note that the Minister later declined to pay the amount Mr Tsotsi requested.

THE DENTONS INQUIRY

76. As I alluded to earlier, the process of appointing Dentons and finalising the ToR was handled under the custodianship of the ARC, which was chaired by Ms Mabude. I only became a member of ARC on or about June 2015.



77. The original Draft ToR was sent to the Board by the Company secretary, Mr Phukubje on 14 March 2015, which I also received. I was comfortable that the original intent was covered and therefore did not add anything.
78. The 14 April 2015 meeting of the ARC articulated the process followed in appointing Dentons. As my first ARC meeting was only in June 2015, my only exposure to this meeting was in terms of the minute, a copy of which is annexed hereto marked "VK20".
80. Dentons gave a presentation of its report to the Board on 25 June 2015, wherein issues related to timing, costs and extending the inquiry beyond three months were discussed.
81. Dentons made numerous recommendations in their report relating to various aspects of Eskom, including commercial, generation, group capital, finance, and group security. The Dentons recommendations as well as the ARC table tracking Eskom's progress in addressing each of the recommendations is annexed hereto marked "VK21".
82. To make the process more manageable and to keep an accurate record of events, the recommendations were broken down into their respective group divisions. The Board was then provided with feedback through every ARC meeting.
83. The Board eventually declined to extend the Dentons investigation due to the agreed timeframe of three months expiring. This is consistent with the original decision as distributed on 08 March 2015. Further, the budgetary constraints played a big role in the allotted time being strictly adhered to.
84. I am aware that three reports were issued by Dentons:
- a. The first report was that presented at the June 2015 meeting, and was collected and shredded. This report included allegations against individuals and companies that had not yet been investigated. Eskom was uncomfortable



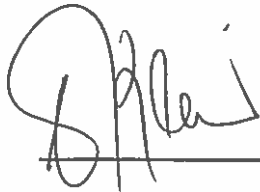
releasing the names of those individuals and companies mentioned in the report that had *not* been investigated by Dentons;

- b. The second report was that of 02 July 2016, that had the names of the above individuals and companies removed. This was a version of the report that the Board felt comfortable releasing to the public; and
- c. The third version of the report was the 02 July 2016 report which was redacted heavily by Suzanne Daniels. At this point in time (early 2017), there was a lot of pressure to release the report. A meeting was therefore held with Ms Daniels to discuss the most effective way to release the approved 02 July 2016 version of the report. This was an informal meeting; hence I do not have any minutes for it, and I recall certain (but not all) Board members attending it. Those I can recall in attendance were Dr Ngubane, Mr Singh, Dr Naidoo, Mr Khoza and myself. It was agreed that the 02 July 2016 version of the report (not the redacted version prepared by Ms Daniels) would be released at a media briefing the day after this meeting. At the end of the meeting Ms Daniels asked to consult with counsel to get an opinion on releasing this version of the report. I did not hear back from Ms Daniels regarding the advice she received from counsel. The next morning at the media briefing, Ms Daniels proceeded to explain to the media that she could only release the redacted version of the report (i.e. the version prepared by her) as per the advice she had received from counsel. This was the first time that I or the other Board members present had become aware that Ms Daniels was releasing her redacted version of the report rather than the 02 July 2016 version of the report. This came as a shock to me and the other Board members.

MATTERS RELATING TO BRIAN MOLEFE

85. Brian Molefe and Anoj Singh were seconded to Eskom by Minister Brown. I welcomed the secondments. I have noted, in great detail, the appointment of Mr Molefe, his resignation, and his pension pay-out in my affidavit to the Hawks. The affidavit I submitted to the Hawks covering these subjects is, annexed hereto marked as "VK22".





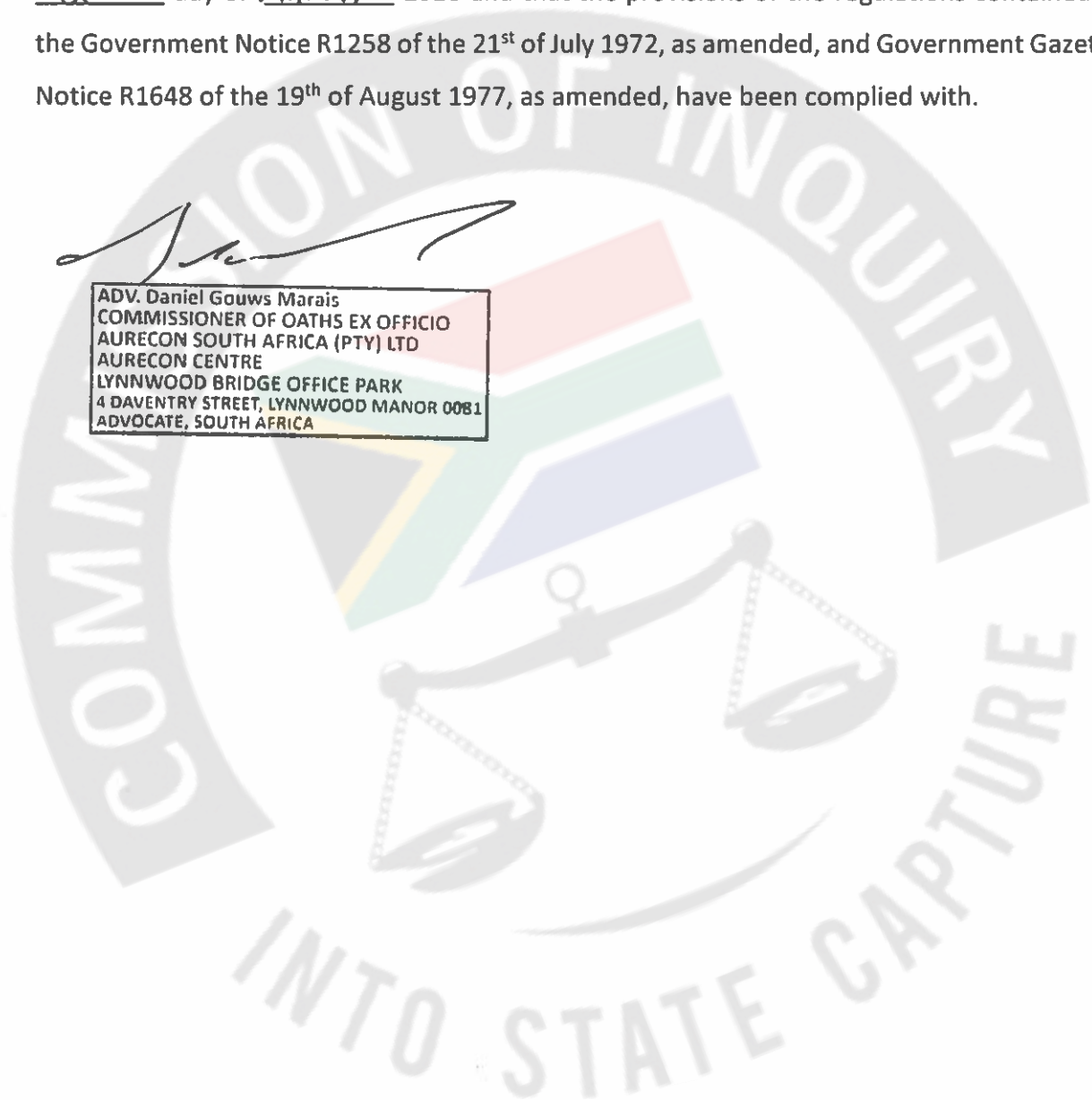
VENETE JARLENE KLEIN

DEPONENT

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposed before me at Pretoria on this the 2 day of March 2020 and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



ADV. Daniel Gouws Marais
COMMISSIONER OF OATHS EX OFFICIO
AURECON SOUTH AFRICA (PTY) LTD
AURECON CENTRE
LYNNWOOD BRIDGE OFFICE PARK
4 DAVENTRY STREET, LYNNWOOD MANOR 0081
ADVOCATE, SOUTH AFRICA



AFFIDAVIT

I, the undersigned

VENETE JARLENE KLEIN

state that,

1.

I am an adult female with identity number 580914 0109 082, residing at 11 Numeral Street, Mooikloof, Pretoria. I am self-employed as the Chief Executive Officer of Klein Inc. Management Consultants and my offices are situated at 517 Mendelssohn Street, Constantia Park, Garsfontein, Pretoria. My telephone number is (012) 993 5856 and cell phone number is 082 412 5759.

2.

On 11 December 2014, I was appointed by the erstwhile Minister of Public Enterprises, Lynne Brown ("the Minister") to serve as a non-executive member on the Eskom Board of directors ("the Board").

3.

In early 2015, I was appointed as Chairperson of the Social Ethics and Sustainability Committee, at which time I also served as a member of the Investment and Finance Committee and the People and Governance ("P&G") Committee. I later became the Chairperson of the P&G Committee and a member of the Audit and Risk Committee. I am not

certain of the exact date of my appointment as Chairperson of the P&G Committee, as during the first few months of the tenure of the new board there were a number of rotations of the Board members within the Board sub-committees.

4.

In or about June 2015, I was replaced as Chairperson of the P&G Committee by Ms Mabude, only to later be reinstated as Chairperson in or about August 2015.

5.

My duties in this position were, broadly speaking, to assist the Board in dealing with the nomination and remuneration of directors and senior executives, human resources strategies and policies and to support the Board in its role as custodian of corporate governance. A more detailed summary of the responsibilities of the members of the P&G Committee is detailed in the terms of reference of the committee dated May 2015, a copy of which is attached hereto as annexure "VK1".

6.

THE APPOINTMENT OF MR MOLEFE AS GROUP CHIEF EXECUTIVE OFFICER

- 6.1 Following Mr Matona's departure, Mr Brian Molefe was seconded to Eskom as Acting Chief Executive Officer on 17 April 2015, for a period of 3 months. Mr Molefe had, prior to this position, been employed as Group Chief Executive Officer at Transnet.



6.2 At the time of Mr Molefe's secondment, Eskom was understandably in an extremely unstable position. In addition to the crisis at executive and Board level, Eskom remained with going concern problems and stage 3 load shedding. During his tenure Mr Molefe successfully addressed the various key challenges faced by the Board viz:

6.2.1 Re-organised the Eskom team in order to address load shedding, which had already reached stage 3;

6.2.2 Addressed the financial challenges facing Eskom, which had been faced with going concern problems;

6.2.3 Dealt with the integrity of data, as most data produced by executives before then had been questionable;

6.2.4 Reduced the time spent and role played by the "war room" in "solutioning" Eskom's problems.

6.3 Bearing in mind that 4 senior executives had been suspended in March 2015, I was particularly relieved and pleased with the manner in which Mr Molefe had brought immediate stability to the organisation and taken control of the business with all the correct results.

6.4 Prior to Mr Molefe's secondment from Transnet, the Board had basically become operational and spent many late nights trying to stabilise the business. As mentioned above, there was a trust deficit between the Board and the executive team, which was largely due to the inability of the executives to get a handle on the issues which plagued

Eskom at the time as well as various allegations of impropriety in conducting their duties. The Board viewed the situation as an exceptional circumstance which necessitated its "hands on" approach to the day to day running of the organisation. Mr Molefe's appointment to the position of acting Group Chief Executive Officer allowed the Board an opportunity to step back into its rightful role of fiduciary oversight.

6.5 Needless to say, the entire Board, including me, was in awe of what Mr Molefe had been able to deliver, especially as he had done so with substantially the same executive team who had previously not known how to turn the load shedding situation around.

6.6 Bearing in mind that the Board had been under severe public and media scrutiny and attack since its appointment in December 2014, the turnaround experienced under Mr Molefe's tenure had been particularly pleasing. In fact, such was his performance that Mr Molefe was nominated for the award of South African of the Year in 2015.

6.7 In his tenure as Acting Group Chief Executive, Mr Molefe assisted the Board with the turnaround of Eskom. Along with the rest of the Board, I was impressed by Mr Molefe's performance and the immediate and significant strides that Eskom made under his leadership. Mr Molefe demonstrated the expertise, urgent resolve and certainty of direction required to set Eskom on the right course.

6.8 On 19 June 2015, Ms Suzanne Daniels sent a letter, a copy of which is attached hereto as annexure "VK2", to the Minister on behalf of Dr Ngubane, in his capacity as then interim Chairperson of the Board, in which he motivated for the appointment of Mr



Molefe as Chief Executive Officer of Eskom. It appears however from correspondence between Dr Ngubane and Ms Daniels, during this time, that Dr Ngubane advised Ms Daniels that the motivation for the appointment of Mr Molefe was premature as he had not yet served 6 months as Acting Chief Executive Officer. He further advised that the correct approach would be to motivate for an extension of Mr Molefe's secondment to Eskom. A copy of the email from Dr Ngubane to Ms Daniels is annexed hereto as annexure "VK3".

6.9 On 23 June 2015, Dr Ngubane, wrote to the Minister and requested her support and endorsement for the extension of the secondment of Mr Molefe as Chief Executive Officer of Eskom for a further period of 3 months, to be negotiated between Eskom and Transnet. A copy of the letter is annexed hereto as annexure "VK4". In his letter, Dr Ngubane also advised the Minister that the P&G Committee had resolved to seek the appointment of Mr Molefe to the position of Group Chief Executive Officer, as soon as possible. He mentioned further that I was tasked with obtaining a legal opinion on the most optimal route to be followed to give effect to the appointment of Mr Molefe.

6.10 This opinion was obtained, from Bowman Gilfillan Attorneys, on 18 June 2015 and accordingly informed the contents of Dr Ngubane's aforementioned letter.

6.11 The P&G Committee decided to obtain this legal opinion as it was cognisant of the fact that its intention to recommend (to the Board, and ultimately, the Minister) the appointment of Mr Molefe without following the ordinary external search process may amount to a deviation from the terms of the MOI. It was therefore agreed that the prudent approach would be to obtain a legal opinion regarding the permissibility of



appointing a Chief Executive Officer without following the usual process of the Board providing the Minister with a shortlist of candidates from which the Minister would appoint the Chief Executive Officer.

6.12 As the Board, we strongly believed that Mr Molefe had done an outstanding job in turning Eskom around and was the ideal candidate to remain at the helm. It made no sense to risk destabilising the business by bringing in a different Chief Executive Officer, especially in circumstances where we had only just begun to stabilise the business. In fact, we considered Mr Molefe's retention as crucial to maintaining Eskom's new formed stability. The legal opinion concluded that Eskom could appoint a Chief Executive Officer without conducting an external search process and that the Board could provide the Minister with a shortlist of one candidate only, who the Minister could then decide to appoint or not.

6.13 In a letter dated 27 June 2015, a copy of which is annexed hereto as annexure "VK5", the Minister responded to Dr Ngubane's letter. In her letter, the Minister agreed, in essence, with the request to extend the period of Mr Molefe's secondment. The Minister also requested that the Board deal expeditiously with the process of appointing a new Chief Executive Officer, in accordance with the MOI, the Labour Relations Act and Eskom's employment policies and procedures. The Minister ended her letter by requesting sight of the full legal opinion and recommendation on the optimal route to follow in the appointment of the Chief Executive Officer.

6.14 The legal opinion was sent by Ms Daniels to Ms Orcillia Ruthnam, the Chief Director: Governance of the Legal and Governance Department at DPE on 13 September 2015



(annexure "VK6"). Ms Ruthnam responded to Ms Daniels on 14 September 2015 (annexure "VK7") and requested clarification regarding whether Eskom's attorneys had considered the "Guidelines for the appointment of a Chief Executive for a State Owned Enterprise" ("Guidelines") which Guidelines were also attached to the email from Ms Ruthnam. We then forwarded the Guidelines to Eskom's attorneys for a supplementary opinion on whether the proposed process for appointing Mr Molefe as Chief Executive Officer remains competent in view of the guidelines.

6.15 The supplementary opinion was received on 15 September 2015 and forwarded to Ms Ruthnam at DPE on 16 September 2015. A copy of the email to Ms Ruthnam is annexed hereto as annexure "VK8". In brief, the supplementary opinion acknowledged that the Board is actually required to make recommendations to the Minister on the top 3 candidates in order of priority, and that any proposed deviation from that requirement required the Board to notify the Minister in writing and to provide reasons for the deviation.

6.16 In accordance with the legal advice received, I subsequently submitted a notification of Eskom's departure from the application of the Guidelines in the appointment of its Chief Executive Officer, by way of a letter to the Minister, which I understand was sent to her office by Ms Daniels on 16 September 2015 (the signed version following on 23 September 2015). A copy of the email is annexed hereto as annexure "VK9". The Minister did not object to the aforementioned departure.

6.17 On 9 September 2015, the P&G Committee met to discuss the issue of vacancies in the executive team. The meeting resolved that it was important to first address the



vacancies in the office of the Chief Executive Officer and Chief Financial Officer and that approval in this regard must be sought from the Board. A copy of the P&G Committee resolution dated 9 September 2015 is annexed hereto as "VK10".

6.18 On 10 September 2015, the Board resolved that the P&G committee should submit a recommendation to the Minister around the appointment of a Group Chief Executive Officer. A copy of the Board resolution dated 10 September 2015 is annexed hereto as annexure "VK11".

6.19 Pursuant to the aforementioned Board resolution, on 11 September 2015 Dr Ngubane, addressed a letter to the Minister in which he advised the Minister of the Board's resolution to propose permanently appointing Mr Molefe as Group Chief Executive Officer. Attached to the letter was a draft employment contract, for the Minister's consideration and approval. A copy of the letter is annexed hereto as annexure "VK12".

6.20 We were confident that Mr Molefe was the right man to drive Eskom towards a successful future, given the turnaround already experience in a short space of time. Permanently appointing Mr Molefe was also identified as offering Eskom the leadership stability that had been so sorely lacking before then (it should be remembered that Eskom had appointed 7 different Group Chief Executive Officers in the prior 6 year period).

6.21 On 2 October 2015, the Minister approved the appointment of Mr Molefe as Group Chief Executive Officer. In this regard the Minister addressed a letter to Dr Ngubane, on which I was copied, enclosing copies of the letters she had addressed to Mr Molefe and Mr Singh. A copy of these letters is attached hereto as annexure "VK13". These letters

confirmed Mr Molefe's and Mr Singh's appointments as Group Chief Executive Officer and Chief Financial Officer, respectively. Furthermore, the letters indicated that their appointments would be effective as at 1 October 2015. No indication of the terms of the respective appointments was made in the letters.

6.22 On 9 October 2015, I received an email from Ms Daniels drawing my attention to email correspondence between herself and Ms Ruthnam (annexure "VK14"), in which:

6.22.1 Ms Ruthnam suggested that the Minister had approved a 5 year contract for Mr Molefe;

6.22.2 Ms Daniels had asked Ms Ruthnam to check this since the Minister's letter approving Mr Molefe's appointment had not specified a 5 year contract and all of Eskom's previous Eskom's previous Group Chief Executive Officers were permanent appointments;

6.22.3 Ms Ruthnam advised that the 5 year term was a cabinet requirement but that she would revert as to whether the Minister must write back to the Board on the matter.

6.22.4 I received no further correspondence in this regard and believed the issue had been resolved.

6.23 On 16 October 2015, Dr Ngubane addressed a letter to the Minister regarding the proposed terms of Mr Molefe's appointment and remuneration. A copy of the letter is annexed hereto as annexure "VK15". The contents of this letter were informed by




various inputs received by the P&G Committee from Mercer, PE Corporate & Deloitte on chief executive remuneration packages.

6.24 The Board was officially advised in November 2015 that Cabinet had approved the terms of Mr Molefe's appointment for a period of 5 years, but by that time Mr Molefe had already signed a contract permanently appointing him to the position of Group Chief Executive Officer. I understand that Dr Ngubane had presented a permanent contract of employment (and not one for a 5 year term) to Mr Molefe on 9 November 2015, and that Mr Molefe had signed it on 11 November 2015. A copy of the contract signed by Mr Molefe is annexed hereto as annexure "VK16".

6.25 On 9 November 2015 (after Mr Molefe had signed his permanent contract of employment), I received an email from Ms Daniels enclosing a draft offer of employment letter, dated 13 October 2015. The letter specified that Mr Molefe would enter into a fixed term employment contract with Eskom, however, the term of the contract was not specified. A copy of the email and draft contract is annexed hereto as annexure "VK17".

6.26 I now understand that the Minister addressed a response to Dr Ngubane's letter dated 1 November 2015 (I am not sure on what date the letter was received by Dr Ngubane), in which she approved the proposed remuneration but confirmed that she required the term of employment to be specified as 5 years. I did not have sight of the Minister's response at the time that it was received and was only informed after Mr Molefe had already signed the permanent contract that the Minister still insisted on a 5 year contract.



6.27 The Board was faced with the challenge of having to change the signed permanent contract to a 5 year fixed term contract in accordance with the Minister's instruction.

6.28 Until that point (i.e. of learning that the Minister and Cabinet remained insistent that Mr Molefe be appointed for a fixed term of 5 years) my understanding was that the contract had been approved as permanent, as per the Board's request and as informed by all previous Chief Executive Officer appointments. As a Board we relied heavily on guidance received from Mr Anton Minnaar, the Executive Remuneration Officer, regarding the standard terms of employment of Eskom Group Chief Executive Officers (Mr Minnaar had presented to the Board prior to Mr Molefe's permanent appointment the explanation that all previous Group Chief Executive Officers had permanent contracts of employment). We placed confidence in Mr Minnaar's guidance as he had been involved in the appointment of 7 previous Chief Executive Officer's in the preceding 6 year period.

6.29 Mr Molefe was thereafter advised of the Minister's direction. I understand that Dr Ngubane had engaged with Mr Molefe in this regard, and that Mr Molefe had been quite concerned at the change that was required to be made to the terms of his appointment. The Board was advised by Dr Ngubane that Mr Molefe was willing to accept a 5 year contract, however, he had some concerns regarding the perceived pension benefit which he had understood would emanate from his permanent employment at Eskom.

6.30 Dr Ngubane and I, having considered the impact of losing Mr Molefe, if a resolution on the terms of his appointment could not be reached, engaged Mr Minnaar for advice as to how the contracts of previous Chief Executive Officers were dealt with in the past and what benefits would Mr Molefe be losing in the case of a 5 year contract, as opposed to permanent contracts of employment. Mr Minnaar explained that all previous Chief Executive Officers at Eskom had been on a permanent contract and that Mr Molefe would not be able to accumulate an equivalent pension benefit during his service at Eskom. In light of this, we agreed that an arrangement could be put in place to ensure that he is not adversely affected in respect of his pension benefits.

6.31 Mr Minnaar assisted the Chairman in drafting and dispatching a letter to the Minister on 25 November 2015 to recommend that a retirement arrangement be reached with Mr Molefe in order to allay his concerns regarding his pension and to lock him in for the benefit of Eskom. The arrangement proposed by Dr Ngubane in this regard was as follows:

6.31.1 Regardless of Mr Molefe's age after the 5 year termination date, he would be allowed to retire from Eskom's service on the basis that he is aged 63.

6.31.2 The penalties prescribed by the Eskom Pension and Provident Fund ("EPPF") for retirement prior to age 63 will be waived (i.e. not paid by Mr Molefe).

6.31.3 That Eskom carries the cost of such penalties (to be paid over to the EPPF).



6.31.4 In the event that Mr Molefe's contract is not extended beyond the 5 year termination date, he will not be allowed to subscribe to any other State Owned Companies or government pension fund.

6.31.5 Should the contract be extended, however, it is important to note that the cost of any subsequent penalties (actuarial value) will decrease proportionately.

A copy of the aforementioned letter is annexed hereto as annexure "VK18".

6.32 The effect of the retirement arrangement would be to place Mr Molefe in the same position that he would have been in had he retired from Eskom at the age of 63. The Board supported the arrangement as it was critical to securing Mr Molefe's long-term retention at Eskom. It was, at all times my understanding and what I understood as the intention of the Board, that Mr Molefe would only qualify for this benefit after serving an initial 5 year period.

6.33 The terms of the arrangement were communicated to the Minister for her noting in a letter from Dr Ngubane on 25 November, in accordance with advice received from both Legal and Executive support. I was not aware, at the time, that the Board's proposal to the Minister, with regard to Mr Molefe's retirement arrangement had not received feedback from the Minister. I accepted that the P&G Committee had the right to recommend the resolution to the Board.

6.34 The P & G Committee met on 9 February 2016 to deliberate on the conclusion of the contract with Mr Molefe, including the aforementioned issue relating to his pension

benefits. In order to better understand the distinction between appointing Mr Molefe on a fixed term versus permanent basis, and the options available to the Board for addressing Mr Molefe's concerns over the impact of a fixed term contract on his ability to grow an adequate pension benefit, the Board sought input and guidance from Mr Minnaar (in his capacity as Executive Remuneration Officer). Mr Minnaar explained to the P&G Committee at the meeting that as a result of Mr Molefe's short term contracts in the numerous public entities in which he had served at executive level, Mr Molefe had been deprived of the opportunity to grow a pension benefit in a single fund.

6.35 At the meeting of 9 February 2016, it was resolved that:

"7.5.1 the current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable;

7.5.2 in cases where an Executive Director (appointed on a fixed term contract) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

- i. bridge the gap to make up for the 10 years;*
- ii. waive penalties applicable to early retirement; and*
- iii. refund EPPF actual cost for additional service added, plus penalties applicable to early retirement."*

7.5.3 a proposal in respect of the Chief Financial Officer to be considered and submitted to the Committee in due course."

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A copy of the minutes of minutes of the P & G meeting held on 9 February 2016 are annexed hereto as annexure "VK19".

6.36 What the minute of the P&G Committee meeting of 9 February 2016 neglected to record, was the intention of the P&G Committee that the arrangement must be structured in such a way that the benefit would only accrue to Mr Molefe upon completion of his 5 year term, and that Mr Molefe would not be able to participate in any other government pension fund after qualifying as per the resolution. These intentions were clearly recorded in the letter to the Minister dated 25 November 2015 and are clear from the audio recording of the meeting.

6.37 The resolution of the P&G Committee meeting of 9 February 2016 was approved by the Board on 19 April 2016. A copy of the Board resolution is annexed hereto as annexure "VK20".

6.38 On 7 March 2016, Mr Molefe signed a second contract of employment for a fixed five year term, with effect from 1 October 2015 and terminating on 30 September 2020. A copy of the contract is annexed hereto as annexure "VK21".

MR MOLEFE'S EARLY RETIREMENT

7.1 Shortly after the release by the Public Protector of her report Mr Molefe enquired from me whether he qualified for the pension pay out benefit. I was not sure as I was



NA

of the view that the resolution only kicked in after he had served a period of 5 years or beyond. I therefore asked Mr Minnaar, who confirmed that Mr Molefe did indeed qualify. I was surprised by this, as I was of the understanding that Mr Molefe needed to serve out at least the 5 year term of his initial appointment in order to qualify for this benefit. I accepted that this would be debated by the Board, which I believed would still have the final say on the matter

7.2 At a special board meeting on 7 November 2016, the Board asked Mr Molefe about the allegations in the State of Capture report. Minutes of the Board meeting are annexed hereto as annexure "VK22". Mr Molefe shared with the board his side of the story and the impact it had on his family. After that meeting, Mr Molefe mentioned to me that he would be sending his letter that night. That did not happen.

7.3 During a press conference on 11 November 2016, Mr Molefe indicated that he had decided to leave his employ at Eskom. Mr Molefe indicated, in a press statement, that his decision to step down was motivated by the reputational risk to Eskom as a result of the findings made by the Public Protector in her report of 2 November 2016. A copy of Mr Molefe's statement is annexed hereto as annexure "VK23".

7.4 On 11 November 2016, Mr Molefe submitted a letter seeking approval for early retirement in terms of the Eskom Pension Fund rules read in conjunction with the resolution of the P&G Committee, dated 9 February 2016. This letter was not presented to me as chairperson of the P&G Committee, and was apparently only sent to Dr Ngubane (as chairman of the Board) and the Minister. A copy of the letter is annexed hereto as annexure "VK24".



7.5 On 11 November 2016 Eskom issued its own press release in which it confirmed Mr Molefe's decision to step down. A copy of the Eskom press release is annexed hereto as annexure "VK25".

7.6 On 21 November 2016 the P&G Committee met to deliberate on various issues, including the State Capture Report and Mr Molefe's decision to step down. I made it clear at the commencement of the meeting that the meeting was not quorate and, therefore, that no decisions could be taken at the meeting. This is reflected in the recording minutes of the meeting. A copy of the minutes of the P & G meeting are annexed hereto as annexure "VK26".

7.7 This is when I first became aware of the contents of Mr Molefe's letter of 11 November 2016 (i.e. in terms of which he sought approval for early retirement). The Committee was advised by Mr Minnaar that Mr Molefe was entitled to receive his pension benefit pursuant to his early retirement. Mr Minnaar read to the meeting an extract from a letter he had prepared for Dr Ngubane to send to Mr Molefe, confirming the acceptance of his request for early retirement.

7.8 As the meeting was not quorate, the approval of Mr Molefe's pension benefit was only supported in principle by the P&G Committee. It was understood by me, and I believe the other members of the P&G Committee that were present, that:

7.8.1 the matter would be deliberated upon and a decision would be taken at a P&G Committee meeting with a quorum;



7.8.2 the decision would then be placed before the Board as a recommendation for approval. All decisions relating to the Group Chief Executive taken by the P&G Committee were subject to Board approval in terms of Eskom's Delegation of Authority;

7.8.3 the issue relating to the non-fulfilment of the 5 year tenure would also be deliberated upon and decided at the Board meeting;

7.8.4 only once approved by the Board would a letter be sent to Mr Molefe confirming the acceptance, or otherwise, of his request for early retirement.

7.9 Further to the above, I have now been advised that as the decision related to the removal of the Group Chief Executive Officer, the matter required the Minister's approval as per Eskom's Memorandum of Incorporation, adopted on 1 July 2016. A copy of the Memorandum of Incorporation is annexed hereto as annexure "VK27".

7.10 On 24 November 2016, and without having sought approval from either the P&G Committee, the Board or the Minister, Dr Ngubane addressed a letter to Mr Molefe communicating Eskom's acceptance of Mr Molefe's request for early retirement. A copy of the letter is annexed hereto as annexure "VK28". Upon being made aware of this letter, I asked the Company Secretary, Ms Daniels, who had approved the acceptance communicated by Dr Ngubane. In response she advised that the decision to accept Mr Molefe's early retirement did not require Board approval (and had ostensibly been approved by Dr Ngubane on his own). This is contrary to what we were



advised at the P&G committee meeting on 21 November 2016. Dr Ngubane claims to have been told by Mr Minnaar that the P&G Committee had approved the letter, which it clearly had not.

7.11 I understand that Mr Minnaar called for actuarial values of the amount to be paid out to Mr Molefe if he qualified for early retirement. I also recall Mr Minnaar mentioning the financial implications of Mr Molefe's early retirement to me at some point, however, this was done in passing and did not amount to a fully-fledged discussion with respect to the amounts involved nor was this communicated to me in formal correspondence.

7.12 My understanding is that Mr Molefe chose to receive 30% of the pension benefit as a lump sum payment and that the remainder is to be paid out to him as a monthly pension of R100 000 per month.

8

REINSTATEMENT OF MR MOLEFE


8.1 The following Wednesday, 19 April 2017, we were summoned to the Minister's office to discuss Mr Molefe's pension payout. At the meeting, the Minister enquired as to why Mr Molefe had qualified for the pension payout, considering that he was on a 5 year contract. In response to the Minister's query, we explained that this was the first time that any Eskom Group Chief Executive Officer was on a fixed term contract and that the Board was in quandary when advised (after signing the permanent contract on 11 November 2015) that there ought to have been a term attached to Mr Molefe's

contract. We further explained that Mr Molefe had some concerns regarding the perceived loss of the pension benefit which he understood would have emanated from his permanent employment at Eskom, which is what led to us recommending a solution to the Minister in Mr Ngubane's letter dated 25 November 2015. It was only at this point (at the meeting with the Minister on 19 April 2017) that I became aware that our recommendation was never accepted by the Minister. A copy of an unsigned and undated letter from Dr Ngubane to the Minister with the subject "*Rationale behind the retirement of Mr Brian Molefe*" is annexed hereto as annexure "VK29".

8.2 The Minister expressed her dissatisfaction with the early retirement arrangement reached with Mr Molefe and instructed the Board to engage with Mr Molefe with the view to renegotiate the terms of his early retirement. At that meeting the Minister advised that her team had given input in response to the Board's recommendation of 25 November 2015 and that the Director General had given the DPE's feedback to Eskom's Chief Financial Officer, Mr Singh. Whatever the discussions were, the outcome was never communicated back to the Board.

8.3 The Board had also been advised by Ms Daniels that we did not require the Minister's approval in respect of the acceptance of Mr Molefe's retirement.

8.4 Neither I nor the Board had received any feedback from Mr Singh as articulated by the Director General of the DPE to suggest that our recommendation was not supported.



8.5 At that meeting it became clear that there were quite a few issues where I had been led to be of one view – on account of feedback from either Mr Minnaar, Ms Daniels or the Chairman - and the DPE was of another, viz:

8.5.1 the Fixed term contract of the Chief Executive Officer versus the full-term contract, given that this was the first time that Eskom had adopted a fixed term contract in respect of the Chief Executive Officer.

8.5.2 the request of the change of Eskom policy in order to secure Mr Molefe's appointment on a 5 year contract and the DPE's handling of this matter.

8.5.3 the question of whether Mr Molefe qualified to be a member of the EPPF notwithstanding the fact that he was only on a 5 year fixed term contract (I believed that he did, whereas the DPE contends that he never).

8.6 I was surprised by the events of the day as my colleagues and I had been led to believe that we had acted within the rules of the EPPF and that the transaction had met all the governance protocols as confirmed by Ms Daniels, who was both the Company Secretary, and the Head of Legal at the time.

8.7 The main point of contention was that we were operating under the previous Memorandum of Incorporation ("MOI"), in terms of which the Minister was not required to sign off on the exit of the Chief Executive Officer. Also, according to Ms Daniels, the resolution of the P&G Committee adopted on 9 February 2016 stood. According to her, this had the effect that Dr Ngubane did not require approval from the Board to affect the signing of the application for early retirement by Mr Molefe.



This, coupled with the feedback from the EPPF to the effect that Mr Molefe qualified for early retirement in terms of the EPPF rules, gave me comfort that we had acted completely within the rules and the mandate of the Board. It therefore came as a surprise to me to learn that the pension arrangement didn't carry the Minister's blessing.

8.8 The Minister gave the Board 7 days to renegotiate with Mr Molefe, as she advised that she simply could not support a payout of R30 million. To my mind, the money had not yet been paid over, so looking for an alternative solution was workable.

8.9 As we were under pressure for time, Ms Daniels and I were mandated to go and meet with Mr Molefe to explain the Minister's position on the matter. At that meeting on the evening of 19 April 2017 we explored all the possible ways in order to resolve the impasse, and the following alternatives emerged:

8.9.1 Mr Molefe abandoning the pension benefit;

8.9.2 Agreeing on a more acceptable benefit;

8.9.3 Mr Molefe returning to Eskom.

8.10 It has to be noted that Ms Daniels and I did not have the requisite mandate to agree on anything with Mr Molefe; we were merely engaging with him in order to explore possible resolutions – which still required Board approval.



8.11 At this meeting with Mr Molefe we learnt that 30% of the pension benefit had already been paid over in January 2017, and that Mr Molefe has been receiving monthly pension payments of *circa* R100 000 since then.

8.12 Early the next morning (i.e. on 20 April 2017)) Mr Molefe called me and explained that he had been thinking about how best to resolve the matter, and that if he agrees to forego all retirement benefits he would effectively still be in the employ of Eskom. I shared the information conveyed in the call with both the Company Secretary and the Chairman, Dr Ngubane.

8.13 Dr Ngubane and I met with Mr Molefe that Friday morning (i.e. on 21 April 2017) in order to look at workable solutions to what had by now become a matter of immense public interest. Nothing came of the meeting, as it remained unclear how best to address the impasse.

8.14 That next Sunday (i.e. 23 April 2017)), before any of our discussions had been properly explored, the Minister publicly expressed her view that the Board had acted improperly in the award of the R30 million pension benefit and that she had instructed the Board as articulated above. This created additional pressure as I, for one, was hopeful that we could resolve the matter amicably – albeit that this would be very difficult to achieve at that time.

8.15 On 24 April 2017, the Board met to discuss the events as published in the media as well as the Minister's concerns in the meeting of 19 April 2017. The Board was also

updated on the discussions with Mr Molefe on 19 April and 21 April 2017. The meeting was attended by Mr Adiel Patel of Cliffe Dekker Hofmeyer attorneys. Mr Patel explained to the Board that the EPPF Board had the option to decline the request by Mr Molefe in respect of his early retirement. The minute of this Board meeting is annexed hereto as annexure "VK30".

8.16 At the meeting of 24 April 2017 Ms Daniels further advised that the Minister's approval for the pay out of retirement benefits was not required. I also confirmed with Mr Patel whether the proper decision making process had been followed. He confirmed that it was his view that the required decision making process had been followed.

8.17 At this meeting I raised the following points:

8.17.1 The pension arrangement only arose as a result of the introduction of a fixed term contract of 5 years. It was initially the intention of the Board to provide Mr Molefe with a permanent contract as was the case with the previous Chief Executive Officers;

8.17.2 Mr Molefe had advised previously that he wanted to retire from Eskom as he had been on various 5 year assignments and that was the biggest attraction to him and the reason that he agreed to be seconded from Transnet to Eskom.


8.18 The Board met on Tuesday, 2 May 2017 in order to look at the various options at its disposal, at which point we also considered the upshot of the legal opinion received from senior counsel on 28 April 2017. Ms Daniels prepared a summary of the legal

opinion, which she submitted to the Board for consideration at its meeting of 2 May 2017. We were informed that senior counsel's advice was that Mr Molefe's return was the most plausible resolution to the dilemma faced by the Board.

8.19 On 2 May 2017, the Board took the view that, subject to confirmation by another Senior Counsel, should Mr Molefe be amenable to returning to Eskom and if it was plausible (given that he was by now a Member of Parliament), his return to Eskom could solve more than just the issue of the R30 million. A copy of the minutes of the Board meeting held on 2 May 2017 is annexed hereto as annexure "VK31".

8.20 Eskom had by that time engaged a Search Firm, Woodburn Mann, and had agreed on a shortlist for the appointment of the next Group Chief Executive Officer. We were also faced with extreme media challenges regarding the acting Group Chief Executive Officer (i.e. Mr Koko) regarding contracts awarded to a company in which his step-daughter had a substantial interest (Impulse International (Pty) Ltd) being investigated at the time.

8.21 On 2 May 2017, the Board resolved that the best of the options presented by senior counsel was to rescind the decision to accept Mr Molefe's early retirement and to reinstate Mr Molefe. A decision was accordingly taken to rescind the acceptance of Mr Molefe's early retirement. The Board understood this to be entirely lawful and acceptable based on the opinion received from senior counsel.



8.22 At the meeting the Board again considered that it had acted within the rules of the EPPF and Eskom's MOI, and agreed that its decisions and actions had been reasonable and rational considering all the factors and dynamics at the time of the request for early retirement as well as when it was trying to conclude the contract of employment with Mr Molefe in February 2016.

8.23 I appreciate now that the mere rescission (if that is legally possible) of the acceptance of Mr Molefe's application for early retirement does not necessarily automatically mean that he ought to have been reinstated to the position of Group Chief Executive Officer. I say so as Mr Molefe's public statements were to the effect that he would be stepping down, and not that he would only do so if his application for early retirement was approved. Therefore, even if the acceptance of Mr Molefe's application for early retirement was rescinded, I now understand that it shouldn't necessarily follow that he should be reinstated to the position of Group Chief Executive Officer, as the position remained that he had *de facto* stepped down from that position. The Board, however, was never advised of this. On the contrary, the Board was advised that this was entirely lawful and acceptable. The Board was also not advised whether Mr Molefe's reinstatement required the approval of the Minister, which I now understand that it did.

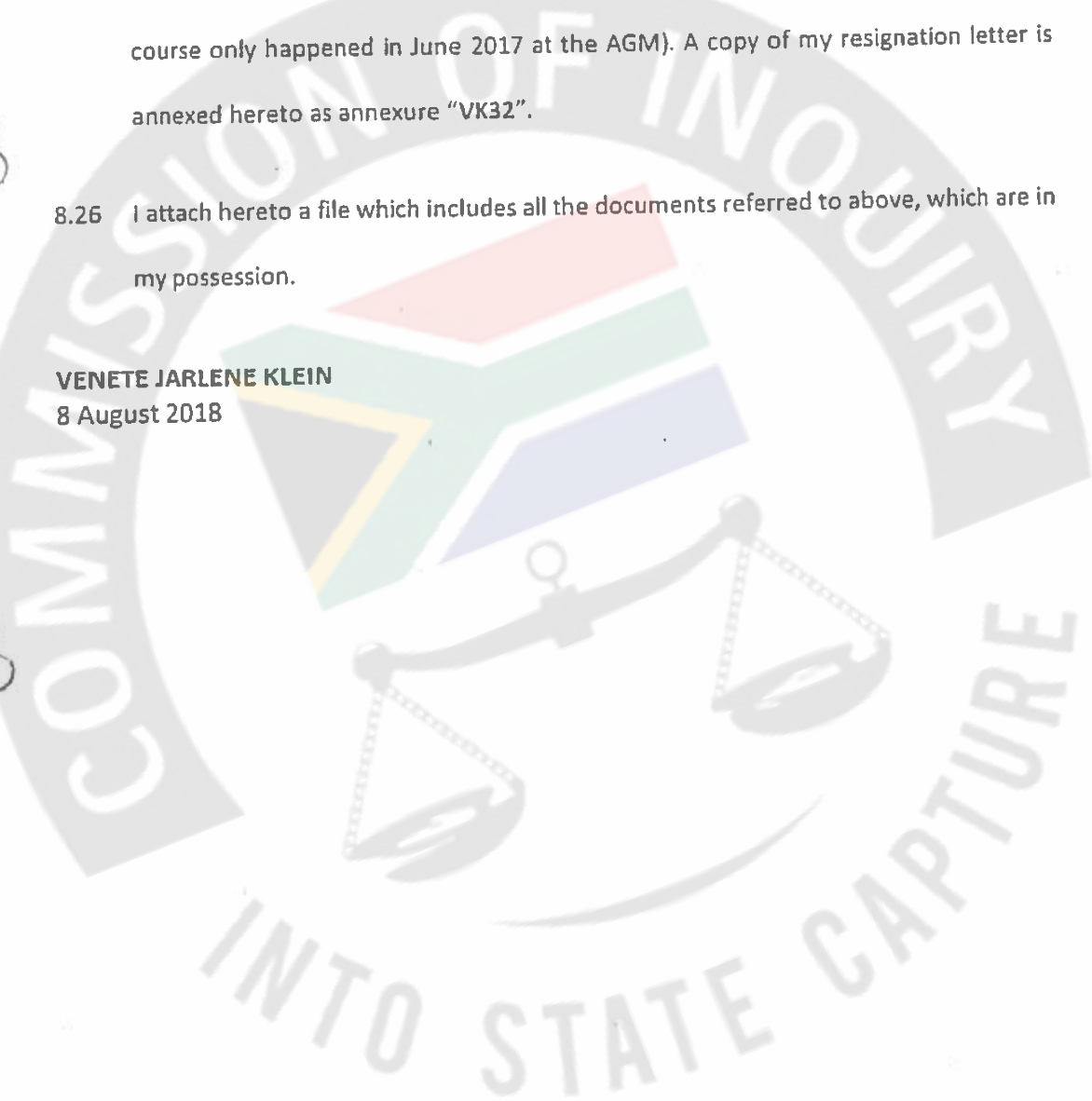
8.24 I was not privy to the negotiations around Mr Molefe's reinstatement. In this regard, the Chairman and Company Secretary attended a range of meetings with different stakeholders.



8.25 To my mind, we were solving quite a few problems with Mr Molefe's return. I could not have imagined the outrage of "SA Inc" on this decision. Having viewed the impact of this when Mr Molefe's return was announced on 12 May 2017, I decided immediately to affect my resignation (which I had first tendered on 7 June 2016 and later postponed until October 2016 at the request of the Minister, as she needed support for the Eskom board until she appointed additional members – which of course only happened in June 2017 at the AGM). A copy of my resignation letter is annexed hereto as annexure "VK32".

8.26 I attach hereto a file which includes all the documents referred to above, which are in my possession.

VENETE JARLENE KLEIN
8 August 2018



Handwritten signature and initials in the bottom right corner of the page.

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF
STATE**

AFFIDAVIT

I, the undersigned,

BALDWIN SIPHO NGUBANE

do hereby state under oath that:

1. Introduction

- 1.1. I am an adult male South African citizen currently retired and self - employed.
- 1.2. The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.

2. Qualifications

- 2.1. My qualifications include a Bachelor of Medicine and Bachelor of

*Bug D -
Baldwin Ngubane*

Surgery (MBChB) (Natal); MPRAX Med (Master of Family Medicine) (Natal); DTM&H & DPH (Diploma in Tropical Medicine & Hygiene and Diploma in Public Health) (Wits) Dip. Economic Principles (London).

2.2. I have been approached by investigators associated with the Commission of Inquiry into Allegations of State Capture, Fraud and Corruption in the Public Sector and certain Organs of State ("**the Commission**") and have been requested to provide a statement which details matters relating to my tenure as member and chairman of the board of directors ("**the Board**") of Eskom Holdings SOC Limited ("**Eskom**").

2.3. I have agreed to provide this statement as well as evidence to the Commission freely and voluntarily.

3. **Appointment to the Eskom Board**

3.1. I was appointed to the Board of Eskom during December 2014 following a nomination process initiated by the Minister of Public Enterprises ("**the Minister**"). Ms Lynne Brown ("**Ms Brown**") was the Minister at that time.

3.2. I had not known Minister Brown prior to my appointment to the Board

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of Eskom. I was notified of my appointment by letter from Minister Brown.

3.3. I was initially an ordinary member of the Board but following the resignation of Mr Zola Tsotsi ("**Mr Tsotsi**") as Chairman, I was appointed acting Chairman from 30 March 2015 until October 2015 when I was appointed Chairman. I have previously stated in my statement to Parliament that I was appointed acting Chairman with effect from 15 March 2015. That was incorrect.

3.4. I acted as Chairman of the Board Tender Committee ("**BTC**") meeting held on 28 February 2015. This was an *ad hoc* appointment. I was asked by Mr Tsotsi to chair that meeting.

3.5. I served as Chairman of the Board until June 2017, when I resigned of my own volition.

3.6. I do not have copies of the letters appointing me as acting Chairman and later as Chairman nor my resignation letter from the Board.

4. **The suspension of the four Eskom executives**

4.1. I was not Chairman of the Board at the time of suspension of the four



executives, namely, the Group Chief Executive Officer, Mr Tsediso Matona ("**Mr Matona**"), Group Executive, Commercial and Technology, Mr Matshela Koko ("**Mr Koko**"), Group Executive Group Capital, Mr Dan Marokane ("**Mr Marokane**") and the Finance Director, Ms Tsholofelo Molefe ("**Ms Molefe**").

4.2. I shall henceforth refer to Mr Matona, Mr Koko, Mr Marokane and Ms Molefe collectively as "**the four executives**".

4.3. The suspension of the four executives came up for discussion at a board meeting which took place on or about 9 March 2015. This meeting was preceded by another, where the Board discussed, amongst others, the Minister's strategic statement of intent and other matters. I believe this may have been the board induction meeting. I do not recall the date of this meeting nor the Minister's role in it, but I recall it was the very first board meeting since our appointment.

4.4. Mr Tsotsi, convened a special board meeting on or about 9 March 2015. Minutes of this meeting are annexed hereto marked "**BSN1**". Mr Tsotsi apologised for failing to give the Board the usual notice of meeting of at least seven days before the meeting. The reason, as his resolution states, was that "*there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors*". This

meeting focused entirely on the proposed suspension of the four executives and the establishment of an inquiry into Eskom's affairs. Mr Tsotsi was asking the Board to resolve that an external independent inquiry be set up to investigate and determine the facts relating to the then current technical, commercial and structural status and any acts and/or omissions that have contributed to the deficiency of generating and distribution capacity of Eskom.

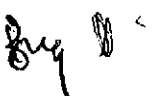
4.5. During this meeting, Mr Tsotsi reported that he had met with President Jacob Zuma at his house in Durban, who had instructed him to procure from the Board a resolution approving the establishment of an internal independent inquiry into Eskom's affairs and the suspension of the four executives. I was not part of the meeting with President Zuma and do not know who else attended the meeting.

4.6. In terms of Mr Tsotsi's proposal, the Board was to set up a subcommittee comprising Mr Tsotsi, Ms Chwayita Mabude, Chairperson of the Eskom Audit and Risk Committee (the "ARC") and Mr Zethembe Khoza ("Mr Khoza"), Chairman of the Eskom People and Governance Committee ("P&G Committee"), mandated with delegated authority of the Board to determine the terms of reference of the inquiry. The subcommittee would have the Board's delegated authority to take all such steps and measures to ensure the unfettered

fulfilment of this mandate. Also, that the Board authorised the Chairman, in consultation with the Minister and the Minister of Finance to approve expenditure sufficient to fund the inquiry. And that this inquiry shall be required to present its final report to the Board, the Minister and the Presidency by no later than the 30th June 2015. That the subcommittee would have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary, given the urgency to complete the investigation within three months and to appoint such persons or entities to conduct the inquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have an effect on the inquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations.

4.7. A Board member stated that he was not comfortable with making major decisions based only on a two-page document and there had been no opportunity to discuss the issue in an in-committee session. He was also against approving a resolution allowing for deviation from Eskom's Procurement Policies and Procedures.

4.8. The Chairman reported that an independent resource had been identified already by the Presidency. He reported further that the Presidency had done all the legal and governance work to facilitate the



resolution on deviation from procurement policies and procedures.

4.9. I recall a Board member expressed the view that the Board was being asked to approve the implementation of a subcommittee with wide-ranging powers and he felt that he could not agree with the request.

4.10. When Mr Tsotsi said the four executives had to be suspended, the Board differed with him because he did not give the Board cogent reasons as to why they ought to be suspended. The Board intimated to him that the reasons he was giving for their suspension were defamatory, and unsubstantiated. The Board did not support the proposed suspensions.

4.11. Mr Tsotsi reported that the Presidency had expressed a concern that the impact of Eskom on power shortages in the country had been understated and therefore required the Board to ensure that it received accurate information from management about those matters. He reported that the Presidency required that the inquiry be unfettered by management, the Board and other policy stakeholders and that it must be seen to be credible and objective and have a mandate that would be penetrating and unhindered.

4.12. The Board suggested that the four executives take special leave while

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the concerns Mr Tsotsi had raised were being investigated. Nonetheless, Mr Neo Tsolanku ("**Mr Tsolanku**") from Legal Department at Eskom, whom Mr Tsotsi had brought with to the meeting, advised that special leave only applied in special cases, not for investigation purposes.

4.13. At this time, all of us, except for Mr Tsotsi and Ms Mabude, were newly appointed to the Board. We were therefore taken by surprise that we had to deal with an issue of such magnitude so early in our tenure.

4.14. The meeting was uneasy and tense. Members suggested that the Minister be invited to meet with the Board to explain the decisions that were required by government and the basis thereof, before the Board could consider the proposed resolutions further.

4.15. The Board specifically needed to obtain clarity from the Minister regarding the following –

4.15.1. the reasons for the establishment of the inquiry, its terms of reference and the basis of the suspension of the four executives whilst the enquiry was underway;

4.15.2. the proposal of the appointment of Mr Nick Linnell ("**Mr**

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Linnell") to conduct the inquiry. Mr Tsotsi indicated that President Zuma required Mr Linnell to undertake the inquiry;

4.15.3. the role of the Board whilst the inquiry was underway, specifically whether the Board would be expected to continue with its normal duties during this time; and

4.15.4. the role that the Board would play in relation to the activities of the war room that had been set up to manage the power supply challenges that were facing Eskom. The Board was appraised of the War Room and its activities by the Minister when she came to speak to the Board on 11 March 2015. During this time, the Board was not involved in the activities of the War Room. The Eskom executives were responsible for the management of the affairs of the War Room. This was a matter of concern to the Board.

4.16. The meeting adjourned to allow the Minister to address the Board on these matters. The Minister came to address the Board on 11 March 2015. Minutes of this meeting are annexed hereto marked "BSN2".

4.17. Although the Minister did not direct the Board to suspend the four executives, she raised concerns of her own against them. The concerns related to the War Room, which she suggested complained it was not receiving consistent information from management and therefore it could not develop strategies to turn around Eskom and stop load shedding. The Minister felt that the presence of the four executives might hinder the investigation.

4.18. After meeting with the Minister, it was clear to the Board that government, as shareholder of Eskom, required the inquiry to proceed and that the four executives had to "*step aside*" whilst the enquiry was underway.

4.19. The board meeting proceeded after the Minister's address. During the meeting, the Chairman provided names of persons whom he suggested the Minister had approved would act in the positions of the four executives once they are suspended. These were Mr Khoza, a member of the Board, who was suggested as acting Group Chief Executive Officer ("**GCEO**") and three others whom I cannot recall. The acrimony and mistrust that prevailed at the meeting between Mr Tsotsi and the Board was so much that because I was the eldest on the Board, I was mandated to call the Minister to inquire on the veracity of the Chairman's representations regarding the Minister's approval for the

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appointment of those persons to act in the positions that would be vacated by the four executives whilst the investigation proceeds. Minister Brown stated that she had not given any instructions as to who should fill the positions vacated by the four executives. She indicated that she would only need to be consulted by the Board in relation to the filling of the acting GCEO position, and only be informed of the Board's decision regarding the other positions.

4.20. Overall, most members of the Board were of the view that everything was happening too sudden upon the commencement of our tenure and were uncomfortable with the suspension of the four executives because there was no apparent case of wrongdoing against them. Nonetheless, appreciating that that was what the government required, the Board ultimately approved the establishment of the inquiry and the suspension of the four executives in order to address government's concerns regarding the presence of the four executives at Eskom whilst the inquiry was underway.

4.21. The Board decided that the suspension of the four executives would endure only for three months, by which time it was envisaged the inquiry would have been completed.

4.22. The Chairman proposed that Mr Linnell be appointed to conduct the



inquiry. The Board was uncomfortable with the manner in which the recommendation of Mr Linnell's appointment came about. He was proposed by the Chairman without any process nor involvement of the Board. The Board decided that instead of Mr Linnell, the inquiry would be conducted by someone appointed independently by the Board. The ARC was entrusted with the process to appoint an independent service provider to undertake the investigation. As result, following a procurement process conducted by the supply chain division, during April 2015 Eskom appointed Dentons, an international law firm based in Sandton, to conduct the inquiry. I do not have copies of the procurement documents nor the appointment letter issued to Dentons.

4.23. Apart from the name of President Jacob Zuma, which was mentioned by the Chairman when he introduced the need for the establishment of the inquiry, I do not recall any mention of, or interaction of the Board with, Ms Dudu Myeni.

4.24. The ARC formulated the terms of reference of the inquiry conducted by Dentons and the Board approved them. A copy of the terms of reference is annexed hereto marked "**BSN3**".

4.25. The inquiry looked at, amongst others, the following key issues –

- 4.25.1. the poor performance of our coal fleet which was causing the load shedding;
- 4.25.2. the delay in the New Build programme which was characterised by billions of penalties and claims, and questioning the ability to handle contracts at Eskom;
- 4.25.3. the financial challenges of Eskom, the fact that NERSA had cut down on the tariff, and how the financial gap would be covered in terms of revenues that would be low;
- 4.25.4. the security at Eskom as a key national point; and
- 4.25.5. the integrity of the Eskom procurement process and how it complied with the rules.
- 4.26. Dentons presented the Board with a big report, which we passed on to the ARC to process and implement. The ARC was led by Ms Mabude. The ARC gave each division of Eskom issues that had to be corrected in their sphere of responsibility. By the time I left, I think about 18 of the issues had been corrected and implemented. I do not have a copy of the Dentons report.

4.27. The scope of the inquiry did not include an investigation into any misconduct on the part of the four executives. Upon the conclusion of the inquiry, Dentons did not find nor attribute any wrongdoing to the four executives. Nonetheless, except for Mr Koko who was keen to return to Eskom, the others were not.

4.28. Whilst the inquiry was pending, Mr Matona had filed a labour dispute with the CCMA against Eskom. Following the conclusion of the inquiry, Mr Matona negotiated and settled the dispute out of court and left Eskom. This process was handled by the P&G Committee. I was not involved with it.

4.29. Prior to that, I had been tasked by the Board to attend the CCMA proceedings which Mr Matona had instituted against Eskom. During one of my interactions with Mr Matona at the CCMA I suggested to him, at my own initiative, that he should consider returning to his position. However, Mr Matona was too upset with the whole saga and made it clear to me that he would not return to Eskom.

4.30. Mr Marokane and Ms Molefe also left the employ of Eskom following settlements that were reached with each of them by Eskom. This too was handled by the P&G Committee. I am not privy to the details of the settlements. I do not recall whether they too were offered the



opportunity to return to Eskom. I was not involved in any such discussions with them.

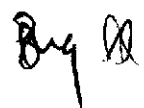
5. The removal and/or resignation of Mr Zola Tsotsi

5.1. As I have indicated previously, the relationship between Mr Tsotsi and the rest of the Board did not start off well. It was characterized by acrimony and mistrust from the onset.

5.2. This emanated from his handling of –

5.2.1. the proposal for the appointment of Mr Linnell to conduct the inquiry which had been proposed by government into Eskom's affairs without following any procurement process nor prior consultation with the Board. The board felt that he was involving himself in matters which encroached into the terrain of executive management, which he could not do as a non-executive chairman. Moreover, such appointment had financial implications, which unless implemented in compliance with the Eskom procurement policy would result in irregular expenditure;

5.2.2. the proposed suspension of the four executives without

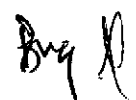


any apparent allegations of wrongdoing having been levelled against them. Inasmuch as the suggestion was that the four executives were required to "*step aside*" to allow the inquiry to continue unhindered by their presence at Eskom, the Board considered that it was a high handed approach, which was not in the interests of Eskom and the four executives; and

5.2.3. the unilateral manner which the Chairman went about nominating the people who would act in the positions that were to be vacated by the four executives whilst the inquiry was underway. The Chairman went ahead to recommend such persons to the Minister without regard to the Board.

5.3. It was because of these decisions, which he sought the Board to "*rubberstamp*" that the Board lost faith in his leadership. This conduct culminated in the decision by the Board to initiate a motion of no confidence against Mr Tsotsi, with the view to remove him as Chairman.

5.4. To my knowledge the motion of no confidence against Mr Tsotsi was a Board driven process, without any external influence from anyone. The



charges were formulated by the Audit and Risk Committee ("**the ARC**") and subsequently approved by the Board at its meeting of 14 March 2015. I agreed with the position of the Board that Mr Tsotsi had conducted himself improperly. Mr Tsotsi was asked to recuse himself when the item on his alleged misconduct came up for discussion by the Board and I was requested by the Board to chair the meeting. A copy of the minutes of meeting of 14 March 2015 is annexed hereto marked "**BSN4**".

5.5. Shortly after the decision of the Board to pass a motion of no confidence against Mr Tsotsi, I was mandated by the Board to meet with him to explore whether he would be amenable to stepping down without having to endure the specter of a drawn-out disciplinary hearing. I met with him, but he was not persuaded to follow that route. He felt the charges were without merit and that he wanted to clear his name in a formal meeting.

5.6. On 30 March 2015, the Board convened a meeting to consider, amongst others, the motion of no confidence and the removal of Mr Tsotsi as a director and Chairman of Eskom. Mr Tsotsi attended the meeting with his legal representative. Mr Mark Pamensky ("**Mr Pamensky**") was appointed to chair the meeting. At this time I was yet to be appointed the acting Chairman of the Board. The allegations of

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misconduct were put to Mr Tsotsi and he placed all the allegations in dispute. Subsequently, the meeting adjourned and a discussion ensued between me, Mr Pamensky and Mr Tsotsi, during which we sought to persuade Mr Tsotsi to step down voluntarily without the Board having to vote on the matter. These discussions culminated in Mr Tsotsi's resignation as director and Chairman, on the basis that the Board would abandon its motion of no confidence against him. A copy of the minutes of meeting of 30 March 2015 is annexed hereto marked "BSN5".

5.7. The Minister accepted Mr Tsotsi's resignation and during the Annual General Meeting ("AGM") held on 31 March 2015, the Minister announced Mr Tsotsi's resignation and my appointment as acting Chairman. I do not have copies of the correspondence exchanged between Mr Tsotsi and the Minister regarding his resignation. A copy of the minutes of the AGM is annexed hereto marked "BSN6".

5.8. I do not recall at what stage the Minister was notified of the Board's decision to bring a motion of no confidence against Mr Tsotsi. I am however aware that the Minister was not opposed to the decision. I remember that during one of our meetings with the Minister, she too had been critical of Mr Tsotsi for various conduct, including his alleged interference with executive management in the performance of their



duties, for instance the award of contracts for the supply of oil and diesel, where she accused him of attempting to influence who should be awarded the contracts.

5.9. On 31 March 2015, I issued a press statement on my appointment as acting Chairman. In it, I also thanked Mr Tsotsi for his service to Eskom. I did not personally prepare the statement. It was provided to me by the Company Secretariat. Mr Phukubje Malesela was the Company Secretary of Eskom at the time.

5.10. I hasten to add that as a matter of practice, I did not prepare my own speeches or press statements at Eskom. They would be provided to me by the Company Secretariat or Corporate Affairs division.

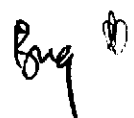
5.11. I did not have a meeting or conversation with Mr Salim Essa ("Mr Essa") regarding Mr Tsotsi's resignation from Eskom. Nor did I have any correspondence with Mr Essa regarding any appointments and resignations and movement of any employees within Eskom.

6. **The appointment and early retirement of Mr Brian Molefe**

6.1. After the suspension of the four executives, including Mr Matona, who was the GCEO, there was serious vacuum in the leadership of Eskom.



- 6.2. The Board petitioned the Minister to approve the appointment of Mr Khoza as interim GCEO, whilst the P&G Committee worked with the Minister to find someone capable of turning around institutions and whose leadership had been tested to assume the position.
- 6.3. Whilst the search for a new GCEO was underway, the Minister suggested that we consider Mr Brian Molefe ("**Mr Molefe**"). The Board was amenable to the Minister's suggestion because we knew of Mr Molefe's track record, based on his work at the Public Investment Commissioners ("**PIC**") and Transnet SOC Limited ("**Transnet**"). The Board felt that Eskom was in dire straits and needed someone with Mr Molefe's skills and experience.
- 6.4. The Minister suggested that the Board approaches Transnet to request for Mr Molefe's release to Eskom. I wrote to the chairperson of Transnet, Ms Linda Mabaso ("**Ms Mabaso**") to convey our request and the board of Transnet agreed to release Mr Molefe on a secondment to Eskom. I do not have copies of the letters exchanged between the boards of Eskom and Transnet regarding Mr Molefe's appointment nor the secondment agreement.
- 6.5. Mr Molefe was therefore seconded to Eskom as the acting GCEO on 17 April 2015, for a period of 3 months. I do not recall how the 3 months

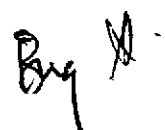


period came about.

6.6. On 23 June 2015, I addressed a letter to the Minister requesting her support for the extension of Mr Molefe's secondment as acting GCEO for a further period of 3 months. A copy of this letter is annexed hereto marked "**BSN7**". In the same letter, I informed the Minister that the P&G Committee had resolved to seek the full-time appointment of Mr Molefe to the position of GCEO and Ms Venete Klein ("**Ms. Klein**"), who chaired the P&G Committee had been tasked to procure a legal opinion on the most optimal approach to follow to give effect to the appointment of Mr Molefe. The Board did not wish to go through a public recruitment process because it had found its candidate in Mr Molefe.

6.7. The legal opinion was obtained from Bowman Gilfillan ("**Bowmans**") on 18 June 2015. A copy of the legal opinion is annexed hereto marked "**BSN8**". Bowmans advised that Eskom could appoint a GCEO without having to conduct a public recruitment process and that the Board could provide the Minister with a shortlist of one candidate only, whom the Minister could elect whether to appoint or not.

6.8. On 27 June 2015, the Minister responded to my letter agreeing to the request for the extension of Mr Molefe's secondment and also requested the Board to deal expeditiously with the appointment of a

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new GCEO in accordance with Eskom's Memorandum of Incorporation, Labour Relations Act and Eskom's employment policies and procedures. The Minister also requested to be provided with a copy of the complete legal opinion obtained from Bowmans on the matter. A copy of the Minister's letter dated 27 June 2015 is annexed hereto marked "**BSN9**".

6.9. On 13 September 2015, Ms Suzanne Daniels ("**Ms Daniels**") transmitted the legal opinion to Orcillia Ruthnam ("**Ms Ruthnam**"), who was at the time the Chief Director: Governance of the Legal and Governance Department at the DPE.

6.10. On 14 September 2015, Ms Ruthnam responded to Ms Daniels and enquired whether Bowmans had considered the "*Guidelines for the appointment of a Chief Executive Officer for a State - Owned Enterprise*" ("**the Guidelines**"). Ms Ruthnam also enclosed a copy of the Guidelines in her communication to Ms Daniels.

6.11. Copies of the emails exchanged between Ms Daniels and Ms Ruthnam on 13 and 14 September 2015 are annexed hereto marked "**BSN10**" and "**BSN11**", respectively.

6.12. On the same day, the Guidelines were sent to Bowmans, requesting



them to prepare a supplementary opinion having regard to the Guidelines, specifically on whether the proposed appointment of Mr Molefe on a permanent basis as GCEO was competent. A copy of the Guidelines is annexed hereto marked "**BSN12**"

6.13. On 15 September 2015, Bowmans delivered the supplementary opinion, advising Eskom that the Board was actually required to make recommendations to the Minister on the top 3 candidates in the order of priority and that any proposed deviation from that requirement required the Board to notify the Minister of such deviation in writing, together with reasons therefor. A copy of the supplementary opinion is annexed hereto marked "**BSN13**".

6.14. On 16 September 2015, the supplementary opinion was emailed to Ms. Ruthnam at the DPE. A copy of the email is annexed hereto marked "**BSN14**".

6.15. Ms Klein subsequently submitted a notification of Eskom's departure from the application of the Guidelines by way of a letter to the Minister. I understand the letter was sent to the Minister's office by Ms Daniels on 16 September 2015 with a signed version following thereafter, on 23 September 2015. The Minister did not object to the deviation.



- 6.16. Copies of the correspondence transmitted by Ms Daniels to the Minister on 16 and 23 September 2015 are annexed hereto marked **"BSN15"** and **"BSN16"**, respectively.
- 6.17. In the meanwhile, on 10 September 2015, the Board resolved that the P&G Committee should submit a recommendation to the Minister for the appointment of Mr Molefe as GCEO. A copy of the minutes of this meeting are annexed hereto marked **"BSN17"**. On 11 September 2015, and pursuant to the aforesaid resolution, I addressed a letter to the Minister advising her of the Board's decision to propose the permanent employment of Mr Molefe as GCEO. A draft employment contract was annexed to the letter for the Minister's consideration and approval. I attach hereto a copy of the said letter dated 11 September 2015 and the draft employment contract marked **"BSN18"** and **"BSN19"**, respectively.
- 6.18. On 2 October 2015, the Minister approved the appointment of Mr Molefe as GCEO. In this regard, the Minister addressed a letter to me, copying Ms Klein and enclosing letters addressed to Mr Molefe and Mr Anoj Singh (**"Mr Singh"**), confirming their appointments as GCEO and Chief Financial Officer (**"CFO"**), respectively, with effect from 1 October 2015. The letters to each of Mr Molefe and Mr Singh did not specify the duration of their respective appointments. Copies of the said



letters are attached marked "**BSN20**" and "**BSN21**", respectively.

6.19. I do not recall how the process of appointment of Mr Singh came about. The P&G Committee managed that process. Nor do I recall whether the impact of Transnet losing both its GCEO and CFO at roughly the same time was considered or discussed with the Minister. Nonetheless, I am aware that the Board of Eskom was not opposed to Singh's appointment at Eskom. I did not know Mr Singh prior to his appointment at Eskom.

6.20. On 7 October 2015, a permanent contract of employment was prepared for Mr Molefe. A copy of the contract is annexed hereto marked "**BSN22**". The Minister's letter dated 2 October 2015 and addressed to Mr Molefe made no mention of a fixed term employment contract. The Board was advised by Mr Anton Minnaar ("**Mr Minnaar**"), Executive Remuneration Officer at Eskom, that none of the previous GCEOs of Eskom was appointed on a fixed term contract, hence the proposal to appoint Mr Molefe on a permanent contract.

6.21. On 8 October 2015, Ms Klein received an email from Ms Daniels, drawing her attention to the exchange of email communication between Ms Daniels and Ms Ruthnam regarding the term of appointment of Mr Molefe. A copy of this email is annexed hereto marked "**BSN23**". Ms

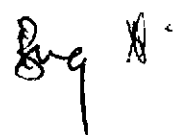


Ruthnam advised that the Minister had approved a five-year term for Mr Molefe. Ms Daniels had requested that Ms Ruthnam verify this as Mr Molefe's appointment letter had not stipulated a five-year term and that all previous GCEOs at Eskom were appointed on a permanent basis. Ms Ruthnam advised that the five-year term was a cabinet requirement. Nonetheless, Ms Ruthnam undertook to revert on whether the Minister would need to address the Board on the issue. According to Ms. Klein, she received no further correspondence on the issue and, under the circumstances, assumed the issue was resolved.

6.22. On 16 October 2015, I addressed a letter to the Minister on the proposed terms of Mr. Molefe's appointment and remuneration. A copy of this letter is annexed hereto marked "**BSN24**". The contents of the letter were informed by various inputs which the P&G Committee had obtained from Mercer, PE Corporate and Deloitte on chief executive remuneration packages. I do not have copies of these reports. None of these inputs considered any compensation for the loss of pensionable earnings that would result from Mr Molefe's appointment on a fixed term contract. The Board's understanding was that Mr Molefe's employment would be on a permanent basis.

6.23. On 1 November 2015, the Minister responded to my letter of 16 October 2015, in which she approved the proposed remuneration package to

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Mr Molefe, a copy of the Minister's approval is attached hereto as **"BSN25"**. The Minister further recorded that the term of Mr Molefe's appointment was for a period of 5 years, subject to annual performance reviews. I do not recall corresponding with the Minister regarding Mr Singh's appointment.

6.24. The Minister's letter of 1 November 2015 was addressed to me as the Chairperson of the Board and was received by Ms Daniels on 4 November 2015.

6.25. On 9 November 2015, I presented Mr Molefe with a permanent contract of employment. At this time, the Minister's letter to me dated 1 November 2015 had not come to my attention or that of the Board. I do not know how the letter was transmitted to Ms Daniels.

6.26. On 12 November 2015, Ms Klein received an email from Ms Daniels enclosing a draft offer of employment letter dated 13 October 2015 which specified that Mr. Molefe would enter into a fixed term employment contract with Eskom but the term was not specified. A copy of this email is annexed hereto marked **"BSN26"**. At this time I was still not aware of the Minister's letter dated 1 November 2015.

6.27. The Minister approved Mr Molefe's proposed remuneration but



indicated that the term of employment would be for a fixed term of 5 years. The Minister directed the Board to change Mr Molefe's signed contract from a permanent one to a five-year fixed term.

6.28. On or about 16 November 2015, I advised Mr Molefe of the Minister's decision. Mr Molefe was amenable to the variation of his contract of employment to a fixed term contract of 5 years. Mr Molefe however had concerns regarding the adverse impact that the variation would have on his retirement and pension benefits.

6.29. Around that time, I was advised by the head of the P&G Committee that Mr Molefe had threatened to leave Eskom if the matter was not resolved to his satisfaction.

6.30. I advised the Board of the outcome of my discussions with Mr Molefe and his discontentment with the effect of the variation of the term of the contract of his employment on his retirement and pension benefits. The Board did not wish to lose Mr Molefe. As result, myself and Ms Klein were tasked to engage with Mr Minnaar to come up with a solution. I do not recall when this discussion with the Board took place or if there are minutes of such discussion. It is unlikely that it was discussed in a formal board meeting.

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6.31. Mr. Minnaar was involved in the appointment of 7 previous GCEOs at Eskom in the six-year period prior to Mr Molefe's appointment. Mr. Minnaar advised that all Eskom's previous GCEOs were employed on a permanent contract basis and that based on the fixed five-year term contract, Mr. Molefe would not be able to accumulate an equivalent pension benefit during his service at Eskom. At this time, neither the Board nor Mr Molefe was aware that Mr Molefe could not be a member of the Eskom Pension and Provident Fund ("EPPF") unless he was a permanent employee of Eskom.

6.32. The Board then agreed that an arrangement should be put in place to ensure that Mr Molefe was not adversely affected in respect of his pension benefits. On 25 November 2015, Mr Minnaar assisted me in drafting a letter to the Minister, recommending that a retirement arrangement be reached with Mr Molefe in order to allay his pension concerns. A copy of the said letter is attached as "**BSN27**".

6.33. The arrangement proposed by the P&G Committee with the guidance of Mr Minnaar was that:

6.33.1. regardless of Mr. Molefe's age after the expiry of his five-year contract, he would be allowed to retire from Eskom's on the basis that he was aged 63;



6.33.2. the penalties prescribed by the EPPF for retirement prior to the age of 63 would be waived and not payable by Mr Molefe. Eskom would then carry the costs of such penalties, which would be paid over to EPPF;

6.33.3. if Mr Molefe's employment contract was not extended beyond the five-year period, he would not be allowed to subscribe to any other state-owned companies or government pension fund; and

6.33.4. should the employment contract be extended, the costs of any subsequent penalties would decrease proportionately.

6.34. The effect of the abovementioned arrangement was such that Mr Molefe would be placed in the same position that he would have been had he retired from Eskom at the age of 63. The Board was in support of the arrangement.

6.35. On 25 November 2015, the terms of the arrangement were communicated in writing by Ms Daniels to the Minister's office. The Minister's office acknowledged receipt of the letter and undertook to bring its contents to the Minister's attention. Copies of this



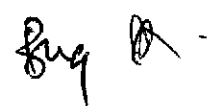
correspondence are annexed hereto marked "**BSN28**" and "**BSN29**", respectively.

6.36. As at 9 February 2016, however, a formal response to the letter addressed to the Minister had still not been received and at that time, there was no formal contract of employment with Mr. Molefe.

6.37. On 9 February 2016, the P&G Committee met to deliberate on the conclusion of a contract of employment with Mr. Molefe, including the issue relating to his pension benefits. In order to better understand the distinction between appointing Mr Molefe on a fixed term, as opposed to a permanent contract, basis and the options available to the Board for addressing Mr Molefe's concerns, the Board sought guidance from Mr. Minnaar.

6.38. Mr. Minnaar explained to the Board that due to Mr. Molefe's short term contracts with numerous public entities in which he served at executive level, he was deprived of the opportunity to grow a pension fund in a single fund.

6.39. The P&G Committee then resolved at its meeting of 9 February 2016 that:



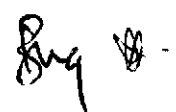
"7.5.1 the current EPPF rule that Employees may proceed on retirement from the age of 50 with 10 years' service remains applicable;

7.5.2 in cases where an Executive Director (appointed on a fixed term contract) decides to take an early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

- i. bridge the gap to make up for the 10 years;*
- ii. waive the penalties applicable to early retirement;*
and
- iii. refund EPPF actual costs for additional service added, plus penalties applicable to early retirement."*

7.5.3 a proposal in respect of the Chief Financial Officer to be considered and submitted to the Committee in due course."

6.40. A copy of this resolution is attached hereto marked **"BSN30"**.

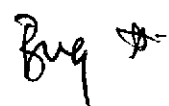


6.41. It was the intention of the P&G Committee that the arrangement had to be structured in such a way that the benefit would only accrue to Mr Molefe upon completion of his five-year term and that Mr Molefe would not be able to participate in any other government pension fund after qualifying for retirement at Eskom as per the resolution. Such intention was communicated to the Minister in my letter to her dated 25 November 2015. The practice was that the Board would take a decision on such matters and thereafter refer the same to the Minister for concurrence.

6.42. On 7 March 2016, Mr Molefe signed a second contract of employment for a fixed term of 5 years with effect from 1 October 2015 and terminating on 30 September 2020. A copy of the contract is attached hereto marked **"BSN31"**.

6.43. On 19 April 2016, the Board approved the resolution of the P&G Committee meeting of 9 February 2016. A copy of the board resolution is attached hereto marked **"BSN32"**.

6.44. On 6 September 2016, it was decided to increase the long-term incentive award for Mr. Molefe to two times the annual pensionable earnings on the basis that the amount was relatively low based on the benchmark against similar long - term incentive awards to the chief



executives at his level. A copy of the resolution is attached hereto marked **"BSN33"**.

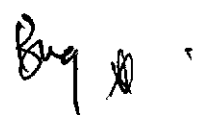
- 6.45. On 24 October 2016, the P&G Committee approved the additional award in the form of an increase to Mr Molefe's long-term incentive to two times the annual pensionable earnings. A copy of the resolution is attached hereto marked **"BSN34"**.

7. The eventual payment of pension benefits to Mr Brian Molefe

- 7.1. On 11 November 2016, Mr Molefe formally submitted his request for early retirement in terms of the EPPF rules read together with the board resolution of 9 February 2016. In the same letter, he also indicated that his last day of service would be on 31 December 2016. A copy of the said letter is attached marked **"BSN35"**.

- 7.2. On 15 November 2016, EPPF provided Eskom with the calculation of Mr Molefe's early retirement benefits on the basis that he would exit the service on 31 December 2016. It came to an amount of R25, 80 204.19.

- 7.3. On 21 November 2016, Mr Molefe's request for early retirement was discussed at a special meeting of the P&G Committee and the meeting agreed to support Mr Molefe's request and payment to him of the

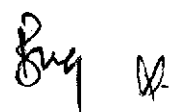


retirement benefits as calculated by EPPF. I was not at this meeting. I subsequently learned from Mr Minnaar that the meeting was not quorate.

7.4. On 24 November 2016, I wrote to Mr Molefe informing him of the approval of his request for early retirement in terms of Rule 28 and Rule 21.4 of the EPPF rules. I also confirmed that all penalties would be waived and further that his early retirement will be on the basis that Mr Molefe be deemed to have achieved the age of 63. The advice to the Board was that other senior executives had Eskom pay the penalty when they took early retirement. That was the point of departure. A copy of my approval letter is attached hereto marked "**BSN36**".

7.5. At this time I was not aware that the Minister had not responded to my letter dated 25 November 2015 regarding Mr Molefe's retirement. Mr Molefe's retirement was managed by the P&G Committee, with the assistance of Mr Minnaar. Board committees were entitled to take decisions on matters they were seized with and report to the Board on a quarterly basis in respect of resolutions they have taken. Thus, I had assumed that all was above board.

7.6. As at 23 March 2017, and pursuant to his early retirement, Mr. Molefe was paid the following amounts –



- 7.6.1. R575, 679.91 in respect of his salary up to December 2016;
- 7.6.2. R226, 278.84 in respect of leave due to him; and
- 7.6.3. R2, 110, 185.00 in respect of a short-term incentive bonus to the end of December 2016.
- 7.7. The total amount paid to Mr Molefe was the sum of R2, 912, 143.75.
- 7.8. I do not recall that the Board was consulted for approval of the above-mentioned amounts.
- 7.9. On 19 April 2017, the Minister called a meeting with me to discuss Mr Molefe's pension pay-out. It became evident at this meeting, that the Minister did not approve of Mr Molefe's early retirement arrangements as set out in my letter dated 25 November 2015. I do not have a copy of the minutes of this meeting.
- 7.10. The Minister maintained that the amount of R30, 103, 915.62 which was paid by Eskom to EPPF in respect of Mr Molefe's early was not permissible and should be repaid. I wish to point out that the Board had not been consulted for approval of these amounts. The P&G



Committee had taken this decision.

7.11. Following the meeting with the Minister, Ms Klein and Ms Daniels had a meeting later that evening with Mr Molefe to inform him of the Minister's position regarding his retirement arrangements.

7.12. According to Mr Molefe, he had received R7, 700, 000.00 from the EPPF on being admitted to the EPPF and of this sum, R4, 300, 000.00 had been transferred from the Transnet Pension Fund to the EPPF. I have not been able to verify these payments.

7.13. On 17 May 2017, the Board rescinded its acceptance of Mr Molefe's early retirement upon becoming aware that the Minister did not support it. A copy of the minutes of the Board meeting held on 17 May 2017 is annexed hereto marked "BSN37".

8. Relationship with Mr Salim Essa and/or the Gupta's

8.1. I knew Mr Salim Essa and Mr Nazeem Howa from past interactions with each of them before I was appointed to the Eskom Board.

8.2. I came to know Mr Howa when attending The New Age breakfast meetings during my time as Chairman of the South African

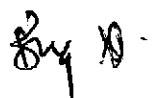
By M.

Broadcasting Corporation ("**SABC**").

8.3. I also knew Mr Essa prior to my appointment at Eskom. I had met him for the first time during 2011 or so when I was at the SABC. Mr Essa was on the Board of Broadband Infraco SOC Limited ("**BBI**"). I used to attend meetings with various state-owned entities, including BBI, as part of the SABC delegation, where we were discussing digital migration for the country. These were some of the occasions during which I interacted with Mr Essa.

8.4. Sometime during 2013, when I was sitting at JB's, Melrose with some people involved in the oil business in West Africa, especially Mali. Mr Essa came over to greet me. I introduced him to the people I was with. Once he knew we were talking about the oil business, he expressed an interest to participate as he too was in the oil business. He indicated that he had interests in oil blocks in other African countries. Following several interactions with me he suggested we form a new entity for oil exploration in African countries with potential oil blocks. This is how Gade Oil and Gas (Pty) Ltd ("**Gade**") came about.

8.5. Gade was a newly established entity and we each owned a 50% (fifty percent) interest. Both Mr Essa and I were directors of Gade. Mr Essa was to provide the financial capital required and arrange for our



prospective exploration in Central African Republic ("CAR"). I was to leverage my networks from my days in the Diplomatic Corps as Ambassador to procure contracts, particularly for supply of oil to African countries in which there was need.

8.6. The venture collapsed around the time of the civil unrest in CAR during 2013 and Mr Essa resigned as director of Gade. In the end, Gade never traded.

8.7. I knew members of the Gupta family. When I was Chairman of the SABC I often met members of the Gupta family together with officials of The New Age newspaper at the business breakfasts which were arranged by The New Age and broadcast on the Morning Live programme of the SABC. My relationship with them was social, but not business related. I used to receive invitations for social events at their home in Saxonwold and attended some.

8.8. I was invited to and attended the much talked about wedding at Sun City. At that time, I was a member and Chairman of the SABC board.

8.9. I have travelled through Dubai three or four times, but never at the expense of the Guptas or at their instance. These were personal journeys to overseas countries. I did not keep a record of these travels.

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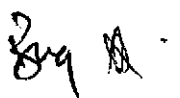
9. **Business Man email account**

9.1. I was copied on the email addressed to Ms Daniels regarding the draft statement by chairman on 11 June 2016 from "*businessman*" on the email address: Inforportal1@zoho.com. There were comments made to the media statement I was going to issue. A copy of the email is annexed hereto marked "**BSN38**".

9.2. I understood from Ms Daniels that the "*businessman*" email address belonged to Mr Richard Seleke ("**Mr Seleke**"), who at the time was the Director General ("**DG**") at DPE.

9.3. The Director General of any Government Department has a lot of influence as he/she speaks and advises the Minister directly. The DG in this instance took a keen interest in the business of Eskom, especially on how Eskom was reflected in the media. He was also very concerned that he and the Minister often saw statements issued by Eskom for the first time, in the media. I had a meeting with him at his DPE office at some point, where he expressed this concern. I cannot recall when this meeting was.

9.4. I did not share Eskom confidential or proprietary information with Mr Essa or anyone outside Eskom and the DPE.



10. T-Systems

- 10.1. I was appointed to the Eskom Board during December 2014. Soon after my appointment Mr Tsotsi asked me to chair the BTC, to which I agreed.
- 10.2. To the best of my knowledge, Eskom had commenced the procurement process which was aimed at replacing T-Systems before I was appointed to the Eskom Board.
- 10.3. During February 2015, the Executive Committee Procurement Sub-Committee ("**EXCOPS**") decided to cancel the procurement process aimed at replacing T-Systems in relation to the provision of IT services to Eskom.
- 10.4. EXCOPS' made a presentation to the BTC motivating for the cancellation of the procurement process to the BTC meeting held on 28 February 2015 I chaired the BTC meeting.
- 10.5. In my statement to Parliament I suggested the BTC meeting took place on 24 February 2015. I have now established that date was incorrect. 24 February 2015, was the meeting of the Executive Committee Procurement sub-Committee which decided on the recommendations

that were to be presented to BTC at the 28 February meeting.

10.6. EXCOPS' motivation for the cancellation of the procurement process was presented to the BTC as follows:

10.6.1. Around December 2014, more than 50% of senior Eskom employees who were critical to the management of the Eskom IT Division accepted voluntary severance packages which had been offered by Eskom to employees in general, and left Eskom;

10.6.2. The departure of the said employees resulted in depletion of skilled resources and thus a lack of requisite capacity within the IT Division, as the affected positions were quite senior. This negatively affected Eskom's Generation Division;

10.6.3. By virtue of the crisis in Eskom's Generation Division, as manifested in persistent load shedding at the time, the view was then formed that bringing in a new IT service provider, which would be unfamiliar with the Eskom Generation business, would likely exacerbate the electricity supply problem which was already prevalent

By A.

during that entire period;

10.6.4. T-Systems' continued involvement, as the incumbent IT service provider, which was already familiar with the power station system in Eskom would be in the best interests of both Eskom and the country; and

10.6.5. That under the circumstances, it made commercial sense for Eskom to extend T-Systems' contract, and to cancel the procurement process which was then aimed at replacing them.

10.7. On the strength of the abovementioned motivation by EXCOPS, the BTC approved the recommendation for cancellation of the procurement process to replace T-Systems. The procurement process was then cancelled by Eskom.

10.8. I do not have the documents pertaining to the EXCOPS decision and the procurement process under consideration.

10.9. My understanding was and still is that in terms of the Eskom SCM Procedure, Eskom was entitled to cancel any procurement processes. Paragraph 3.4.5.7 of the SCM Procedure states, *inter alia*, that

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cancellation/re-issuing of tenders may occur any time after the tender has been issued to the market and before contract award.

10.10. I recall an oral opinion was expressed by Mr Neo Tsolanku, a legal adviser at Eskom, that Eskom could not cancel the procurement process because it did not meet the criteria for cancellation of tenders as stipulated in the procurement regulations. However, following extensive deliberations on the matter, the BTC decided to cancel.

10.11. I note that the minutes of the meeting of 28 February 2015 refer to change of business strategy as but one of the motivations that were presented to the BTC in support of cancellation of the procurement process. I do not recall the discussion of the BTC on that aspect nor that it was considered at all.

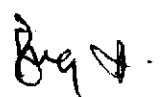
10.12. I did not discuss the cancellation of the procurement process or extension of the T-Systems contract with Mr Essa.

11. Meeting with Minister Ngoako Ramatlhodi

11.1. I set out below the context of my and Mr Molefe's meeting with Advocate Ngwako Ramatlhodi ("**Minister Ramatlhodi**").

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- 11.2. As Chairman of Eskom I had consistently sought to protect Eskom's generating capacity as this was critical to ensuring load shedding ends. Central to this effort was ensuring adequate supplies of the volumes of coal required, but at affordable prices.
- 11.3. I recall from the documents I have gleaned at the time that Glencore were insisting on substantial increases in the price of coal while the quality of the coal they supplied was declining. Glencore had been washing their coal to RB1 export grade and giving Eskom the middlings coming out of the wash. I learned that this had been happening from 2012 onward.
- 11.4. At some point the Energy Availability Factor ("EAF") across various Eskom power stations deteriorated by 10% from 85% to 75% due to breakdowns associated mostly with the burning of low quality coal.
- 11.5. The boiler explosion at Duvha was due to inadequately combusted coal as far as reports to me indicated. 10% of coal plants were not available at any one time.
- 11.6. At the meeting held between the Minister and the Board on 20 March 2015, the Minister insisted that she be informed of coal supplies that were in place throughout the country because the supply of coal to



Eskom could not be compromised. The meeting was to discuss "*the state of the system*" as I recall. These meetings were also attended by members of executive management. I do not have minutes of this meeting.

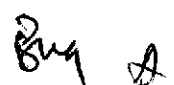
11.7. The Minister also wanted to be provided with the timeline generating units that were coming out of maintenance. She went on to say government's efforts at transforming the lives of especially poor South Africans could not be frustrated. 6,000,000 households were already connected to the electricity grid and load shedding was denying them a better quality of life. I do not recall if there were minutes of this meeting. These would be briefings before the open meetings with the press.

11.8. To meet its goals Eskom was to implement cost containment measures and find a solution on pricing of coal supplies. The high cost of coal would drive up the cost of electricity.

11.9. There were six coal mines where Eskom had to provide capital expenditure (the cost plus mines), and this resulted in cost increases in relation to the coal price itself, as Eskom was required to make continuous investments to bring out the coal.

By A.

- 11.10. Despite the capital investments coal from cost plus mines was marginally cheaper than of fixed price collieries, e.g. Kusile coal (a cost plus mine) was R300/ton compared to R400 from an untied colliery.
- 11.11. On 21 August 2015 the GCEO, Mr Molefe, reported to the Board that there was a danger that the Eskom grid could lose 2000MW from the Hendrina power station which was supplied by Glencore's Optimum Colliery. Mr Molefe reported that he had had an acrimonious meeting with Glencore who wanted the price per ton increased from the contractual value of R150 per ton to R500 per ton, which he had refused. I cannot recall whether Mr Molefe's report was in writing. I am not aware there are minutes of this meeting.
- 11.12. Mr Molefe advised me that Glencore had indicated they would stop supplies to Hendrina. If executed this would result in the loss of 2000MW, which was going to reverse all the gains management had achieved in the race to stop load shedding and stop the use of very expensive diesel for the Open Cycle Gas Turbine generators, which was the last desperate effort to keep the lights on.
- 11.13. Mr Molefe further advised me that every R10 increase in the price of coal would increase the tariff by 4%. To make matters worse, Hendrina required coal which has a CV of 23 GJ while other collieries produce of



a CV of 21 GJ, therefore this higher quality CV was difficult to obtain. Hendrina was one of three best performing power stations in terms of EAF.

11.14. The fact that Optimum Colliery was being placed under business rescue also presented a risk that there would be no further coal supplies from Optimum Colliery.

11.15. In the face of all these concerns about the sustainability of coal supplies for Hendrina power station, Minister Ramatlodi had suspended the mining licence for Optimum Coal Holdings on 03 August 2015. He suspended the licences because Glencore had apparently undertaken retrenchments in a non-compliant manner.

11.16. Optimum Coal Holdings had open cast mines and a complex of Underground Mines. Among These are:

11.16.1. Kwagga Colliery;

11.16.2. Pullenshope Colliery;

11.16.3. Eckeboom Colliery;

11.16.4. Boschmanspoort Colliery; and

11.16.5. Koomfontein Colliery.

11.17. Loss of coal from all these collieries would seriously jeopardise Eskom electricity generation.

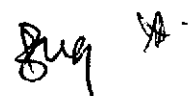
11.18. These were the concerns that drove Mr Molefe and I to request a meeting with Minister Ramatlhodi, who then was the Minister of Mineral Resources, to appraise him of the consequences of suspension of the coal mining licence. The meeting took place at Minister Ramatlhodi's offices in Pretoria. The meeting was arranged by Mr Molefe. I cannot remember the date of the meeting. Luckily Minister Ramatlhodi reinstated the mining licence on 11 November 2015

11.19. I deny Minister Ramatlhodi's account of the version of events regarding the purpose and content of my discussion with him during the meeting which was held between him, Mr Molefe and I. That was the only meeting which Mr Molefe and I attended with Minister Ramatlhodi. I do not recall there was anyone else accompanying Minister Ramatlhodi to the meeting.

12. The R1.68 billion guarantee

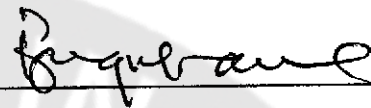
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- 12.1. The guarantee fell within the primary coal energy issues, which I was not involved with.
- 12.2. The R1.68 billion guarantee was approved by the Board during December 2015. I do not have copies of the report that served before the Board nor the minutes of this meeting.
- 12.3. The Company Secretary, Ms Daniels, requested an urgent meeting on the basis of the letter Mr Matshele Koko ("**Mr Koko**") had written to the DG of the Department of Mineral Resources ("**DMR**") on 6 December 2015, and the undated response of the DG of DMR. Copies of this correspondence are attached hereto marked "**BSN39**" and "**BSN40**", respectively. The Company Secretary presented a memorandum dated 8 December 2015 dealing with the urgency of the matter, a copy of which is attached hereto marked "**BSN41**". But because people were in different places we agreed on a round robin resolution. It had first to go through the Investment and Finance Committee ("**IFC**"). The IFC had its own round robin. They approved the emergency payment in order to secure coal supply. Since the IFC had recommended it, the Board approved the proposed round robin resolution and approved the issuing of the guarantee. A copy of the approved resolution is annexed hereto marked "**BSN42**".



13. Conclusion

13.1. I believe the statement gives a fair account, to the best of my knowledge or recollection, of the events that happened during my tenure at Eskom.

**DEPONENT**

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at 04 August on the Umheli day of Post office 2020, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

**COMMISSIONER OF OATHS**

Sanjana Beluen




**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

AFFIDAVIT

I, the undersigned

SUZANNE MARGARET DANIELS

Do hereby state under oath in English that:

1. I am an adult female with ID 6908230280081.

My contact details are:

Cell: 082 580 7832

E-mail: suzanne.daniels@icloud.com

2. The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
3. My qualifications include, Bachelor of Arts (B.A), Bachelor of Laws (LL.B) and Postgraduate Diploma in Law.



MY EMPLOYMENT HISTORY AT ESKOM

4. I began my career at Eskom on 1 May 2006 as a Chief Legal Adviser in Generation Primary Energy, Contracts Section. This business unit was part of the Generation Division at the time headed by Ehud Matya.
5. I became Acting Contracts Manager, Primary Energy in April 2007 and during this period I was accountable for the articulation, promotion and execution of a contract advisory and risk management approach in the fuel procurement executed by the Primary Energy Division.
6. I was permanently appointed to the role of Senior Manager: Contracts (Coal, Water and Gas) in April 2008 until January 2010 when I moved to the office the Managing Director, Primary Energy Division.
7. I was appointed Senior Manager, Office of the Group Executive in 2011 and served under Dan Marokane, Kannan Lakmeharan, and Matshela Koko respectively.
8. Subsequently, I was transferred to the Office of the Chairman on 11 April 2015.
9. I was appointed Group Company Secretary on 1 October 2015 and held this position until 27 July 2017 when the current interim board of Eskom accepted my resignation as Company Secretary. The duties of the Company Secretary are set out in section 88 of the Companies Act, 2008 as amended.
10. It is important to note, I attended board meetings and board subcommittee meetings as company secretary and not as a director, hence I would have no



voting rights. My role was to record the proceedings of the meeting and produce a record thereof in the form of minutes. While part of the role required that I advise the board on compliance with regulatory and statutory requirements, this role was located within the legal and compliance department and thus my role was limited to adherence to the Companies Act and the Memorandum of Incorporation.

11. Upon the departure of the General Manager: Legal and Compliance, I was requested by the Group Chief Financial Officer and Group Chief Executive to caretake the role of Acting head of legal with effect from 1 September 2016 and thus I fulfilled a dual function of Company Secretary and Acting Head of Legal and Compliance for the period until 27 July 2017.
12. In hindsight, at the time it made sense to assume both roles as the guiding principle was that as an officer of the company, I had to act in the best interests of Company. For a period of time I exercised duty of care in these roles and executed both to the best of ability. This is evidenced by the successes Eskom enjoyed in Court and other regulatory forums. On the Company Secretary, various initiatives such as improving the quality of minute taking and record keeping and/or the entire capacity decision making and verification.
13. While this principle is theoretically sound as stated in the textbooks, it became problematic for me as this led to clashes with the then Interim Chief Executive, Matshela Koko and also caused disquiet at Board and Exco level. This dual role demands a higher order leadership for it to function optimally to achieve its natural objectives.
14. As it became untenable for me, which ultimately impacted the span of my operations, I formally advised the Board that I wished to take up the role of Head



of Legal and Compliance in March 2017 and would resign as Company Secretary.

15. Due to leadership instability at the time, this became a formal reality only in July 2017.

THE SUSPENSION OF THE FOUR EXECUTIVES

16. At the time of the suspension of the four executives, I held the position of Senior Manager; Office of the Group Executive (Group Technology & Commercial). I reported to Matshela Koko, in his capacity as Acting Group Executive. (Dan Marokane, had been moved to Group Capital).
17. My first knowledge of the impending suspension of the four executives was on **10 March 2015**. In my parliamentary testimony I surmised that this was the 9th March but evidence shown to me by the Zondo investigation team shows that this meeting took place on the 10th March.
18. As I have testified in Parliament, I received a call from Matshela Koko in the afternoon wherein he instructed me to meet him at Melrose Arch. I was at Megawatt Park at the time and packed up for the day and went to meet him there. He did not give any indication of the reason for the meeting at Melrose Arch and I did not ask any detail.
19. I was questioned at Parliament as to why I would have heeded such a call from Matshela Koko. To put it into context, he was my direct superior at that time and I had no reason to suspect anything out of the ordinary. We had spent quite a bit of time working together on the Westinghouse legal challenge to Eskom awarding the Koeberg Steam Generator contract to AREVA that my perception of him at



the time was one of a fastidious, loyal and principled Eskom executive.

20. I waited at JB Rivers for just over an hour when Matshela Koko called to ascertain my whereabouts. I confirmed that I was at JB Rivers and he came to meet me there. He paid the bill and he instructed me to follow him. We walked across the road to a nearby office complex. We took the elevator to the first floor and then he led me to an office at the corner of the building.
21. We entered the offices (I could not see any plaque on the outside of the office). We were greeted by a receptionist and Koko instructed me to hand my mobile to the receptionist. We proceeded to enter a mini boardroom and waited for someone to join us. I asked Koko what was the purpose for meeting at this place. He gestured that I should be patient.
22. As we were chatting, a gentleman walked into the boardroom and introduced himself as Salim Essa (Essa), adviser to Minister Brown. I was quite puzzled. A few pleasantries were exchanged and it was then that Essa asked me *"What is the procedure to be followed if one wanted to suspend someone at Eskom?"* I was quite taken aback and looked at Koko enquiringly. He nodded and I took that as an indication that I could answer Essa.
23. My response was that one could not suspend someone at a whim and needed a very good reason to do that. I explained the process as I understood it and pointed out to Essa that I did not work in the Industrial Relations ("IR") section. Therefore, my knowledge of labour law was high level.
24. He seemed to accept this and then proceeded to tell me that in the upcoming days, four (4) executives at Eskom would be suspended, namely, Tshediso Matona, Tsholofelo Molefe, Dan Marokane and Matshela Koko. I looked at Koko



in shock and he appeared to have knowledge of this as his demeanour remained composed.

25. Essa proceeded to tell me that there would be an investigation by an independent firm into the affairs of Eskom. I was flabbergasted at this point, I was not sure if I was to believe this man as he had sketched the scenario to me in front of one of the impacted parties.
26. I cannot recall how the meeting ended but I was excused and Koko accompanied me out of the building. I was quite perturbed at what I had heard and I do not recall speaking to him at the time.
27. On my way home I called a friend of mine to ask him about Essa. My words were *"I met this man called Salim Essa, can he do what he says he can?"*. My friend responded, *"in all probability, yes"*.
28. Thereafter, I received a call from Dr Guenon, the Head of the Southern region for AREVA at the time.
29. My next message I sent was to Dan Marokane ("Mr Marokane"). I sent him a text as it was his day off. He responded by saying that he will pop by my house as he was in the area. He arrived later that afternoon and I told him what had transpired in the afternoon. Mr Marokane indicated that he was aware of the rumours that were circulating about their impending suspensions and that he would relay what I had told him to the other two parties, namely Mr Tshediso Matona and Ms Tsholofelo Molefe.

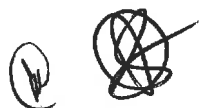
30. Just to give context, as an employee at the SOC Eskom, I was quite used to the amount of political interference and lobbying behind the scenes which took place. However, I had not been exposed to this level of "behind the scenes" influence by a third party as I was on this day. This level of interference would continue to be the hallmark of the period from 2015 up until I eventually departed from Eskom in 2018.
31. The day after this meeting, I had arrived at work just after 9h00 and Matshela Koko was frantically calling me. He asked me about my whereabouts and also why I was talking to Rustum Mohamed and the French. Rustum Mohamed was the friend I had spoken to, and we have been friends for more than 20 years, so I was quite shocked that Koko knew about this call and also the call from Dr Guenon. I had asked Dr Guenon to call me when I was back in the office. This was the first suspicion that I had that my mobile phone was bugged, as Koko could relate to me verbatim who I had spoken to. I was alone in my car at the time of making the call and receiving the call from Dr Guenon.
32. Koko called me in quick succession that morning as he wanted to see me rather urgently. He was agitated and his stated reason for this was that he suspected that he was going to be suspended.
33. I was rather tense by that time and told him that I did not see the logic for him being agitated, as he was clearly privy to what was happening in the Boardroom at the time.
34. There was a Board meeting scheduled for that day and it was generally a tense atmosphere on the executive floor. I was not present at these meetings as I was not the Company Secretary at the time but I have read the minutes of the meetings:

35. The minutes clearly indicate that at a meeting with the Board of Directors of Eskom Holdings SOC Limited ("the Board") on **11 March 2015**, the Honourable Minister of Public Enterprises, Ms Lynne Brown, raised a number of concerns with the Board in respect of the following:
- 35.1. Information that Eskom was sharing with the War Room was deemed to be unreliable and misleading in some respects;
 - 35.2. Load shedding continued to occur with alarming regularity;
 - 35.3. Issues relating to reports of retrenchment and voluntary separations could not continue;
 - 35.4. A forensic enquiry into matters affecting the business operations of the company may be needed;
 - 35.5. The interest rates and borrowing terms negotiated by Eskom in the market appear to be unfavourable to it;
 - 35.6. Appears to be inequities in the coal price purchases negotiated;
 - 35.7. Perception of manipulation of the load shedding process;
 - 35.8. Lack of planning in diesel purchases;
 - 35.9. Breaches of security in the bugging of board rooms and leaking of information;
 - 35.10. Lack of transparent reporting to the Shareholder. Copy of the minutes of the meeting is attached hereto marked "**Annexure SMD1**".

36. Following on the meeting with the Honourable Minister of Public Enterprises, the Board proceeded to deliberate on the issues raised by the Minister and the most optimal manner in which to begin to address the issues which confronted the Company.
37. A number of issues were deliberated and debated upon flowing from the concerns raised by the Honourable Minister and the Board finally resolved that:
- 37.1 An inquiry be instituted into the affairs of Eskom and that the duration of the inquiry should be three months;
 - 37.2 The Audit and Risk Committee ("ARC") shall take custodianship of the inquiry and that the People & Governance Committee ("P&G") and other committees assist where necessary and report to the Board. The ARC was mandated to draft the Terms of Reference;
 - 37.3 The key executives be put on suspension for the duration of the inquiry;
 - 37.4 The Corporate Plan and the Borrowing Programme be deferred until further notice; and
 - 37.5 Management must institute an investigation into the bugging of the Boardroom and report to the Board on their findings and recommendations. Copy of the minutes is attached hereto as "**Annexure SMD2**"
38. A meeting of the People and Governance Committee ("P&G") was convened immediately after the Board meeting to deal with the decision to suspend key executives for the duration of the enquiry.

39. P&G identified the key executives to be put on suspension for the duration of the enquiry as:
- 39.1 Tshediso Matona, Chief Executive Officer;
- 39.2 Tsholofelo Molefe, Financial Director;
- 39.3 Dan Marokane, Group Executive: Group Capital;
- 39.4 Matshela Koko, Group Executive: Technology and Commercial.
40. I do not have a copy of these P&G minutes, however, I mention them in the subsequent report that I prepared for the then Minister of Public Enterprises, Ms Lynne Brown on the matter.
41. These executives were then called into the meeting individually and were informed of the Board's decision to launch an enquiry. They were further advised of the Board's view that their presence could hamper the said enquiry. The 4 executives were suspended on **11 March 2015**.
42. On **13 March 2015**, I was called to a meeting with Dr Pat Naidoo (Dr Naidoo), a Board member and Chairperson of the Board Recovery & Build Program Committee. At that stage one of my duties was the coordinating of and liaison with the Board on procurement matters.
43. At this meeting Dr Naidoo enquired what the process would be to appoint an independent consultant as the Board had acquired the services of one Mr Nick Linnell ("Mr Linnell") as an adviser to the Board. This was not a formal meeting as it was only him and the meeting coordinator for the Build Recovery & Build Program Committee present in the room.

44. I explained the process to Dr Naidoo and the options as to how the Board could go about it. It did involve putting out an RFQ/RFP for the services. It did however appear that the Board had already engaged the services of Mr Linnell as an adviser to the Board.
45. He spoke of the Board wanting to initiate an independent fact-finding exercise which he described as an "Eskom Deep Dive".
46. My impression proved to be correct, as I would later be called upon to cancel the contract between Eskom and Mr Linnell. I attach a letter from Mr Linnell addressed to the Chairperson of Eskom which set out the interactions with the Board on the matter marked "**Annexure SMD3**". I also attach an email which I received from Mrs Venete Klein which confirms that the Board had in fact engaged the services of Mr Linnell. A copy is attached marked "**Annexure SMD4**".
47. On **9 April 2015**, the Acting Chairman of the Board, Dr Ben Ngubane, called Mr Leo Dlamini ("**Mr Dlamini**") and I to his office and informed us that I would be transferred to the Chairman's office and that Leo would have to be transferred elsewhere in the organisation.
48. Dentons was appointed to conduct the enquiry late April, as the appointment was confirmed by the Board Audit and Risk Committee on **20 April 2015**.
49. The Eskom Board meeting of **23 April 2015** discussed the interface between the WAR ROOM, that was being led by the Deputy President at the time, Cyril Ramaphosa, and the Dentons Review. Copy of the minutes of the meeting is attached marked "**Annexure SMD5**".



50. The Chief Executive was instructed to develop the framework of interaction with the WAR ROOM. It was at this meeting that he outlined the maintenance strategy to stop load-shedding. He also emphasised that should Eskom be able to achieve this, the purpose for the WAR ROOM would be obsolete.¹ The Acting Chief Executive at that time was Brian Molefe.
51. The meeting proceeded to discuss the removal of one of the directors, Mr Norman Baloyi, and confirmed that the removal had been approved by the Minister of Public Enterprises.
52. It was at this meeting that Thomson Wilks, a firm of attorneys not on the Eskom panel, was approved to review Eskom's Memorandum of Incorporation and that it was made clear that they were advising the Board in respect of the suspension of the four executives and the attendant matters thereto.
53. Mr Matona's challenge to his suspension at the CCMA was discussed, as well as options for the treatment of his suspension. Already at this point, his reassignment to another post in government was being considered by the Minister of Public Enterprises and the changing of the status of suspension to special leave.
54. The Board emphasised that this would not alter the fact that he would remain on suspension. Dr Ben Ngubane and Mr Romeo Khumalo ("Mr Khumalo") were mandated to meet with Mr Matona on **29 April 2015** to discuss the matter of his suspension. At this point, it was clear that the Board was not really considering the option of the return of the executives, contrary to their public utterances.

¹ An indication of the "us and them" stance that the Board took against the institutions of government.



SETTLEMENT MEETINGS WITH SUSPENDED EXECUTIVES

55. It was further clear that the exit of the executives was the ultimate aim, as the Board reiterated that the Dentons Review would continue. It was a separate enquiry and its outcomes were deemed independent of the four executives. The Board at this stage already anticipated that the executives would resign to avoid charges.
56. I was tasked with coordinating the meetings of the executives and the Board during this time. I attended some of the meetings to take notes and keep Dr Ngubane apprised of proceedings.
57. The first meeting that I attended regarding one of the suspended executives was on **4 May 2015** where Mrs Venete Klein, Mr Romeo Khumalo and Dr Ben Ngubane met with Ms Tsholofelo Molefe. This meeting took place at the Protea Hotel, Midrand. The introduction of the meeting by Mrs Klein set the tone: she advised Ms Molefe that the Board had mandated the delegation, that is her, Mr Khumalo and Dr Ngubane, to interact with the executives and the question was *"How do we amicably find a solution?"*.
58. Ms Molefe highlighted to the Board members present that there was a clear contradiction to what had been communicated to them and what was reported in the media. She emphasised that in the eight weeks since her suspension she had not had any communication from the Board or a response to her correspondence. She had enquired as to what was the position of the Board at that point in time.
59. At this point Mr Khumalo very directly conveyed to Ms Molefe: *"Without prejudice and reserving the rights of Eskom, the terms of reference for the review were developed by the Audit and Risk Committee and that this was a separate discussion."* He further went on to say, *"Can we find a way of amicably parting ways? The parties would like to avoid the legal wrangle on each side. Would you*

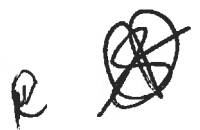
consider a managed parting of the ways? Would you be open to this discussion and also the public management thereof?"

60. Ms Molefe responded that *"Eskom had already appointed lawyers in the matter and that it put them at an unfair advantage. ...The trust issues are so deep so it would be something I would consider."* She further requested time to appoint legal representatives and time to consider the proposal. She also stressed that her professional integrity had been impugned by her suspension and that her integrity as a chartered accountant was critically important to her.
61. Mr Khumalo confirmed that the delegation would put a "without prejudice" offer on the table. He emphasised that the Board would work with her to manage her exit. It was agreed that a formal offer would be put to Ms Molefe by the end of that week.
62. In-between these meetings, a meeting with Brian Molefe, also took place at the Protea Hotel where the Board members present briefed him on their top priorities as set out in Minister Brown's correspondence of 22 April 2015 and which he needed to attend to as a matter of urgency. These were the top priorities:
- 62.1. Board position on tariff re-opener;
 - 62.2. weekly reports on the Dentons Enquiry;
 - 62.3. short term deliverables of the appointed interim executives;
 - 62.4. report on servicing and treatment of the World Bank loan;
 - 62.5. issue of bugs in the main boardroom.
63. I do not have a copy of the correspondence dated 22 April 2015.

64. The delegation subsequently met with Mr Tshediso Matona on the same day. Mr Khumalo opened the discussion and emphasised that at that stage there was no commitment to a specific alternative role in government, but that it would be considered. He emphasised that Mr Matona's *"court action did not sit well with the powers that be"*. There appeared to have been prior discussions that I was not privy to.
65. Mr Khumalo then proceeded to outline the framework of a proposal to Mr Matona. He stressed that Eskom was committed to managing the messaging together with Mr Matona so that his dignity and credibility, as well as the credibility of the Board, remained intact. The financial proposal included a payment by Eskom to the Government Employees Pension Fund to secure Mr Matona's full benefit as a government employee, since he had been at Eskom for a relatively short time. It was confirmed that Eskom and the Department of Public Enterprises were working together to secure the full benefit, to have it approved and reinstated. The prospect of another role in government was also mooted. Mr Matona requested that a formal proposal be tabled and that a further meeting be set up.
66. The second meeting with Ms Molefe took place on **7 May 2015** where an offer was tabled to her. She undertook to consider it.
67. It must be noted that I do not include these details in my testimony to cause harm to the individuals involved, but to give this Commission a sense of the careful orchestration of events on the part of the Eskom Board to ensure that the identified persons would not return to Eskom.
68. The Board met with Matshela Koko on **11 May 2015** and the tenor of this meeting was dramatically different from the previous two I had sat in. The Board was represented by Mrs Venete Klein and Mr Zethembe Khoza.



69. Unlike the previous two meetings, Mr Koko was given time to express his sentiments on the issue of his suspension quite in length. He waxed lyrical – “*I don’t understand*” and “*shocked and surprised*” permeated his speech and the now legendary “*Eskom is in my veins*” was part of his rendition of his position at that moment.
70. He also portrayed his relationship with the previous chairperson, Mr Zola Tsotsi, as acrimonious and he attributed this acrimonious relationship as the reason for him finding himself on suspension. He went at great lengths to impart to the Board members that they had been misled and that he “would not make it difficult for the Board” if the board says “you don’t fit”, he would accede and leave Eskom.
71. Mr Khoza thanked him for his submission and Mrs Klein started her conversation with an opening question of “*Could you fully trust this Board again?*” Once again Koko emphasised that he believed that the reason for his present situation was the acrimonious relationship he had with Mr Tsotsi which led to acrimony between him and the previous Board. At this point Mrs Klein then asked “*Could you come back and work with this Board?*” Mr Koko retorted that he had “*horror stories relating to Zola Tsotsi*” and not the current Board. Mrs Klein thanked him for his honesty and took note that he had said “*I will come back to Eskom*”. She emphasised that this confirmed that the trust element was intact and that Koko was prepared to sit it out and wait. She confirmed that she respected what he had told them and thanked him for being open and frank.
72. I was not privy to the discussions with Mr Dan Marokane, but he had informed me that he was liaising with the Board at the time through his attorneys and that there was correspondence on more than one occasion that had not been replied to by the chairperson of the Board.

Handwritten signature and initials in the bottom right corner of the page.

73. The Board delegation met on **19 May 2015** and I was in attendance. Mrs Klein opened the discussion by emphasising the need to find settlement with the parties and *"clear the decks"*. She also confirmed that the *"Shareholder has approved to get rid of the people and make the necessary concessions if it sorts out the problem"*. She stressed that *"the priority is to get the people off and away"*. The meeting further discussed the various settlement arrangements as the "Minister had a ceiling of R12 million to negotiate" and the guiding principles were i) full cost to company, up to twelve months, ii) payment of tranche 8, iii) payment of tranche 9; iv) contribution to legal costs and v) communication plan around the suspended executives. The settlements with Mr Marokane and Ms Molefe were mentioned as those that needed to be finalised.
74. I was then asked to prepare a Brief to the Minister from the Chairman on the status of the suspended executives. A copy of the briefing document is annexed hereto marked **"Annexure SMD6"**.

DENTONS REVIEW

75. As already indicated, I was not a witness to the Board meetings of March 2015 referred to above. My knowledge stems from reading the minutes of the meetings.
76. Eskom records reflect that at a meeting with the Board on **11 March 2015**, the Honourable Minister of Public Enterprises, Lynne Brown, raised a number of concerns with the Board in respect of the issues already listed above.
77. A copy of the minutes is already attached marked **"Annexure SMD1"**.
78. Following on the meeting with the Honourable Minister of Public Enterprises, the Board proceeded to deliberate on the issues raised by the Minister and the most

optimal manner in which to begin to address the issues which confronted the Company.

79. A number of issues were deliberated and debated upon flowing from the concerns raised by the Honourable Minister and the Board finally made certain resolutions already specified above.
80. A copy of the minutes is already attached marked "**Annexure SMD2**".
81. As already stated, a meeting of the People and Governance Committee ("P&G") was convened immediately after the Board meeting to deal with the decision to suspend key executives for the duration of the enquiry, and the executives were identified as already explained.
82. I was not part of the procurement process which resulted in the appointment of Dentons. This was handled by senior managers in procurement and the General Manager Legal at the time, Neo Tsolanku.
83. The first presentation to the Board by the Dentons Team was on **27 May 2015**. It stressed the preliminary nature of the feedback, as they were only six weeks into the investigation.
84. The feedback detailed the mixed messaging that Dentons was receiving from the Board and the Shareholder in the understanding of the brief:
- 84.1 The Minister of Public Enterprises described it as a "deep dive".
- 84.2 The Eskom Board instruction is "Tell us what is wrong and we will fix it".
- 84.3 Audit and Risk Committee shifts between "investigate all executives" and "investigate suspended executives".

85. The feedback at this stage highlighted the following:

85.1 Information provided by the EXCO was not complete;

85.2 Poor performance of Eskom generation plant;

85.3 Delays in new build decisions leading to unrealistic timeframes;

85.4 High cost of primary energy (cost of coal);

85.5 Diesel purchasing handled incorrectly;

85.6 Financial challenges;

85.7 Anecdotal references to influence over procurement exerted by the executives.

86. These anecdotal references mentioned Matshela Koko in the main and the various allegations were described as obtained from witness interviews across the organisation. This detail did not make its way into the final reports.

87. I am able to say this as I received a copy of the initial drafts where Matshela Koko was heavily implicated in tender manipulation and was described as running the organisation by means of strategically placed proxies. Descriptions of specifications being tailored for specific companies, decisions of lower committees overturned, etc were provided by the various witnesses.

88. These details did not make it into the official records of Eskom as it was decided by the Board that it would be destroyed. This is recorded in the Board minute of 14 August 2015 where it states “... *concern was expressed with regard to the collection and destruction of initial reports. The Company Secretary was expected to take the necessary steps to ensure that all original reports were collected in exchange for the final reports. In view of this concern, the Chairman of P&G, Ms V Klein undertook to ensure that all reports were returned to her within 7 days for them to be destroyed*”.
89. A copy of the minutes is attached hereto marked “**Annexure SMD7**”.
90. Mrs Klein emphasised that the Board needed “to find a way for the Minister to dissociate herself in the public space” and that the inquiry should be perceived as a “Board Initiative”. The Minister failed to take a definitive stance on the matter throughout and this led to often conflicting positions and created a fracas at operational level.
91. Copies of the Dentons Reports as formally provided to me are attached hereto marked “**Annexure SMD8**” and “**Annexure SMD9**”.

T-SYSTEMS

92. I was not directly involved in this matter but I have discovered the following in my notes from the meeting of the day.
93. The matter of the IT infrastructure and outsourcing to T-systems was discussed at a Board Tender Committee (BTC) meeting on 28 February 2015.

94. It was at this BTC meeting that the change of business strategy in relation to the IT Infrastructure was presented by Sean Maritz, acting CIO at the time.

After completion of the statement, the following questions were put to the deponent and her answers were recorded accordingly:

1. Q. Do you know and understand the contents of this statement?
Yes
2. Q. Do you have any objections in taking the prescribed oath?
No
3. Q. Do you consider the prescribed oath as binding in your conscience?
Yes

I believe the statement gives a fair account of the event that happened.

[Signature]

Signature of Deponent

17 / 8 / 2020

Date

I HEREBY CERTIFY that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn before me at RETORIA on the 17 day of August 2020~~2019~~, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

[Signature] KB DINTWE Captain

COMMISSIONER OF OATHS



WRITTEN SUBMISSION OF MR MATSHELA MOSES KOKO

I, the undersigned,

MATSHELA MOSES KOKO

hereby state that:

INTRODUCTION

1. I am an employee of Eskom Holdings SOC Limited ("Eskom") of 23 years standing. I have been employed by Eskom since the beginning of 1996, and even before that, while I was an engineering student, I worked for Eskom during university vacations. I had with the assistance of Eskom obtained a place at the University of Cape Town to study engineering, for which Eskom provided financial assistance.
2. I qualified with a B.Sc. degree in chemical engineering at the University of Cape Town at the end of 1995. I additionally have a Master of Business Leadership (MBL) degree from the University of South Africa, conferred in 2016.
3. More information regarding my career with Eskom can be gleaned from document MMK 1 in the accompanying bundle¹, a document that Eskom put out on its website.
4. My current permanent position with Eskom is that of Group Executive: Generation, i.e. head of Eskom's Generation Division. The Generation Division comprises Eskom's electricity generation assets. My permanent post was previously that of Group Executive: Generation and Technology, i.e. the head of Eskom's Generation

¹ MMK 1, bundle p 1.

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and Technology Divisions, but due to recent restructuring, I am now responsible for the Generation Division only. I first became responsible for Generation on 1 October 2015, when it was added to my responsibilities as head of Technology.

5. To provide context to what I refer to below I provide a brief synopsis of material events relating to the positions that I held in recent times, and to whom I reported from time to time.
6. I was appointed to the position of Group Executive: Generation and Technology in October 2015. The Technology Division provides engineering designs and support for the Generation, Transmission and Distribution Divisions. My previous position was that of Group Executive: Technology and Commercial to which I was first appointed in an acting capacity when the Technology and Commercial Divisions merged in April 2014. I was permanently appointed to the post in November 2014. Before that, from 2010, I held appointment as a Divisional Executive: Technology. During the period from 20 July 2015 to the end of September 2015 I was responsible for Technology only, Commercial having been assigned to the Chief Financial Officer. Generation was added to my portfolio with effect from 1 October 2015.
7. I was appointed as Eskom's interim Group Chief Executive ("Group Chief Executive" or "GCE") during early December 2016 arising from the resignation of Mr Brian Molefe. Mr Molefe left Eskom in November 2016. Eskom's board of directors ("Eskom's Board" or "the Board") then appointed me in December as interim GCE pending a recruitment process for the eventual appointment of a new GCE.

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8. I was during 2017, on 16 May 2017, placed on special leave pending the outcome of an investigation that had been undertaken at the behest of Eskom's Board by attorneys Cliffe Dekker Hofmeyr ("CDH"), acting in conjunction with the forensic investigation arm of auditors' firm Nkonki Inc. ("Nkonki"), to investigate the veracity of newspaper reports that alleged that I had, arising from interests that my wife's daughter from a previous marriage had in March 2016 unbeknown to me obtained in an Eskom contractor, Impulse International (Pty) Limited, acted in breach of the fiduciary duties that I owed Eskom and Eskom's policies and procedures. I was subsequently, on 1 August 2017, placed on suspension pending finalisation of disciplinary proceedings that Eskom's Board then decided had to be instituted against me. This occurred despite the findings of the investigators in terms of their report dated 13 June 2017 that:

"There is no evidence that supported and/or indicated that Mr Koko committed an act which undermined the internal control system of Eskom and no action in terms of Section 15(1) of the Public Finance Management Act was therefore required from the accounting authority relevant to the conflict of interest matter",

which was supported by a memorandum to similar effect, dated 14 June 2017, from the attorneys, CDH.

9. Eskom's pursuing the disciplinary enquiry despite CDH/Nkonki's findings apparently arose from a report made to Eskom's Board by Mr Khulani Qoma, General Manager in the office of the Chairman of Eskom's Board, on 14 June 2017 to the effect, among other things, that *"(t)he findings of the investigation on the alleged conflict of interest relating to the Impulse International should be viewed within the prisms of the public sentiments as opposed to solely focusing on the legal rationale"* and that I should be dismissed regardless, in conjunction with a memorandum subsequently obtained from a senior advocate of the Johannesburg Bar that was to the effect

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that, despite the findings of CDH/Nkonki that had exonerated me, I should answer certain questions in the forum of a disciplinary enquiry².

126. The disciplinary proceedings commenced only on 18 October 2017 before Adv. M. Mthombeni, a member of the Johannesburg Bar, and ran their course on and off until the beginning of December 2017. It became apparent during the proceedings that my issuing instructions early in 2017, after I had been appointed interim GCE, that corrupt senior officials charged with overall responsibility for the Medupi and Kusile projects be moved, pending investigation, from their posts to posts where they would no longer be able to continue with their harmful conduct, was the precipitating turn of events that eventually culminated in my being subjected to disciplinary proceedings. It led to information about my having declared the interests of my stepdaughter in Impulse International (Pty) Ltd in terms of Eskom's policies and procedures being fed to the Tiso Blackstar group of newspapers by the very corrupt officials against whom I had acted. They had realised that I was coming for them, and connived with the journalists who then launched a campaign of vilification of me based on falsehoods and distortions of the truth, which is still continuing. Ironically, charges for misconduct were even added during the disciplinary process relating to the action that I had taken to stop the corruption at Medupi and Kusile. These arose from alleged "whistleblower reports" that had been made by the corrupt officials themselves, who then, eventually, refused to testify before Mr Mthombeni.
10. I was on 29 December 2017 supplied with Mr Mthombeni's findings (that had already been issued on 14 December 2017). I was in terms of these found not

² As opposed to simply being given the opportunity to provide explanations in respect of the questions that the advocate had posed, whether to Eskom's Board, CDH/Nkonki, or whomever.

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guilty on all the charges that Eskom had chosen to prefer against me.³ My suspension was at the same time lifted and I have since 8 January 2017 been rendering service to Eskom in my permanent (albeit in the interim restructured) position of Group Executive: Generation.

11. Previously, during the period from 11 May 2015 until 15 July 2015⁴, while I was serving as Group Executive: Technology and Commercial, I together with 3 others of my then colleagues⁵, was also placed on suspension. That was supposedly to allow an “*unfettered enquiry*” while a so-called “*Forensic Fact Finding Enquiry ... into the status of the business and challenges experienced by Eskom*” by the Cape Town law firm, Dentons South Africa, was taking place. Dentons had been appointed by Eskom’s Board to investigate, among other things, “(t)he poor performance of Eskom’s generation plant” and the “(i)ntegrity of the procurement processes and compliance with legislation as well as Eskom’s procurement policies”. I shall refer in greater detail to the events that gave rise to my suspension below. However, our supposedly being suspended to allow an “*unfettered enquiry*” was simply a ruse and attempt by the Eskom Board, as constituted at the time, to pressurise us to accept separation packages and leave Eskom.⁶ This had been engineered by the then Chairman of the Board, Mr Zola Tsotsi. The Chairman of the Board, Mr Tsotsi, resigned shortly afterwards and in the ensuing period the

³ Which was not surprising as there was, despite the relentless continuation of the vicious trial by media campaign against me in, principally, publications of the Tiso Blackstar media group on the basis of false and misleading reporting, never a *prima facie* case against me for misconduct, as put across to Eskom’s Board already in June 2017, as referred to above.

⁴ I returned to the office on 20 July 2015.

⁵ The then Group Chief Executive, Mr Tshediso Matona, the Group Executive: Group Capital, Mr Dan Marokane and the then CFO and Director of Finance serving on Eskom’s Board, Ms Tsholofelo Molefe (the latter’s suspension by the Board occurred a few days after that of Messrs Matona, Marokane and myself).

⁶ Which was, for the most part, effective in the end. I was the only one who refused to accept the separation packages offered to us while we were on suspension. Concomitantly, I was the only one of the four who returned to work when Dentons reported on 15 July 2015 that they had found no wrongdoing on our part.

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other members of the Board, with three exceptions⁷, resigned or were replaced by the shareholder.

12. As interim Group Chief Executive I reported and was responsible directly to Eskom's Board. Dr Baldwin (Ben) Ngubane was the Chairman of the Board during the period that I actively rendered service as interim Group Chief Executive from December 2016 to 16 May 2017.
13. In my position as Group Executive: Generation and Technology I reported to the Group Chief Executive. From April 2015 until December 2016, the Group Chief Executive was Mr Brian Molefe. He was previously the Group Chief Executive of Transnet SOC Ltd. He was first appointed on an interim basis, on secondment from Transnet (as far as I am aware), but permanently in October/November 2015. Before that, from 2010, the GCE was Mr Brian Dames, who, however, retired during 2014. He was succeeded as GCE by Mr Colin Matjila in an acting capacity. Mr Tshidiso Matona was then permanently appointed as GCE during or about November 2014. He resigned shortly after he was suspended (with me and 2 others, as referred to above) on 11 March 2015. He then returned to Government where he is now the secretary of the National Planning Commission. Mr Zithembe Khoza acted as GCE for a short period before Mr Brian Molefe was appointed in an acting capacity.

⁷ Mr Zithembe Khoza, Ms Venete Klein and Prof Pat Naidoo.

INVITATION TO APPEAR BEFORE THE PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES

14. I received an emailed letter from the chairperson of Parliament's Portfolio Committee on Public Enterprises ("the Portfolio Committee" or "this Committee"), Ms Mnganga-Gcabashe on 14 November 2017.⁸
15. The letter invited me in my capacity "*as the former acting group chief executive of Eskom*" to appear before the committee to testify "*on issues related to the governance at Eskom*". These issues (in respect of which I was requested to make a written submission) are in terms of the letter referred to a:
- "1. *The purchase of Optimum Coal Holdings by Tegeta from Glencore.*
 2. *The pre-payment of the coal supply extension at a Board Tender Committee meeting of 11 April 2016.*
 3. *Corporate governance at Eskom."*
16. The original date of the enquiry was communicated to me as 21 November 2017, but in subsequent communications I was requested to respond to the invitation at the continuation of the proceedings of the Portfolio Committee on Wednesday, 24 January 2018. This document serves as the written submission that the Portfolio Committee has required me to make.

⁸ MMK 2, bundle pp 2 – 3.

“THE PURCHASE OF OPTIMUM COAL HOLDING BY TEGETA FROM GLENCORE”

Introduction

17. My assumption is that this issue relates to the acquisition by Tegeta Exploration & Resources (Pty) Limited (“Tegeta”)⁹ of the shares and claims on loan account held by Optimum Coal Holdings (Pty) Limited (“OCH”)¹⁰ in certain of OCH’s subsidiary companies, including Optimum Coal Mine (Pty) Limited (“Optimum”)¹¹, Optimum Coal Terminal (Pty) Limited and Koornfontein Mines (Pty) Limited (“Koornfontein”)¹². My understanding (derived from the internet) is that Optimum Coal Holdings (Pty) Ltd is still a subsidiary of Glencore Operations South Africa (Proprietary) Limited, the South African subsidiary of the London listed Glencore plc¹³.
18. The essentials of the agreement at issue were described in a press release that the business rescue practitioners at the time of OCH and Optimum, Messrs Piers Marsden and Peter van den Steen¹⁴, issued when the (then conditional) transaction was concluded. A copy is document MMK 3 in the accompanying bundle.¹⁵ Greater particularity regarding the transaction is provided in the “*Reasons for Decision*” of the Competition Tribunal of South Africa, issued on 12 April 2016, in

⁹ At the time jointly controlled by Oakbay Investments (Pty) Ltd and Mabengela Investments (Pty) Ltd. It is now, according to what I could source from the internet, a subsidiary of Shiva Uranium (Pty) Ltd, of which Oakbay Investments (Pty) Ltd is apparently still a shareholder.

¹⁰ At the time in business rescue.

¹¹ Also at the time in business rescue.

¹² Which were the operating companies in the OCH group. Optimum’s mining operations comprise opencast and underground coal mining operations near Middelburg. Koornfontein mining operations are conducted as underground mining operations near eMalahleni, the erstwhile Witbank.

¹³ With secondary listings on the Hong Kong Stock Exchange and the Johannesburg Securities Exchange.

¹⁴ The independent business rescue practitioners that had been appointed for OCH and Optimum when the boards of directors of those companies, at Glencore’s behest, on or about 4 August 2015 opted for that avenue to avoid the arbitration proceedings that were pending between Eskom and Optimum.

¹⁵ MMK 3, bundle pp 4 – 5.

terms of which that body explained the reasons for its approval on 22 February 2016 of the agreement(s) that had been concluded and the resultant merger.¹⁶ What is relevant to what I state below is an understanding that the transaction included Koornfontein. Koornfontein enjoyed the benefit of a lucrative coal price agreed with Eskom for the supply of thermal coal to Eskom's Komati Power Station.

19. On 14 November 2016, *Business Report*¹⁷ published a so-called "opinion piece" that I had written, titled "*Eskom Tegeta deal is in the interest of South Africa*".¹⁸ It was published after Eskom's Board had at a press conference that was held in November 2016 put out details of agreements that at that time existed between Eskom and Tegeta for the supply of coal. These transactions included a long-standing coal supply agreement that related to the supply of coal for the Hendrina Power Station ("the Hendrina Coal Supply Agreement"), that Tegeta had (via Optimum) become party to arising from the transaction referred to above and had undertaken to honour. The press conference arose to address questions and speculation that had been raised in the media in relation to, among others, the Hendrina Coal Supply Agreement. The article provides some information about the background to the transactions concluded, including those between OCH, represented by the business rescue practitioners, and Tegeta that had been concluded with Eskom's and Glencore's approval. I stand by what I stated at the time.

¹⁶ MMK 4, bundle pp 6 – 11.

¹⁷ A section of the daily newspapers that are published by the Independent News & Media media group.

¹⁸ MMK 5, bundle pp 12 – 14.

20. The upshot of the overall deal that was struck was that from December 2015 until the expiry of the Hendrina coal supply contract in December 2018, Eskom would derive a real benefit of R3.39 billion from the OCH/Tegeta deal.
21. In his submission to the Portfolio Committee Mr Piers Marsden, one of the independent business rescue practitioners of OCH and Optimum, conveyed that throughout the negotiations with the business rescue practitioners after they had been appointed Eskom exhibited a determination to maximise its economic benefits from any deal to be struck. Mr Marsden was quite correct in what he stated.
22. The benefits derived from the overall deal arose from Eskom's insistence that Optimum continue to deliver coal to it at R150 per tonne until December 2018 in accordance with the Hendrina Coal Supply Agreement that has existed between Eskom and Optimum since 1983 (with effect from 1969 and amended on occasions subsequently).
23. In comparison Glencore, by way of a letter from Optimum to Eskom, dated 30 June 2015 (i.e. shortly before OCH and Optimum went into business rescue)¹⁹, had tabled an offer at a doubled price of R300 per tonne until contract expiry in 2018, "*to allow it (i.e. Optimum) to continue operating*". Glencore also proposed that as part of a package deal the contract be extended to 2023 and the price be increased to R570 per tonne from 2019, to be done without Eskom going through any open tender process. The Optimum letter of 30 June 2015, was written after an apparently acrimonious meeting that had taken place on 11 June 2015 between, among others, Mr Brian Molefe, then acting GCE of Eskom, and Mr Ivan Glasenberg, CEO of Glencore.

¹⁹ MMK 6, bundle pp 15 – 17.

24. In another letter to Eskom, dated 17 September 2015 (i.e. after Glencore had put OCH/Optimum into business rescue),²⁰ the independent business rescue practitioners proposed a deal that would result in a weighted average price of R443 per tonne until 2023. In terms of this proposal, Eskom would continue to pay R150 per tonne for coal until December 2018, but the contract would be extended until 2023 at a price of R630 per tonne.
25. Eskom rejected both the above proposals, insisting that Optimum honour the Hendrina Coal Supply Agreement (as amended in 1993 and again in 2011) until its expiry during 2018.
26. The fundamental considerations for Optimum Colliery's agreeing amendments to the Hendrina Coal Supply Agreement in 1991 can be gleaned from Schedule 7 of the Hendrina Coal Supply Agreement. These considerations informed my thinking throughout insofar as I participated in negotiations during the business rescue process of OCH and Optimum²¹, as from the time when I first became involved in late August 2015, after I had returned from suspension on 20 July 2015, and then subsequently, when I was appointed the head of Generation with effect from 1 October 2017. By the time I became involved, however, OCH and Optimum had already been placed in business rescue. Insofar as I refer below to what had occurred before my involvement commenced, I rely on what I gleaned from the historical documents, put in context also by what I learnt from my colleagues who had been involved before.

²⁰ MMK 7, bundle pp 18 – 22.

²¹ That formally commenced on 4 August 2015.

The Optimum operation commenced in 1969 and converted from a single product operation to a multi-product operation in 1983

27. The Optimum Colliery's coal mining operations came into being in the 1960's, at the beginning of 1969 as I have it, as part of, as far as I am aware, the operations of Trans-Natal Coal Corporation Ltd. Trans-Natal Coal was at the time (or at some subsequent stage became) part of the General Mining and Finance Corporation Ltd (Gencor) group of companies, that, eventually, fell to the BHP Billiton group. This resulted in Optimum Colliery operating as a division of BHP Billiton Energy Coal South Africa (Pty) Ltd, known as BECSA. Optimum acquired the Optimum Colliery in 2008 as part of an acquisition of business agreement that it concluded with BECSA. Optimum was at the time part of OCH. OCH was at the time referred to as a newly formed black empowerment consortium led by Mr Eliphus Monkoe, apparently a previous Chief Operating Officer of BECSA.
28. The Optimum Colliery's operations were originally launched to serve Eskom's Hendrina Power Station exclusively "for the life of the plant", i.e. 50 years. That rendered the Optimum Colliery's mining operations a "single product operation" or a supplier to the "domestic tied market", i.e. tied to Eskom as the colliery's single domestic customer.
29. The contractual relationship between Eskom (then the Electricity Supply Commission) and Optimum Colliery was initially on a cost plus basis. The relationship was recorded in the Hendrina Coal Supply Agreement that was originally concluded on 24 June 1983 (applying with retrospective effective back to 1969, and to endure until the end of 2018).

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30. Eskom had, however, earlier in 1983, on 7 January 1983, approved that the Optimum Colliery could, despite what had been agreed originally, supply coal not only to Eskom, exclusively for the Hendrina mine, but also to the export market. This agreement allowed Optimum Colliery's operations to be converted from a "single product operation" (i.e. supplying thermal coal only to Eskom in the "tied domestic market") to a "multi-product operation".
31. The upshot of the January 1983 agreement was that the mining assets and infrastructure utilised until then by Optimum Colliery for purposes of mining coal exclusively for supply to Eskom, could as from that time be utilised also for purposes of mining export coal.

Optimum Colliery's changing to a multi-product operation was dependent upon the continued supply of coal to Hendrina Power Station, but also benefitted Eskom

32. Arising from the January 1983 agreement Optimum Colliery had to invest additional capital in mining and rehabilitation assets to enable it to produce an additional 6.5 million tonnes per year run-of-mine coal for the export market.
33. The coal supply to Eskom for the Hendrina Power Station in terms of the Hendrina Coal Sale Agreement provided revenue security for Optimum Colliery that enabled it to create and maintain the infrastructure and achieve the economies of scale required to enable it to export coal. Without the security of the long-term agreement that was in place with Eskom (until the end of 2018), Optimum Colliery would not have been able to invest in this manner.

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34. The benefit to Eskom was an enlarged opencast mine with improved economies of scale, bringing the cost per tonne down, and making it unnecessary for Optimum Colliery to reopen prior (operationally more expensive) underground mining operations to supply Eskom.
35. The working cost projections at the time were based on the assumption that opencast mining operations would continue into the indefinite future for the duration of the agreement (corresponding with the notional 50 year life of the Hendrina Power Station, i.e. until the end of 2018).

The basis of coal supplies from Optimum Colliery changed from a cost plus arrangement to a fixed price arrangement in 1993

36. Eskom and Optimum Colliery in 1993 agreed a new pricing structure for the Hendrina Power Station coal offtake. This was specified and agreed in terms of amendments to the 1983 Hendrina Coal Supply Agreement that changed the basis of supply from a cost plus basis to a fixed price basis.
37. BECSA, the owner of the Optimum Colliery prior to 2008, never after 1993 raised the issue of hardship as a result of changed market circumstances that at later times made the fixed price that had been agreed for the Hendrina coal seem low. BECSA executives were aware of the background and context of the pricing structure that had been agreed, as were the executives of its 2008 successor.

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38. The base price was agreed anew with Optimum as recently as in 2011, when it was by agreement determined at R115 per tonne as at 1 April 2011²², with a minimum annual offtake of 1 million tonnes and a maximum offtake of 5.5 million tonnes.
39. The base price of R115 per tonne agreed with effect from 1 April 2011 accordingly still reflected the benefits that the Optimum Colliery derived from the multi-product operations that Eskom had allowed since 1983. This was well-understood by all the parties involved at all relevant times before 2012 and Optimum never raised any issue about the level at which the base price was agreed.
40. Optimum Colliery and its owners from time to time, including Optimum, had the benefit of participating in the export market since 1983 by utilising coal reserves originally earmarked solely for Eskom (and, to some extent, using Eskom's infrastructure) to supply the export market.
41. Eskom had furthermore by agreement with BECSA during 2006/2007 consented to the release for export of Koornfontein coal reserves which were originally also to have been dedicated to Eskom in terms of the relevant coal supply agreement. The benefit of this concession also fell to OCH eventually.

Optimum claims hardship and institutes arbitration proceedings; the parties agree in terms of the Co-operation Agreement to maintain the *status quo* pending negotiations to resolve all issues that had arisen after Glencore became involved

42. Glencore became involved in March 2012, after it had, with Shanduka Resources as a BEE partner, acquired OCH and through it, control of Optimum. Optimum later

²² In terms of clause 3.5 of the Second Addendum to the 1983 Hendrina Coal Supply Agreement, read with schedule 8 thereto.

stated²³ that Glencore “*shortly thereafter identified the risk presented by (the) Hendrina coal supply agreement to the viability of OCM*” and “*shortly thereafter raised the issue with Eskom, but Eskom was not willing to entertain any amendments to the agreement*”.²⁴ In other words, according to Glencore, it became involved with Optimum without realising the implications of the Hendrina Coal Supply Agreement, allegedly only (shortly) afterwards identifying these. I respectfully state that that is hardly likely. That Optimum very shortly after Glencore’s takeover started complaining about the agreed price and demanded that it be increased, despite its getting involved with Optimum via OCH with open eyes, is telling. It is more likely²⁵ that Glencore from the very outset knew what it was letting itself in for, and simply thought that it would be able to arm-twist Eskom into agreeing to an increased price.

43. OCM subsequently issued a “hardship notice” in terms of the amended Hendrina Coal Supply agreement. It did so on 3 July 2013. This occurred while discussions between Eskom’s management and that of Optimum about the Hendrina Coal Supply Contract were ongoing. In terms of these discussions Optimum’s stance that it would be unable to continue its operations unless a substantially increased price for the Hendrina coal was agreed was made apparent again and again.
44. The long and short of Optimum’s approach was to try and hold Eskom to ransom with its threats that Glencore would simply cease Optimum’s operations with, quite obviously, very severe potential consequences for Eskom in relation to the generation of electricity at Hendrina at a time when it had already become apparent

²³ See MMK 9, referred to below, bundle pp 30 – 35.

²⁴ MMK 9, bundle p 32, 2nd to 4th paragraphs.

²⁵ Confirmed by what happened when OCH and Optimum went into business rescue, when OCH wanted to jettison Optimum, but retain Koornfontein.

that Eskom's generation capacity was going to run short in the not too distant future. Glencore's approach was presumptuous and paid no heed to the fact that Eskom was itself financially constrained as a result of, among others, an increasingly assertive approach towards Eskom tariff increases applied by NERSA, the National Energy Regulator of South Africa.

45. Optimum on 28 February 2014, pursuant to the prior "hardship notice" of 3 July 2013, instituted arbitration proceedings in terms of the Hendrina Coal Supply Agreement. Optimum's hardship claim did not attack the base price, but the escalation factors (PPI 60%, 30% CCI (Coal Cost Index) and fixed price 10%) that had been agreed.
46. This gave rise to Eskom's and Optimum then, on 23 May 2014, entering into an agreement referred to as a "Co-operation Agreement".²⁶ This agreement specified a process directed at addressing and settling outstanding issues relating to Optimum's alleged hardship arising from the fixed price at which it had agreed (as recently as 2011) to supply coal to Hendrina in terms of the amended Hendrina Coal Supply Agreement. The Co-operation agreement also addressed the disputes about penalties that Eskom sought to impose arising from sub-specification coal that Optimum had been delivering over an extended period of time since early 2012. It established a time table that (optimistically) posited that the issues it identified would be susceptible of resolution by early 2015.
47. In terms of the Co-operation Agreement Eskom undertook that it would from 1 May 2014 until termination of the negotiation and settlement process that the agreement envisaged, suspend all penalties that applied to Optimum in terms of the Hendrina

²⁶ MMK 8, bundle pp 24 – 29.

Coal Supply Agreement, which penalties had a substantial monetary value, albeit that Eskom had not yet finally calculated and specified the aggregate sum at issue.

Glencore continues to try to hold Eskom to ransom with its threats of business rescue and liquidation, settlement does not come about and Eskom terminates the Co-operation Agreement; Glencore puts OCH and Optimum in business rescue to avoid arbitration

48. It is apparent from the documentation that is available that the negotiations (to which I was not a party) did not make much progress towards resolution. This was simply because of the approach that Optimum still pursued, i.e. that Glencore would close Optimum down and put it into liquidation if Eskom did not agree to a substantial increase of the Hendrina coal price (by way of applying much steeper escalation rates to the 1 June 2011 base price) and Eskom's waiving its penalty claims (which claims Optimum posited as a breach of contract entitling it to cancel the Hendrina Coal Supply Agreement altogether). This was confirmed and exemplified in the letter that Eskom received from Optimum on 13 November 2014, supposedly to put forward settlement proposals, but that actually served to threaten Eskom in quite unequivocal terms at a time when load shedding had just started.²⁷ I refer the Portfolio Committee in this regard specifically to the first two paragraphs of the letter, as well as the last paragraph thereof. The letter also recorded that as at that time Eskom's negotiators had developed and expressed a strong mistrust of Optimum's professed *bona fides* in the negotiations.

²⁷ MMK 9, bundle pp 30 – 35.

49. Optimum sent another letter to Eskom of similar import on 22 May 2015.²⁸ The letter recorded that Eskom had at that time exhibited a willingness to try and assist Optimum with the price for the Hendrina coal, but also that Mr Brian Molefe had on 18 May 2015, allegedly, taken a harder line on the basis that Eskom still intended to enforce the Hendrina Supply Agreement. The letter conveyed Optimum's position that business rescue of Optimum was on the cards and that Optimum would inevitably be liquidated unless Eskom increased the price (despite stating that Optimum "*fully appreciates Eskom's difficult financial position and the consequences of increasing the price under the agreement*").
50. Optimum closed its export operations in July 2015.²⁹ This was, apparently, due to "*depressed coal prices and ongoing losses*" that Optimum had suffered in its export operations. However, such prices had reigned for a substantial period, since well before Glencore became involved with OCH and Optimum.
51. Eskom terminated the Co-operation Agreement by letter delivered to Optimum on 22 June 2015.³⁰ In his submission to the Portfolio Committee Mr Molefe confirmed what was stated in the letter, i.e. that Eskom terminated the Co-operation Agreement because of its constrained financial position at the time. The letter was, apparently, originally drafted as a response to Optimum's letter of 22 May 2015³¹, but was only delivered 11 days after the meeting that took place on 11 June 2011, attended also by Glencore's CEO, Mr Ivan Glasenberg. Although I did not myself attend the meeting³², I later learnt that the meeting did not go well and that Mr Brian

²⁸ MMK 10, bundle pp 36 – 38.

²⁹ See 6th bullet point of paragraph 1 on page 2 of MMK 7, bundle p 19.

³⁰ MMK 11, bundle p 39.

³¹ MMK 10. MMK 11 is dated 10 June 2015

³² Still being on suspension at the time.

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Molefe took strong exception to the “*Old South Africa tactics*” that Mr Glasenberg adopted in its course.

52. The letter, MMK 11, had the effect of reinstating operation of the provisions of the Coal Supply Agreement and its addenda, including those relating to price adjustments for sub-specification coal. It also restarted the arbitration process that had been shelved in April 2014.
53. Optimum had for a continuous period from 1 March 2012 to 31 May 2015 failed to supply and deliver coal to Eskom that complied with the quality specifications specified by clause 3.4 of the First Addendum to the Hendrina Coal Supply Agreement. I again point out that the supply of sub-specification coal was already an issue of long standing, as reflected also in the Co-operation Agreement of 23 May 2014, MMK 8.
54. As a result Mr Thava Govender (Eskom’s Group Executive: Transmission), in the capacity as acting GCE³³, authorised that a letter of demand be sent to Optimum. The Eskom memorandum in terms of which Mr Govender approved that a letter of demand be sent speaks for itself insofar as it sets out the motivations that applied.³⁴ It carried the approval of the executives who had been involved with the negotiations with Optimum until that time.

³³ Mr Molefe must have been away.

³⁴ MMK 12, bundle pp 40 – 41.

55. CDH, acting on behalf of Eskom, issued the letter of demand on 16 July 2015.³⁵ The letter of demand specified Eskom's claim for penalties in terms of the Coal Supply Agreement as a claim for nearly R2.18 billion.³⁶
56. Paragraph 3 of the letter of demand recorded that, *"In the event that Optimum disputes the aforementioned claim, we submit that this letter shall constitute a referral of the dispute to arbitration as contemplated in clause 6.3 of the First Addendum"*.
57. In these circumstances the boards of directors of Optimum and OCH on 31 July 2015 adopted resolutions to initiate business rescue proceedings in terms of the Companies Act, 2008. Mr Piers Marsden testified to this committee that the business rescue proceedings (that suspended legal proceedings) were commenced to avoid the arbitration proceedings. The business rescue formally commenced on 4 August 2015, as stated before, and came to an end on 31 August 2016.

The value of Eskom's penalty claim

58. Ms Daniels stated before this Committee that the original penalty calculation was overstated by some R1 billion as a result of what she referred to as a "spreadsheet error".
59. Mr Clinton Ephron, a director of Optimum and OCH, in a one-on-one meeting that I had with him, conveyed to me that Eskom would be lucky if it came away with its penalty claim for R800 million. My view on the matter, which I had inherited when,

³⁵ MMK 13, bundle pp 42 – 43.

³⁶ That claim had, apparently, been computed from figures that had been determined by an employee in the Primary Energy department, part of the Commercial Division, who went to work for Glencore.

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after I had come back from suspension, I became responsible for Generation, was very simple, and I expressed it to Mr Ephron at the time. It was that the final figure had to be determined by the arbitration process that the Hendrina Coal Supply Agreement specified. Mr Ephron, however, made it clear that from Optimum's perspective the value of the claim was actually irrelevant. Optimum's position, representing also that of Glencore, was that Eskom had to waive the penalty claim altogether.

60. Mr Marsden informed the Portfolio Committee that his estimate of the value of Eskom's penalty claim was approximately R700 million.
61. I believe that the Eskom employee from whose figures the calculation of the original claim were done, had gone to work for Glencore. That may explain why Optimum's representatives were able to put figures to the claim that were much lower than the sum for which the claim was instituted – they knew what we did not.
62. The Eskom claim was, eventually, during March 2017, settled at the arbitration hearing at R577 million. The settlement occurred in accordance with a mandate that Eskom's Board had given to Ms Suzanne Daniels, then Eskom's acting Company Secretary and Corporate Counsel. She testified to that effect before this Committee. Ms Daniels was expert regarding Eskom's coal supply agreements and Eskom was represented in the arbitration proceedings by CDH and senior counsel. Although I was not involved, I have no reason not to accept that the settlement was in the right ballpark.
63. I wish again to bring to the attention of this Committee that I was on suspension from 11 March 2015 until 15 July 2015, returning to work from suspension on 20

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July 2015. That was after Dentons had on 15 July 2015 issued a report to the effect that it had in its investigation not found any wrongdoing on my part (or on the part of the other 3 executives suspended with me). It is during this period that the Optimum penalty claim was quantified at R2.18 billion and formally instituted, as is reflected in MMK 12 and MMK 13.

64. I was reinstated to the position of Group Executive: Technology. When I was suspended on 11 March 2015 my position was that of Group Executive: Technology and Commercial, but restructuring had occurred in the interim. Responsibility for the Commercial Division had been transferred to the Chief Financial Officer as his ultimate responsibility.
65. As referred to already, Mr Molefe had in the meantime been appointed as acting GCE, being appointed on a permanent basis during October/November 2015. I had never met or dealt with Mr Molefe before.
66. Mr Molefe undertook some further restructuring of the top executive posts within Eskom. The Board, on his recommendation, appointed me as Group Executive: Generation and Technology, in other words Generation was added to my responsibilities (after Commercial had been assigned to the Chief Financial Officer during the period that I was on suspension, as referred to before).
67. Load shedding commenced in South Africa during November 2014 as a result of a lack of generation capacity. Load shedding was still a matter of overriding importance at the time when I was appointed to the position of Group Executive: Generation. In relation to the issues that had arisen in years and months past regarding Optimum and the Hendrina Coal Supply Contract, I had to acquaint

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myself with the background facts and deal with the matter in circumstances where Eskom's available generation capacity could not meet demand.

68. Arising from Optimum's being put in business rescue on 4 August 2015 the supply of coal from Optimum to the Hendrina Power Station ceased. The Hendrina Power Station then had to rely on its emergency stockpile of coal for purposes of keeping the power station going during the month of August. However, this impacted on Hendrina's ability to continue supply electricity into the national grid going forward. What would happen if Hendrina's electricity generation came to a halt was a matter of major concern and a talking point within Eskom's managerial echelons at the time.
69. There was no meaningful engagement or communication between the business rescue practitioners that had been appointed and Eskom's management during August 2015 regarding the resolution of the Hendrina Coal Supply Agreement pricing dispute and the penalty issues that had arisen since Glencore had become involved with Optimum. However, shortly before 3 September 2015 I received a call from Mr Clinton Ephron, a director of both OCH and Optimum. I knew him because of my having dealt with him previously in my capacity as the Group Executive responsible for Technology and Commercial. He suggested that we find a solution, at least in the short-term, to enable coal supplies to Hendrina to be restarted. I discussed the matter with Mr Molefe and arranged a meeting between Mr Molefe and Mr Ephron. It took place on 3 September 2015. This resulted in a short terms arrangement for the renewed supply of coal to Hendrina at the contract price of R150 per tonne in accordance with the terms of the Hendrina Coal Supply

Agreement. The terms of the arrangement were recorded and confirmed in a letter compiled by CDH, dated 19 September 2015.³⁷

70. The Hendrina coal supply arrangement was short term (after the first 60 days, it was from month to month) and precarious. Overt and veiled threats were still being made not only by the directors of OCH and Optimum still participating in communications and negotiations, but also now from the side of the business rescue practitioners. These were the same as before, i.e. that Glencore would put Optimum into liquidation, unless Eskom came to terms with it, encompassing that Eskom had to agree to a higher price for the Hendrina coal and waive its rights to the penalties that Eskom sought to recover. The continuation of the month to month arrangements was subject to uncertainty and, accordingly, very troubling - the continuing possibility that Glencore would on short notice pull the plug and implement the threats that had been conveyed to Eskom so often since Glencore's involvement had commenced early in 2012 was of major concern.
71. A further concern was that the Department of Mineral Resources had also become involved because of its officials' concerns about whether, given Optimum's apparent precarious financial status, safety and environmental standards continued to be met at Optimum's operations. The Department had for that reason at a stage suspended the relevant mining licence. Mr Molefe had to approach the Minister to ask that the matter be dealt with very carefully in the light of the circumstances that existed, more particularly, Eskom's generation constraints and load shedding that was costing the national economy dearly. As a result the suspension was withdrawn on or about 7 August 2015.

³⁷ MMK 13.1, bundle pp 44 – 46.

72. Such communication with the Department of Mineral Resources was not out of the ordinary, usually occurring at the most senior levels. Eskom and the mining companies that supply coal to it exist synergistically and Eskom has always had regular and ongoing interaction with the Department of Mineral Affairs where its interests required it, including sometimes to seek the Department's assistance to iron out difficulties that had arisen with the miners, and sometimes to act as the miners' interlocutor.
73. Eskom's stance had never changed since even before Mr Molefe's meeting with Optimum's CEO on 18 May 2015. Eskom's stance was simply that it was, despite running short on generation capacity, not going to succumb to Glencore's strong arm tactics, but:
- 73.1 Fully expected OCM to comply with the Hendrina Coal Supply Agreement until its expiry at the end of 2018 at the agreed price of R150,00 per tonne;
 - 73.2 Was not going to waive its penalty claim, but would pursue it to arbitration;
 - 73.3 Was not willing to engage with Optimum at that stage regarding a package deal in terms of which the supply contract was extended until 2023 at a substantially increased price per tonne without going to market.
74. Eskom had, on that basis, rejected the proposals contained in the letter of 17 September 2015³⁸ received from the business rescue practitioners. In these circumstances, the business rescue practitioners (of OCH and Optimum) indicated that they were seeking a buyer for Optimum. This was recorded in their first

³⁸ MMK 7, bundle pp 18 - 22.

Business Rescue Status Report issued on 4 November 2015, as referred to in their second report of 4 December 2015.

75. Even before that, on 28 October 2015, I had a meeting with Messrs Marsden and Van den Steen during which we discussed the avenues that could, potentially, be followed to resolve matters. I was told during the meeting that there was still a third party who was possibly interested in acquiring Optimum's business.³⁹ The name of the third party was not disclosed during the meeting. I subsequently, on 29 October 2015, received a letter from Messrs Marsden and Van den Steen that recorded the options that had been mooted.⁴⁰ It also disclosed Oakbay Investments (Pty) Ltd ("Oakbay") as the potential buyer that the business rescue practitioners could bring to the table.
76. On 24 November 2015 a meeting took place at Megawatt Park when the business rescue practitioners did actually bring representatives of Oakbay to the table. Besides myself, Ms Suzanne Daniels attended the meeting and also Ms Ayanda Nteta, who drafted the minutes of the meeting.⁴¹ Ms Daniels, as referred to already, was regarded as Eskom's expert on its coal supply contracts and had throughout been involved as adviser to the executives dealing with the matter from the time, after Glencore had become involved, when the difficulties with the Hendrina Coal Supply Contract started. Ms Nteta was at the time the acting General Manager: Primary Energy (Fuel Sourcing) in the Commercial Division. The document is an important document insofar as it contemporaneously recorded the status at the time and what the stance was that had been adopted by each of the various parties.

³⁹ The business rescue practitioners had conveyed to me earlier that there were buyers that were interested in Optimum. At first they said that discussions were ongoing with three potential buyers, then later, with two potential buyers and eventually with only one.

⁴⁰ MMK 14, bundle pp 47 – 49.

⁴¹ MMK 15, bundle pp 50 – 52.

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77. At the meeting the business rescue practitioners again conveyed (it had been put across to me before), that their intention was to “rescue” Optimum first and that OCH would come later. At that stage that was to occur by selling Optimum’s business, i.e. its coal mining operations, as a going concern. OCH’s other assets, including Koornfontein, would then be addressed and, potentially, disposed of, separately. Oakbay’s representatives were introduced as representing the remaining potential buyer of Optimum, who was, as I recall, disclosed as intended to be Tegeta, a company within the Oakbay group that already supplied coal to Eskom from its Brakfontein mine.
78. On the basis of the fact that Glencore, Optimum and the business rescue practitioners had regularly before recorded that Optimum was not a viable standalone business, I questioned the viability of its being disposed of separately, given that the Hendrina Coal Supply Agreement had to be honoured⁴². I accordingly conveyed that, although Eskom would support an Optimum sale to Oakbay/Tegeta, a separate disposal of only Optimum or only its business would not be supported by Eskom.
79. Arising from what I conveyed not only the business rescue practitioners and Glencore (representing OCH and Optimum, but also Koornfontein), but also the representatives from Oakbay knew what Eskom’s position was. Arising, however, from the fact that no final conclusions could be reached then and there regarding the way forward in that regard, I requested that the business rescue practitioners indicate what would happen after the end of November 2015 regarding Optimum’s supply of coal to Hendrina. The response was that funding had been obtained to

⁴² Which I am recorded to have confirmed as one of the three issues on which Eskom was not going to change its position.

keep Optimum going and that the coal supply would continue until 15 December 2015, which was the date that the Oakbay/Tegeta representatives indicated as the date by when they aimed to have a deal finalised. In other words, the status remained a precarious and uncertain short-term one. I, accordingly, requested clarity regarding what would happen after 15 December 2015.

80. The conclusion of the meeting of the 24th was that discussions were to occur later on the same day between the business rescue practitioners, Glencore and Oakbay/Tegeta to explore how the issue that I had raised, i.e. that a sale of Optimum's business alone would not be acceptable to Eskom, could be addressed. I later learnt that in these and later discussions a composite sale of OCH's assets, i.e. its holdings in its subsidiaries, including in not only Optimum, but also Koorfontein, was tabled and being negotiated as the deal that would have to be made to achieve business rescue by way of a sale to Oakbay/Tegeta.
81. On 1 December 2015 I received a letter from Werksmans Attorneys, acting on behalf of the business rescue practitioners.⁴³ It stated that coal supplies to Hendrina were confirmed until 31 January 2016. Mr Piers Marsden shortly afterwards came to see me, either on the 1st or the 2nd December. He was accompanied by a representative from Glencore, but I am not now sure whether it was Mr Ephron, or Mr Shaun Blankfield (who had attended the 24 November meeting as Glencore's representative). They informed me that Glencore had decided to take the Optimum companies out of business rescue and to honour the Hendrina Coal Supply Agreement in its terms, i.e. until 2018. That was a major relief to me. It also had as concomitant that the disputed issues that had arisen

⁴³ MMK 16, bundle p 53.

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since 2012 would be resolved in accordance with the resolution mechanisms specified in the agreement.

82. On Friday the 4th of December 2015 Eskom received an update from the business rescue practitioners, represented by Mr Marsden, by way of their second “Business Rescue Report” in relation to Optimum.⁴⁴ It is document MMK 17 in the accompanying bundle. It was directly contradictory of what had been conveyed to me two days before. It was to the effect that the business rescue process of Optimum would continue and that *“the negotiations with the party who expressed an interest in OCM would continue”*, but that *“there is no certainty regarding whether a deal will be concluded and the timing of any deal”*. It again conveyed what had been stated in MMK 16, i.e. that supplies of coal to Hendrina could only be assured until the end of January 2016 (incorrectly recorded as 31 January 2015 in paragraph 4.2 of the report).
83. The change of attitude exhibited (after two days) created major new uncertainty for Eskom, represented by Mr Molefe, who I kept abreast of communications and developments, and me. At this time, as referred to already, Eskom had already communicated with the Department of Mineral Resources regarding its suspension of Optimum’s mining licence and its concerns regarding whether safety requirements were being complied with in Optimum’s constrained circumstances, as well as about potential retrenchment of workers if the situation could not be saved and the availability of financial resources for rehabilitation, among others. The Department of Mineral Resources was accordingly already “in the loop”.

⁴⁴ MMK 17, bundle pp 54 – 57.

84. Between myself and Mr Molefe we decided that we needed to keep the Department of Mineral Resources up to date on the developments that had occurred and to request its assistance, by the means they had, to facilitate a resolution of the impasse that quite clearly still existed despite the potential sale to Oakbay/Tegeta. From our perspective the matter had now to be brought to conclusion one way or the other, i.e. either by sale of Optimum or its business on a viable basis, or Glencore's bringing the business rescue to an end and matters continuing on the basis of the existing Hendrina Coal Supply Agreement.
85. We requested Ms Daniels to draft the required letter. I received a first draft at 18h46 on Friday, 4 December 2015 and after discussion of its contents with her, a second draft on Sunday, 6 December 2015 at 19h55, despatching it by email to the Director General of the Department of Mineral Resources the same evening. Ms Daniels' initial draft with the covering email she sent me is document MMK18 in the accompanying bundle, the covering email for the final draft is document MMK 19, and the letter that went out is document MMK 20.⁴⁵
86. Suggestions have been made that our letter to the Department of Mineral Resources was in some or other manner irregular. I deny that that is the case. We had previously intervened with the Department regarding the suspension of Optimum's operations and it presented an avenue to try to exert influence to bring matters to some form of finality to ensure continued coal supplies to Hendrina. The manner in which we dealt with the matter after receiving MMK17, over the weekend of 4 to 6 December 2015, rather indicates the major concern we had about the continued uncertainty regarding coal supplies to Hendrina, also in the context of further coal supply uncertainties that were looming at other power stations.

⁴⁵ MMK 18, MMK 19 and MMK 20, bundle pp 58 – 63.

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87. The Director General of the Department responded to my letter, as I recall, on Monday, 7 December 2015. His letter is document MMK 21 in the accompanying bundle.⁴⁶ The letter indicated that the Department favoured a sale and transfer of the relevant Optimum mining right. The Department was, clearly, abreast of ongoing developments and of the identity of the potential buyer. The Director General stated that the Department had already been in contact with the Competition Commission “to go and plead the case” and referred to a necessity for “the project to proceed”. It went on to request as follows:

“In return for the new owners honouring the current contract up to 2018, and for driving transformation we would like to propose that consideration be made for some pre-payment to be made for up to one (1) year of coal supply, understanding the upfront capital injections to be made to ramp up production to meet coal supply requirements from these mines. We firmly believe that every possible angle must be considered and offered to ensure that supply is guaranteed at the contracted price for all of these critical mines, thereby averting any national crisis that we as South Africa can ill afford.”

88. The suggestion from the Department of a prepayment of a substantial sum to the buyers of the OCH mines made sense in the circumstances that prevailed, but it had to be given careful consideration from a legal and practical viewpoint. I, accordingly, forwarded the Director General’s letter to Ms Daniels and discussed with her later that she had to prepare a submission to the Eskom Board for the Board to consider and potentially approve a transaction with Oakbay/Tegeta as had been discussed on 24 November, but on the basis of a deal that included Koorfontein and on the basis that Eskom would prepay for coal to be acquired during the first year, as had been suggested by the Department.
89. My belief at the time was that if that was what was going to be required to save the situation, that was what had to be done, taking into account that prepayments for

⁴⁶ MMK 21, pp 64 – 65.

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coal to be supplied in the future (albeit not to the extent that the Department had suggested) was not out of the ordinary in Eskom's operations. The proposal however had to be analysed, assessed and set out in greater detail so that it could be put before Eskom's Board for consideration and approval, also regarding how it would be financed. I requested Ms Daniels to prepare such a submission for the Board's consideration and she did so. I approved the final "*Submission Document*" presented, after she and I had discussed her prior drafts. The document that was produced drew heavily from her expertise and understanding of coal supplies to Eskom, proposing that the prepayment be financed by somewhat decreasing coal stockpiles at other power stations (by for a short while buying less coal from the coal suppliers). The submission eventually, after it had also been approved and agreed to by the Chief Financial Officer, served before and was approved by the Board by way of a round robin resolution.⁴⁷

90. The prepayment authorised in terms of MMK 22 was never implemented. That was because the assumptions on which it was based were not met, particularly that OCM had to be taken out of business rescue. That could not be achieved as a pre-condition to the prepayment being made.
91. The deal for the sale of OCH's interests in its subsidiaries was concluded between OCH and Oakbay/Tegeta shortly afterwards, I believe on the 10th of December 2015. It was announced by the business rescue practitioners in terms of MMK3.⁴⁸ The transaction was subject to Eskom's formal approval, which was given by the Board.

⁴⁷ MMK 22, bundle pp 66 – 70.

⁴⁸ MMK 3, bundle pp 4 – 5.

**“THE PREPAYMENT OF THE COAL SUPPLY EXTENSION AT A BOARD TENDER
COMMITTEE MEETING OF 11 APRIL 2016”**

Eskom’s presentation to SCOPA

92. Eskom on 30 May 2017 presented submissions to Parliament’s Select Committee on Public Accounts (“SCOPA”) regarding Eskom’s procurement of coal from Tegeta. Ms Daniels, in her capacity as Eskom’s acting Corporate Counsel, participated in the drafting of the relevant PowerPoint presentation that was made to SCOPA, as well as in the actual presentation thereof. I did not participate. I had been placed on special leave on the 15th May 2017. The presentation was spoken to by Mr Brian Molefe (who had at the time returned to Eskom).
93. A draft of the final presentation specifying Ms Daniels’ comments and suggestions that were incorporated into the final version, is document MMK 23 in the accompanying bundle.⁴⁹
94. Part of the presentation addressed criticism that had come from various quarters regarding contracts for the procurement of coal that Eskom had concluded with Tegeta. The presentation dealt with these matters and served to explain also the motivation for and basis upon which agreement was concluded with Tegeta in April 2016 for the supply of coal for the Arnot Power Station, in respect of which Eskom made a prepayment. What was conveyed to Parliament in this regard was in all material respects correct.

The 2008 mandate given by the Board Tender Committee

⁴⁹ MMK 23, bundle pp 71 – 105.

95. Eskom's Board of Directors Tender Committee ("the BTC"), a sub-committee of Eskom's board of directors, adopted a resolution during August 2008 that specified a mandate given to the Group Chief Executive "*to negotiate and conclude contracts on a medium term basis for the supply and delivery of coal to various Eskom power stations for the period October 2008 to March 2018*" ("the 2008 mandate"). The 2008 mandate is reflected in the submission made to the BTC. It is the document MMK 24 in the accompanying bundle.⁵⁰
96. The Board Tender Committee approved the 2008 mandate to conclude contracts on a medium term basis for the supply and delivery of coal to various power stations for the period October 2008 to March 2018 in terms of MMK 24. This mandate authorised the Group Chief Executive (at the time Mr Dames) to make advance payments to suppliers up to the value of R700 million to enable them to provide Eskom with the required quantities (subject to approval in accordance with Eskom's "*Delegation of Authority Policy*"). The 2008 mandate was updated in 2014 in terms of document MMK 25 in the accompanying bundle.⁵¹
97. The 2008 mandate was issued during the coal crisis of 2008 to ensure security of coal supply for the period that it covered and to prevent load shedding during high demand periods (often in winter) arising from circumstances that compromise the usability of coal stockpiles acquired in terms of long term contracts (e.g. excessive rainfall). Approval by the BTC of the procurement of 1.2 million tonnes of coal from Tegeta on 11 April 2016 occurred in accordance with the 2008/2014 mandate.
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⁵⁰ MMK 24, bundle pp 106 – 136.

⁵¹ MMK 25, bundle pp 137 – 168.

The shortage of coal for the Arnot Power Station; the suppliers who could fill the gap

99. As from 2008 Eskom regularly executed assessments of its coal burn requirements for set periods in the future. An assessment of the 2016 winter supply plan was conducted during 2015. This indicated a shortfall of 2.1 million tonnes of coal at Arnot.
100. A coal emergency for Arnot Power Station was declared by Eskom's Primary Energy Division Tactical Command Centre on 23 December 2015. The minutes of the meeting at which this occurred is document MMK 26 in the accompanying bundle.⁵²
101. The emergency had to be addressed by the Primary Energy (Fuel Sourcing) department of the Commercial Division, i.e. Ms Nteta's department. Its representatives approached existing Arnot coal suppliers to make offers to increase their supply to mitigate the load shedding risk that the estimated shortfall at Arnot presented.
102. Delivery time and the quality of coal on offer were the overriding determining factors that governed who the successful offeror suppliers would be.
103. Only two of the Arnot suppliers, Tegeta and Umsimbithi Mining (Pty) Limited, were able to source and supply the volumes required and meet the delivery time and quality requirements.

⁵² MMK 26, bundle pp 169 – 171.

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104. Tegeta was at the time already a coal supplier to Eskom elsewhere. Tegeta owned a coal mine, Brakfontein Mine, that supplied coal to the Majuba Power Station on a long term contract. As buyer in terms of the 10 December 2015 deal with OCH it was also at that stage likely to become party, via Optimum, to the Hendrina Coal Supply Agreement enduring until the end of 2018.
105. Tegeta supplied coal to Arnot from coal sourced from Optimum's export coal stockpile. It had purchased the coal in terms of two agreements, each for fixed tonnages of coal, which, however, had fixed termination dates. These contracts had been concluded with the business rescue practitioners of Optimum.⁵³ The last of the two agreements expired on 15 April 2016.
106. Mr Piers Marden confirmed before this committee that:
- "Optimum Coal Mine never supplied coal to Eskom. We supplied coal to Tegeta on a 30-day payment terms. So the prepayment was a transaction between Tegeta and Eskom..."*
107. Umsimbithi operates the Wonderfontein Colliery that supplies coal to Arnot. It also had a short term contract with Eskom that would expire during June 2016.
108. The offers for the increased coal supply encompassed that the short term contracts with Tegeta and Umsimbithi had to be extended. In Tegeta's case that required that a contract for an extension be negotiated and agreed between Eskom and Tegeta and that Tegeta secure the coal with Optimum.
109. I learnt from Ms Nteta that Tegeta had requested a prepayment in respect of the to be extended short term coal supply agreement. It made a case in this regard on the

⁵³ Optimum remained in business rescue until 31 August 2016.

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basis that the prepayment would enable it to meet Arnot's requirements from the coal it could source and secure from Optimum's export coal component. This was discussed with me by Ms Nteta and also Ms Daniels and I had no problem with it - securing an adequate coal supply to Arnot for the immediate future was of critical importance at the time.

110. On 11 April 2011 I received a submission that had been prepared in Ms Nteta's department. I first received it in draft form by email in the morning. Ms Nteta brought a hard copy to me for signature later in the day. She explained to me that it was to serve before the BTC on that day. She had signed it, as had Mr Edwin Mabelane, the acting Chief Procurement Officer. I called Mr Mabelane into the meeting and Ms Nteta, Mr Mabelane and I had a further discussion about the contents thereof. I was quite happy to support the submission and I appended my signature. The signed document is document MMK 27 in the accompanying bundle.⁵⁴

The BTC authorised the prepayment on 11 April 2016 for good reason arising from Arnot's coal supply shortage; I signed the relevant agreement with Tegeta and it was implemented in its terms

111. A R659 million prepayment (R578 million exclusive of VAT) was authorised by the BTC on 11 April 2016 on the basis of, and in accordance with, the 2008 mandate, which was updated in 2014. The approval was on the basis that adequate and appropriate security had to be provided by Tegeta. It eventually did so in the form of a limited guarantee and pledge of the issued shares of Tegeta.

⁵⁴ MMK 27, bundle pp 172 – 175.

112. The meeting of the BTC on 11 April 2016 took place by teleconference at 21h00. It was set up by Ms Daniels. I received an email in this regard after I had left the office. It is document MMK 28 in the accompanying bundle.⁵⁵ I did not participate in the meeting, which, according to MMK 28, was called at the behest of the chairman of the BTC, then Mr Zithembe Khoza. The relevant minute is document MMK 29 in the accompanying bundle.⁵⁶
113. I was subsequently, on 13 April 2015, required to sign the contract document that had been prepared by Primary Energy. I had a discussion about it with Ms Daniels before signing it. She had, apparently, reviewed and authorised it and I was on the basis of that discussion quite happy to sign it. The agreement is document MMK 30 in the accompanying bundle.⁵⁷
114. A 3.5% discount was negotiated with Tegeta for the 5 month early payment that was agreed.
115. The prepayment to Tegeta was not unique - numerous prepayments to coal suppliers had been made since 2008 in terms of the 2008 mandate.
116. Ms Daniels testified before this Committee that it was quite permissible for Eskom to prepay suppliers for future coal deliveries. Ms Daniels also testified that it was perfectly legitimate given the circumstances to contract with Tegeta to supply coal to Arnot and to prepay Tegeta. I agree.

⁵⁵ MMK 28, bundle pp 176 – 177.

⁵⁶ MMK 29, bundle pp 178 – 181.

⁵⁷ MMK 30, bundle pp 182 – 186.

117. Other than prepayments for coal Eskom had prepaid other suppliers sums amounting to R3.5 billion during the financial year ending 31 March 2016.⁵⁸
118. Cost plus coal mines also enjoy upfront investment of Eskom capital in mining plant and equipment infrastructure at their mining operations – the future investment requirement as at this time is R38 billion that Eskom must pay upfront to secure future coal supply from cost plus mines.
119. An internal audit verification that Eskom conducted subsequently revealed that the prepayment made to Tegeta was fully recovered by coal delivered by Tegeta by 31 August 2016.
120. The other potentially available option at the time, as opposed to acquiring coal from Tegeta and Umsimbithi for Arnot, would have been to buy in diesel for Eskom's open cycle gas turbines ("OCGTs") to ensure no load shedding during the 2016 winter. This option would have been by far the most expensive option as the cost of the coal acquired from Tegeta was, comparatively speaking, R277/MWh and the cost of diesel for the same generation output would have been R2 245/MWh.
121. A further consideration in this regard was the record of decision issued by NERSA on Eskom's 2013/2014 Revenue Claw Back Application in which the NERSA completely disallowed costs of diesel used to generate electricity as a cost recoverable from the consumer. Consequently, the use of diesel had to be the very last option that Eskom would employ.

⁵⁸ That appears from Eskom's 2016 annual financial statements.

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122. Additional security was derived from the other underlying contracts for coal supply of Tegeta with Eskom – e.g. the Brakfontein contract extending over 10 years, for a value of approximately R4 billion, against which set-off could, potentially, occur if Tegeta defaulted on the extended Arnot short term contract.
123. I supported the recommendation of 11 April 2016 to the Board Tender Committee to prepay Tegeta. I was alive to the board mandate of 2008 and it was urgently necessary to do so to secure coal supplies to Arnot.
124. As I have referred to already, Ms Daniels had reviewed the submission document before I signed it. Ms Daniels also testified before this committee that she approved of the prepayment agreement with Tegeta which I signed on 13 April 2016.

Carte Blanche

125. I was a couple of months later, in mid-2016, requested by Carte Blanche to participate in a filmed interview that would be broadcast at a later date. Carte Blanche is a business that has a contract with the M-Net television channel to produce a programme for broadcasting on a weekly basis. The interview was broadcast on 13 June 2016.
126. I have since the broadcasting of the interview been publicly vilified on a regular, relentless basis and at every turn, not only by Carte Blanche, but by the media of all stripes and also within Eskom and elsewhere, for, supposedly having lied during the interview, on camera, about the prepayment for coal to Tegeta, or, as it has often been presented, to a Gupta-linked company. This vilification has been baseless. I did not lie “on camera” at all.

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127. During the interview Ms Govender asked me whether Eskom had prepaid Optimum (for coal). I responded that it did not. That response was quite correct. Eskom did not prepay Optimum for coal. The agreement that the BTC approved on 11 April 2016 was for prepayment for coal to Tegeta, which was an entity distinct from Optimum, for coal that Tegeta was able to secure and source from Optimum.
128. It would have been irregular for Eskom to have paid Optimum for coal for Arnot Power Station – Eskom had no contract with Optimum for the supply of coal to Arnot.
129. I was surprised and taken aback when the Carte Blanche interviewer, Ms Govender, then produced a document with my signature that she then suggested confirmed that Eskom had prepaid Optimum. She did not during the recorded interview give me opportunity of checking the full text of the document that she produced, showing me only the last page, which did have my signature on it, at arms' length. The document was document MMK 30 in the accompanying bundle.⁵⁹
130. It is quite apparent from MMK 30 that it is by no means an agreement for any prepayments to Optimum, but to Tegeta, in accordance with the BTC's approval of 11 April 2016. In other words, the Carte Blanche interviewer misrepresented the nature and tenor of the document that she showed to me. I did not recognise the document at the time. I could not recollect at all having signed an agreement with Optimum for the supply of and prepayment for coal, but accepted the interviewer's *bona fides* when she put across that I did, believing at the time that it must somehow have slipped my mind.

⁵⁹ MMK 30, bundle pp 182 – 186.

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131. Subsequently, Carte Blanche broadcast bits of the visual parts of the interview many times, but invariably with a voice over stating that I had denied that Eskom had prepaid Tegeta for coal. This maliciously misrepresented what had occurred during the interview, conveying time and again to the viewing public that I had lied and had falsely denied that Eskom had prepaid for coal purchased from Tegeta.
132. I invite the Joint Committee to view the video recording of the 13 June 2016 broadcast (which I am aware is available to the Committee). It will show that Ms Govender asked me during the interview whether Eskom had prepaid Optimum for coal, which I (quite correctly) denied. When she produced the document, showed me where my signature appeared on the last page and then said that it proved the contrary, I, quite clearly, started entertaining doubt about whether my previous denial (that Optimum had been prepaid for coal) was correct, reluctantly conceding that it might not have been. I was, however, not at all asked, nor did I deny, that Eskom had prepaid Tegeta for coal and insofar as Carte Blanche has repeatedly put out broadcasts that I had, it has maliciously committed a fraud on the viewing public at my expense.

CONCLUSION REGARDING THE ABOVE TWO TOPICS

133. The narrative that has been spun by the media and others is that Optimum was driven into business rescue by Eskom with the intention to enable Tegeta to acquire OCH's assets, and that when Tegeta by April 2015 fell short in putting up the money, Eskom made a prepayment to Tegeta to enable it to make payment. Eskom then, moreover, in 2017 knocked down its penalty claim from R2,18 billion to less than R600 million further to assist Tegeta, all as part of an overall strategy to establish Tegeta as a substantial player in the coal mining sector.

134. As I have made apparent already, I was for a large part not party to the series of events that gave rise to Tegeta's acquiring OCH's assets, but I nevertheless deny that any such overall strategy ever existed. Eskom's instituting its penalty claim against Optimum, which did lead to Glencore's putting OCH and Optimum into business rescue, was an event quite distinct from what happened subsequently. Oakbay/Tegeta as acquirer of, at first, only Optimum's mining operations was introduced and brought to the table by the business rescue practitioners. The proposal of a deal regarding Optimum and/or OCH did not to my knowledge in any manner or way originate from Eskom.
135. I have no knowledge that the prepayment to Tegeta in April 2016 for the emergency coal for Arnot was made at the time that it was, coinciding, apparently, with the time when Tegeta had to pay for acquiring the shares and loan accounts in OCH's subsidiaries (including Optimum), so as to enable or assist Tegeta to stump up the money that it needed to perfect the 10 December 2015 deal made with the business rescue practitioners of OCH and Optimum. I was not party to setting up anything of the sort. From my perspective the prepayment was made to enable Tegeta to secure urgently required coal for Arnot from Optimum. If, however, others within Eskom were party to arrangements to get the money to Tegeta to enable Tegeta to make payment in terms of the 10 December 2015 deal, it would be troubling to me - that was not what had been put across to me at the time.
136. The settling at an even later time of the penalty claim (in respect of which Optimum under Glencore's control had not been willing to pay even a cent), occurred at a figure that was reasonably in the correct ballpark, after it had, apparently, during the build-up to the arbitration proceedings become apparent that a substantial miscalculation of the penalties had occurred originally.

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137. I have been the subject of a still-ongoing trial by media by journalists and others, spearheaded principally by journalists employed in the Tiso Blackstar media group, including some, as identified and referred to in Mr Jacques Pauw's book, *The President's Keepers*, who "have contributed greatly to ending the careers of dedicated civil servants". The public and others in government and elsewhere have been taken in by the many falsehoods and misleading reports published about me, that are, on my reading, part of a frenzied campaign calculated to break Eskom and to discredit the Government. I have been caught in the crossfire and, arising from the simple magnitude of the campaign, have been unable to defend myself against it. It has all been very, very hurtful.

"CORPORATE GOVERNANCE AT ESKOM"

138. Insofar as I have been requested to make a written submission to Eskom regarding "corporate governance at Eskom", I am somewhat at a loss to understand what I am required to provide to the Portfolio Committee. Eskom, as a corporate entity, is governed in terms of detailed written policies and procedures that are, in the usual course, regularly reviewed in three year cycles and subjected to renewed approval at various levels within the organisation. The most important of these is probably Eskom's "Delegation of Authority Policy".

139. Eskom's policies and procedures are carefully crafted documents that have been compiled on the basis of Eskom's institutional knowledge accumulated over many decades, sound business practices and a legal environment constituted of a wide array of regulatory provisions arising in terms of primary and subordinate legislation.

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140. In any organisation, and possibly more so in an organisation of Eskom's size, extent and geographical reach, policies and procedures that seek to achieve sound corporate governance can be undermined and circumvented by dishonest and corrupt officials at various levels within the organisation. Such conduct also occurs at Eskom and has, unfortunately, occurred also at senior levels of management within Eskom. I have referred to that already in the context of the action that I took at the beginning of 2017, after I had become Eskom's interim GCE, pending investigation to move senior officials away from the positions where they were able to carry out their corrupt activities (which then, however, backfired on me, as I have referred to already).

141. I can make no further comment save to state that I have throughout my career strived to comply and enforce compliance with Eskom's policies and procedures and have resisted attempts e.g. by a previous Chairman of the board, Mr Zola Tsotsi, as referred to below, to pursue avenues that do not accord with Eskom's internal rules. I continue to subscribe to best practice corporate governance.

ALLEGATIONS MADE ABOUT ME IN THE PROCEEDINGS BEFORE THE PORTFOLIO COMMITTEE

127. I now wish to address statements made regarding me before the Portfolio Committee by certain individuals that have testified before it which were false or misleading and calculated to damage my reputation.

Mrs Venete Klein

128. Mrs Venete Klein was appointed director of Eskom during or about November 2014. She resigned during May 2017. Mrs Klein was during her tenure as a director of Eskom at a stage the acting Chairperson of the People and Governance Committee of the Eskom Board.
129. Mrs Klein testified before the Portfolio Committee to the effect that the Eskom Board appointed me as interim group executive despite the board's knowledge that I had "*defects*", supposedly a history of dictatorial conduct in respect of employees reporting to me by moving them around or having disciplinary action taken against them and that by my moving Messrs Abram Masango and France Hlakudi I "*went too far*". This was followed by the evidence leader suggesting to Mrs Klein that I was a "*Hitler*", to which she agreed.
130. Mrs Klein's statement suggesting that I habitually acted in a dictatorial manner vis-à-vis my subordinates in any period relevant to my appointment as interim Group Chief Executive was untrue and simply made to cast me in a bad light.
131. During my tenure as Group Executive: Technology and Commercial, I was involved in disciplinary proceedings against three executives, being Messrs Sal Laher, Willy Majola and Malesela Sekhasimbe.
132. Mr Sal Laher's position was that of Chief Information Officer. He was well-qualified, competent and a strong personality. He a very good friend of mine within the Eskom employment context.

133. Mr Tshediso Matona,, at the time the Group Chief Executive had received a letter of complaint from Mr Mongezi Ntsokolo, the Chairman of the Executive Committee Tender Committee (known as EXCOPS), alleging that Mr Laher had not complied with Eskom's prescribed commercial procedures. The letter, dated 13 November 2013, is document MMK 31 in the accompanying bundle.⁶⁰ Mr Matona handed it to me. He asked me to address the complaint and to take it up with Eskom's Industrial Relations Department. I did so and the representatives of that department requested that, pending investigation of the complaint by the department, Mr Laher should be suspended. I on that basis did suspend Mr Laher.
134. Mr Laher in 2015, while still on suspension, requested a separation package that Eskom agreed to. I was at that time also on suspension. After Mr Laher's leaving Eskom he emigrated from South Africa. I regarded his leaving Eskom as very unfortunate and a real loss. However, apart from acting in relation to Mr Ntsokolo's complaint at the request of Mr Matona, I had nothing to do with his leaving Eskom.
135. It has been suggested during the proceedings of the Portfolio Committee that I was party to forcing Mr Laher out of Eskom to enable a contract for information technology systems with an entity referred to as T-Systems, allegedly a Gupta-linked business, to be extended for two years. The suggestion was unsubstantiated and incorrect. I was not party to anything of the like and do not have knowledge that anything of the like occurred.
136. Mr Willy Majola was again a very good friend and associate of mine within our work context. His position was that of a Senior General Manager in Generation. He had been charged for an act of negligence relating to the reliability of information that he

⁶⁰ MMK 31, bundle pp 187 – 188.

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had provided. He was found guilty and the disciplinary enquiry Chairman recommended that he be cautioned and reprimanded. I felt that that sanction was too light in all the circumstances that prevailed at the time, including a complaint from the Minister of Public Enterprises that information emanating from Eskom was often unreliable. After discussion with Mr Majola I applied a more severe sanction of two weeks' suspension of his employment without pay (which is permissible in terms of Eskom's employment policies and procedures). The letter to Mr Majola in that regard, dated 24 February 2017, is document MMK 32 in the accompanying bundle.⁶¹ Mr Majola served his suspension, came back to work and that was that. We continued to work together without difficulty or lingering resentment from his side after his return.

137. In regard to the disciplinary action taken against Mr Sekhasimbe I did play a decisive role.
138. The context was that Mr Zola Tsotsi, then the Chairman of Eskom's Board, came to see me during or about June 2014 to request that I should approve payment of a sum of some R69 million on the basis of invoices that a Japanese company, Sumitomo Corporation, had rendered to Eskom in respect of transformers that it had allegedly manufactured for Eskom that Eskom had not taken delivery of. The issue was that Eskom had never contracted with Sumitomo for the manufacture of the transformers or issued a purchase order for the supply of these. My staff in the Commercial Division was, as a result, not willing to process any payment to Sumitomo.

⁶¹ MMK 189, bundle p 189.

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139. I told Mr Tsotsi quite unequivocally that I could not recommend or approve any payment to Sumitomo for equipment that Eskom did not contract and issue a purchase order for. I conveyed to him that I was not going to intervene and that Sumitomo's request for payment had to be dealt with appropriately in terms of the prescribed procedures. That included, potentially, that the matter be submitted to the relevant tender committee for consideration, which would be the only means through which any informal arrangements that might have been made with Sumitomo could be regularised and any payment could be approved. Mr Tsotsi was not happy with my response.
140. It subsequently came to my attention that, despite the fact that no purchase order had been issued to Sumitomo to manufacture and supply the transformers, Mr Sekhasimbe played an active part to procure that a letter be sent by Mr Tsotsi, in his capacity as Chairman of Eskom's board, to Sumitomo Corporation stating that Eskom would pay for the transformers. Such a letter being issued by the Chairman was irregular for a host of reasons, primarily that no contract existed, no purchase order had been issued and that the letter went out without the matter having been placed before the relevant tender committee to consider in terms of the prescribed procedures and then to approve or reject.
141. In these circumstances I did insist that disciplinary action be taken against Mr Sekhasimbe. He was, as a result, suspended on 2 March 2015. A disciplinary hearing was convened towards the end of 2015 under the chairmanship of an independent chairman, Advocate Afsal Mosal, of the Johannesburg Bar. He found Mr Sekhasimbe guilty of misconduct. Mr Mosal's finding is document MMK 33 in

the accompanying bundle.⁶² He later recommended Mr Sekhasimbe's dismissal, which recommendation I accepted and effected.

142. The matter, however, had adverse consequences for me because of my resisting Mr Tsotsi's attempts to persuade me to act in a manner that was not compatible with Eskom's policies and procedures. While Mr Sekhasimbe was on suspension, on Sunday 8 March 2015, Mr Tshediso Matona, the CGE, spoke to me. He told me that he had been instructed by the chairman, Mr Tsotsi, that Mr Sekhasimbe had to be "unsuspended". I told Mr Matona that there were good reasons for Mr Sekhasimbe's facing disciplinary proceedings and informed him of what it was all about. I conveyed that I was not going to take action to "unsuspend" Mr Sekhasimbe. Mr Matona then informed me that we would then be suspended. My response was that there was no reason whatsoever for my being suspended and I was, in any event, not going to succumb to any threats in this regard emanating from the (non-executive) Chairman.
143. It was this event that led to my and, probably, Mr Matona's, suspension on 11 March 2015, engineered by Mr Tsotsi, supposedly to allow Dentons to conduct an "*unfettered*" investigation.
144. It is possibly relevant that Mrs Klein's testimony before this Committee was to the effect that Mr Tsotsi, after our suspension, proposed to the Board that Mr Sekhasimbe be "unsuspended" and be appointed as acting GCE. The Board, apparently, refused.

⁶² MMK 33, bundle pp 190 – 207.

145. Two months later, during the first week of May 2015 and while I was still on suspension, I was called into a meeting with Ms Suzanne Daniels, then recently appointed as Eskom's acting Company Secretary, as well as Mr Zithembe Khoza and Mrs Klein, both directors. I was then, out of the blue, presented with a letter headed "**Proposed Terms for Settlement**" in terms of which I was to agree to my services with Eskom being terminated by my resigning and my then being paid R4 951 410,94 (before tax) in settlement. The letter is document MMK 34 in the accompanying bundle.⁶³ I refused this outright and was then told by Mrs Klein that I would then face investigation by Dentons. My response was that I had done absolutely nothing wrong and I was quite willing to face investigation or misconduct charges or whatever. Ms Klein stated that I should, in any event, go and think about it. Mrs Daniels about a week later arranged a meeting with me at the Protea Hotel in Midrand. It was with the same people as before. I again informed them that I had no intention whatsoever to resign and take the package.
146. I was subsequently on a number of occasions interviewed by representatives of Dentons. No criticism of me was made in any report that they made to Eskom's board and my suspension was lifted and I returned to work on 20 July 2015.
147. Mrs Klein has in the proceedings before the Portfolio Committee attempted to put me in a bad light because she harbours resentment against me as a result of the fact that I had refused to assist her husband, Mr Harold Klein, to procure a project management contract for his company in respect of the conversion of Eskom's diesel driven OCGT generation plants to gas driven plants.

⁶³ MMK34, bundle p 208.

148. Mrs Klein during the second week of January 2017, after I had been appointed interim GCE, phoned me and requested that I should meet with her at her home in Mooikloof, Pretoria. She stated that she had a private issue that she wanted to discuss with me. I complied with the request and met with Mrs Klein at her home on Saturday, 14 January 2017. Her husband participated in the meeting. They informed me that they had a “problem” and Mrs Klein said that she needed me to solve it. They explained the “problem” as being that Dr Klein’s company had tendered for project management contracts on the conversion of the OCGT units to gas project, but was not getting the jobs. Mrs Klein said that she had taken her Absa pension money and had invested it in her husband’s business and he now could not get Eskom contracts due to her being a director of Eskom, while his competition was getting these irregularly. Mrs Klein stated that she wanted me to do something about it. I was surprised by what she put across because it was contrary to every Eskom rule regarding conflicts of interest. I informed her and husband that I had no knowledge of the intricacies of the conversion projects at that time or of any irregularities in relation to the awarding of tenders in respect thereof. I told her that I would, however, look into the matter.
149. I then phoned Dr Klein on, I believe, Monday, 16 January 2017, and arranged a meeting with him. I, for purposes of the meeting, called in Eskom’s Chief Audit Officer, as well as members of the OCGT gas conversion project team. I introduced Mr Klein to them when he arrived and asked them to hear him out regarding his complaints. I then stepped out of the meeting.
150. Mrs Klein’s attitude towards me changed from that time. She must have expected that I would cause the contracts that had allegedly been “irregularly” awarded to be channelled to her husband.

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151. Mrs Klein's stating that in moving Messrs Masango and Hlakudi I "went too far" is telling. As I have referred to already, my attempts to move corrupt officials who were harming Eskom in relation to the Medupi and Kusile projects from their positions was the precipitating turn of events that caused that I was taken out of play as Eskom's interim GCE from mid May to the end of December 2017 and that I was eventually charged with misconduct on charges in respect of which there never was even a *prima facie* case.

MS SUZANNE DANIELS

152. Ms Suzanne Daniels was before my suspension on 11 March 2015 a Senior Manager in my office (in my capacity as Group Executive: Technology and Commercial) responsible for administration and legal matters in the Commercial Division.
153. Mr Tsotsi resigned as Chairman of Eskom's board shortly after I and my three colleagues were suspended in March 2015. Ms Daniels was then, while I was still on suspension, moved to the Chairman's office to serve in the capacity as Eskom's acting Company Secretary and later its acting Corporate Counsel, i.e. head of the legal department.
154. Ms Daniels was, as I have referred to already, regarded as an expert in relation to the various coal supply agreements in terms of which Eskom procured thermal coal for electricity generation at its coal fired generation plants. She was intimately involved as a draftsman of documentation, adviser on strategy and participant in negotiations on many contracts, also the Hendrina Coal Supply Agreement.

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155. Ms Daniels played an instrumental role to instigate and promote the process that led to my first being put on leave in May 2017 and then being suspended in August 2017, pending the disciplinary hearing that eventually took place.
156. Ms Daniels testified to the Portfolio Committee that I played a role in procuring payment to Trillian Management Consulting (“Trillian”) of millions of Rands in circumstances where Eskom had no contract with Trillian and the payments were irregular, even referring to me as a “thief” in that context. Her statements to that effect, which were also contained in a “report” that she submitted to the Minister of Public Enterprises⁶⁴, were, however, lies. The truth is to the very contrary – it was Ms Daniels who was pivotally involved in procuring payment directly to Trillian of R460 million in circumstances where I, in my capacity as interim CGE, had on more than one occasion declined to approve such payment.
157. Trillian was a so-called “BEE partner” of McKinsey & Company South Africa (“McKinsey”). Eskom’s relationship with McKinsey dates back to 2011 arising from Eskom’s instituting the so-called “Top Engineer” programme. That programme had as its objective to train Eskom engineers to enable them to carry out functions, as employees of Eskom, that would often be contracted out to consulting engineering firms at high cost.
158. McKinsey has before this Committee been described as “a *global management consulting firm committed to helping institutions in the private, public, and social sectors achieve lasting success*”. It had apparently established its South African office in 1995 and was subsequently able to establish a reputation in the public and private sectors in South Africa as a sound business and management consultant.

⁶⁴ Sent to the Minister without Eskom’s Board’s consent or authority.

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159. I am not aware of how McKinsey was originally introduced to Eskom. I can say, though, that the “Top Engineer” programme has been very helpful to Eskom to develop the expertise of its engineers. It continues to this day, still with intellectual property that McKinsey had provided, albeit that McKinsey itself is no longer a consultant to Eskom.
160. BTC, Eskom’s Board Tender Committee, on 6 July 2015 approved that Eskom engage McKinsey as consultant in relation to four further areas of its operations, being procurement, coal purchases, generation and claims management, that Dentons had identified as areas of concern. I was not at all involved in the processes that gave rise to the approval as I was on suspension at the time – I had no input in the whole process. The understanding that I achieved later was that the contract then concluded with McKinsey had been contracted on a so-called “risk basis”, i.e. on the basis that McKinsey would be remunerated on a percentage basis calculated with reference to proven cost savings, but subject to agreed maxima.
161. A further contract was concluded with McKinsey on 10 September 2015. The contract was still targeted at the areas in respect of which the BTC had given its approval on 6 July 2015, but was of a more urgent and immediate nature. McKinsey was in terms thereof engaged to assist to resolve the cashflow problems that had arisen for Eskom, to assist to design and develop a strategy within the regulatory environment that Eskom faced so as to enable Eskom to operate within ever more constrained means and to assist to update the “cost to completion” business cases for the Medupi and Kusile projects. The contract was for a fixed price of R101 million running over an eight month period and was approved as a “Sole Source Procurement” arising from McKinsey’s proven expertise as a consultant and its service delivery in the past. I, along with Eskom’s Chief Financial

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Officer, Mr Anoj Singh, recommended the engagement of McKinsey on this basis and it served before and was approved by the BTC on that basis. I am not aware that any criticism has been raised about this contract.

162. I do not know how Trillian got involved with McKinsey. However, representatives of Trillian, acting on McKinsey's behalf, started participating in functions executed by McKinsey as from some time at the beginning of 2016.
163. Trillian apparently submitted an invoice for R30,6 million directly to Eskom early in February 2016. I was not aware of it at the time, but became aware on 10 February 2016 during a meeting that I had with Ms Bianca Goodson, then Trillian's CEO.
164. I do not know exactly how the meeting was arranged. Ms Goodson submission to the Portfolio Committee stated that it had been arranged by what she referred to as the "executive assistant" of a Mr Stanley Shane. That is possible, but I cannot confirm it.
165. Ms Goodson utilised the meeting as an opportunity to convey, in a rather emotional manner, that her perception was that McKinsey was side-lining Trillian in relation to the consultancy functions that it was supposed to execute on the McKinsey contracts. I explained to her, kindly, that it was not a matter that I could concern myself with – even if her complaints were justified, it was a matter between McKinsey and Trillian. She did also request that Eskom should pay the invoice that had been submitted directly to Trillian and also that I should agree that future invoices be submitted to Eskom directly and be paid directly to Trillian.

166. I dismissed these suggestions out of hand. To quote what Ms Goodson stated in her submission to the portfolio committee:

"3.18.7. When we spoke about TMC's direct invoicing to Eskom [as I had been instructed to do], Matshela responded that he understood TMC's request to invoice directly, but could not support it – simply put, there were no contracts in place between Eskom and TMC."

167. Approximately a year later, during February 2017, I was again confronted with a request that direct payment be made to Trillian, this time of the sum of R460 million. This occurred in terms of a memorandum, dated 17 February 2017, supported, among others, by Ms Daniels, that recommended and requested that I approve direct payment of the said sum to "McKinsey & Company and the BBBEE partner". The document is document MMK 35 in the accompanying bundle.⁶⁵ I declined to sign off on the document for the same reason as before – I could not authorise payment to an entity with whom Eskom had no contract.
168. I was not involved in the approval of the now controversial payments that Eskom made to Trillian. I did not approve any such payments and first learnt that direct payment had been made to Trillian through the press.
169. The long and the short of it is that Ms Daniels' attributing responsibility to me for Eskom's payments to Trillian is pure fabrication. I had at the very outset, when Trillian became involved with McKinsey at the beginning of 2016, refused that Trillian's invoices be paid by Eskom and I again declined to sanction such payments when MMK 35 was submitted to me for approval. I am not aware of how exactly the payments to Trillian were authorised or processed.

⁶⁵ MMK 35, bundle pp 209 – 210.

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MATSHELA MOSES KOKO

21 January 2018
Johannesburg



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF
STATE**

AFFIDAVIT

I, the undersigned

TSHEDISO JOHN MATONA

Do hereby state under oath in English:

I am an adult male with ID No. 6203145604082. I am employed as a Head of Secretariat at the National Planning Commission with work address Government Avenue, Pretoria.

My contact details are:

Office: Union Buildings, Room 237, East Wing

Cell: 0823760448

E-mail: tmatona@gmail.com

My qualifications include:

- Masters in Development Economics, University of East Anglia, UK, 1994
- Bachelor and Honours in Social Science, University of Cape Town, 1990-1992
- Certificates in Management and Infrastructure Development, Harvard University School of Government, 2003 & 2011
- Certificates in International Trade Policy and Law, World Trade Organisation, Geneva, Switzerland (1993), and Maastricht University, Netherlands (1997)

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1. The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.

MY APPOINTMENT AS CHIEF EXECUTIVE OF ESKOM HOLDINGS (SOC) LTD

2. I was appointed on 1 October 2014 as Chief Executive of ESKOM Holdings (SOC) LTD ("Eskom"), a state-owned public company, and as an Executive Director of its Board. My recruitment was conducted by the Board of Directors of Eskom during 1994, through a job advertisement, shortlisting and interview process, which in turn recommended my appointment to the Minister of Public Enterprises. The latter then secured the approval of the Cabinet for my appointment.
3. I was suspended on 11 March 2015.

CHALLENGES FACING THE RESPONDENT

4. Upon my appointment, I had observed that Eskom faced several major challenges, including the following:
 - 4.1. Leadership instability at the top executive level;
 - 4.2. Financial distress;
 - 4.3. A shortage of electricity supply which constrained ability to reliably meet demand and rendered the power system prone to increasing incidents of load shedding;
 - 4.4. Delays in the then ongoing construction of new power plants which had caused overruns in the cost of these projects;



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- 4.5. The failure to undertake consistent and regular maintenance of the existing power plants;
 - 4.6. Over-indebtedness, compounded by constraints to recovering debts;
 - 4.7. Human resources challenges, including low employee morale; and
 - 4.8. Poor public perception of the company.
5. Having been previously employed as the Director General of Public Enterprises, the ministry which oversees Eskom, I was already aware of the above-mentioned challenges, but was able to gain a deeper insight into and obtain greater detail of them from the time of my appointment.
 6. I was also aware that the above-mentioned challenges have been on the agenda of past Boards of Directors of Eskom, and certainly that of the immediate past Board, which has taken numerous resolutions and decisions, and implemented numerous initiatives, to address them. One such initiative was the establishment of 'special Board subcommittees', such as the Emergency Task Team to address the company's financial challenges, and the Board Build Program subcommittee to address delays in the construction of new power plants.
 7. I was also aware that the Board had, in addition to established reporting procedures between Eskom and both the Ministers of Public Enterprises and Finance, written several letters of correspondence to the Minister of Public Enterprises concerning many of the above-mentioned challenges.
 8. In December 2014 the Minister of Public Enterprises appointed a new Board of Directors. It was my understanding that this new Board's responsibility was, amongst other things, to address the above-mentioned challenges and to guide and support the Eskom's management structures, and the Chief Executive in particular.

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THE 'WAR ROOM'

9. In or about December 2014, the government, through a Cabinet decision that was publicized in the media, established an initiative referred to as the 'War Room', with the objective of working with Eskom to address the country's electricity challenges, including those particular to Eskom.
10. The 'War Room' had adopted a five-point plan, consisting of
- 10.1. Immediate measures (to improve maintenance and operational practices);
 - 10.2. Co-generation (of power by the private sector);
 - 10.3. Gas for power generation and additional sources of supply;
 - 10.4. Other independent power producers (IPP's); and
 - 10.5. Demand-side management initiatives.
11. Eskom had participated actively and consistently in the 'War Room' since its inception, led by myself and supported by other executives.
12. Eskom had submitted extensive volumes of information to the 'War Room' and made several presentations detailing management's plans to address the challenges faced by the company.
13. Moreover, the 'War Room' had taken decisions to undertake independent studies on particular aspects of Eskom's challenges, and had also appointed several independent advisors in this regard.
14. It had been resolved, in the 'War Room', that in addition to communication by Eskom on the state of the power system, the then Deputy President and/or the Minister of Public Enterprises would detail the government's approach to the country's electricity



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challenges, as well as the way forward from the then situation. This had however, not happened by the time of my suspension.

MY ACTIVITIES SINCE APPOINTMENT AS CHIEF EXECUTIVE OF THE RESPONDENT

15. Since my appointment Eskom, I had undertaken the following:

- 15.1. In November 2014 I had stabilised the Executive Committee, comprising Group Executives, by appointing to permanent positions those executive who had occupied 'acting' roles, and reassigned functions amongst them;
- 15.2. In December 2014 I had convened an ExCo 'getaway', at which we conducted strategic planning and adopted a turnaround strategy for the company, with the intention of sharing it with the new Board at a similar 'getaway' scheduled for the end of March 2015;
- 15.3. I had held meetings with the company's major stakeholders, for example, the General Secretaries of major trade unions, Eskom's major customers (such as the Energy Intensive Users Group), organised business groupings (such as Business Unity South Africa and the various Chambers of Commerce) and investors at which I communicated Eskom's challenges and plans to address them;
- 15.4. I had presented the company's audited half-yearly results (until end September 2014) as well as on the state of the power system at a major media event held in November/December 2014;
- 15.5. I had addressed executive and other staff forums at both Megawatt Park (the site of Eskom's head office in Sunninghill, Gauteng) and at some power plants, with a view towards visiting all the power plants and other operating units;
- 15.6. I had made a presentation to the new Board at its induction at the beginning of 2015 on the company's challenges and our proposed turnaround strategy; and



15.7. I had participated actively and consistently in the 'War Room' since its launch by Cabinet in early December 2014, and led several presentations and presented reports to it.

16 It was furthermore my intention to report on my activities as Chief Executive, as well as the plans of ExCo (including the turnaround strategy) and the 'War Room', to the new Board at its first scheduled meeting on 26 February 2015, however this meeting was postponed and had yet to be reconvened at the time of my suspension.

MY SUSPENSION

17 I was suspended by way of a notice signed by Mr. Zola Tsotsi, Chairperson of the Board of Directors of Eskom, dated 11 March 2015.

18 The events leading to my suspension are as follows:

25 February 2015

18.1 The new Board had scheduled their first meeting for Thursday 26 February 2015, and the agenda for that meeting included two items which I was to present on, namely the Chief Executive's report and a presentation on the initiatives of the 'War Room';

18.2 However, on the evening of Wednesday 25 February 2015 Eskom's company secretary informed me that the scheduled meeting had been "postponed", purportedly at the request of the Minister of Public Enterprises;



8 March 2015

18.3 On Sunday evening, 8 March 2015, the company secretary alerted me to an email containing a notice to convene an urgent Board meeting at 9am on 9 March 2015, issued by the Chairman of Eskom;

18.4 Attached to the notice of 8 March 2015 was a proposed resolution to be discussed at the scheduled meeting, which resolution called for an independent enquiry into the affairs of the company. I was not privy to any discussions in relation to this resolution, and I had no knowledge about the circumstances in which a 'decision' was reached about the resolution or the proposed inquiry. In fact, the resolution had not been drafted by Eskom's company secretary, as is the normal practice, and I do not know who had drafted it. I was surprised that an independent enquiry was being proposed in light of the fact that the 'War Room' that had recently been established was already seized with the same;

9 March 2015

18.5 At the meeting of 9 March 2015, the Chairperson informed the Board that he had Cabinet support for the enquiry called for in the proposed resolution, and called on Board members to adopt it. However, he was met with disagreement by certain members of the Board, who were unwilling to adopt the resolution, on the grounds that there had not been sufficient information provided to motivate the resolution;



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18.6 Furthermore, the Board members argued that if the proposed resolution was attributed to the Minister of Public Enterprises, then it was best that the Minister be on record and address the Board in this regard;

18.7 The Chairperson closed the meeting, and undertook to convey the Board members' sentiments to the Minister of Public Enterprises;

8 March 2015

18.7 On 10 March 2015 I received another notice from the company secretary which stipulated that the Chairperson had reconvened the Board meeting for Wednesday 11 March 2015. The notice indicated that the Minister of Public Enterprises was to attend the meeting;

18.8 The agenda for the scheduled meeting contained some of the items from the cancelled meeting of 26 February 2015, including the two items which I was to have presented, as well as the proposed resolution discussed in part at the meeting of 9 March 2015;

11 March 2015

18.9 When the meeting of 11 March 2015 was convened, and prior to the arrival of the Minister, I presented my Chief Executive's report. Little, if any, discussion ensued in relation thereto;

18.10 When the Minister arrived between 10h30 and 11h00, the Chairperson requested that all members of management leave. I understood this



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instruction to be directed to the other members of management, excluding the financial director and myself because we are executive directors of the Board. So I and the financial director did not leave. However, the Minister explicitly requested us to leave;

18.11 As I was clearing my things to leave the meeting, the Minister raised – seemingly in passing – an incident which had occurred in my tenure involving ‘bugs’ which had been planted in the boardroom of the Respondent;

18.12 Without much discussion about the ‘bugs’, I left the meeting as instructed by the Minister. I understand that the Minister left the meeting at some point during the day;

18.13 Sometime around 17h30 - 18h00 the company secretary, who had also been asked to leave the meeting, asked me to return to the meeting. At that point many of the Board members had left and only the members of the Board subcommittee on human resources: people and governance (‘the Board subcommittee’) had remained;

18.14 The Chairperson –

18.14.1 informed me that the Board had resolved to institute the independent enquiry, and he asked me to recuse myself as Chief Executive so as not to influence that enquiry, which he indicated would last about 3 (three) months; and



18.14.2 requested me to propose ways in which I could assist in ensuring that the enquiry would proceed without me influencing it;

18.15 Given that the Board had already made this decision, the circumstances in which this decision was conveyed to me shocked me. In the circumstances I pertinently asked the Chairperson whether I was being suspended, and if I should report for work the next day. He said that they were not saying that I should not report for work the next day, and avoided the terminology of a 'suspension'.

18.16 At that point, another Board member, Ms Venete Klein, asked me why they should not be doing what they were doing and in approaching the matter in this way she reversed the 'obligation' to explain precisely why the Board had reached its decision to conduct the enquiry and consequently to remove me from my post. I was, as one can imagine, confused by the discussion and I indicated to them that a recusal was different from a suspension. A recusal indicated a temporary absence from a meeting or an event, for a very brief and perhaps intermittent purpose with no aspersion of wrongdoing, and that a suspension involved a longer term absence from work with the view that the employer would conduct an enquiry into allegations of wrongdoing against me.

18.17 In response to Ms Klein I provided the following three reasons why there was no need for such an enquiry:



18.17.1 that the issues which the enquiry would seek to investigate predated my tenure as Chief Executive of Eskom;

18.17.2 that the new Board has not had sufficient time to properly consider the issues that faced Eskom or to engage with me about the activities I have undertaken during my short tenure; and

18.17.3 that the "War Room" initiative was seized with the same issues as those proposed for the enquiry to investigate;

18.18 I was then asked to leave the meeting, once again. When I returned after about 30 (thirty) minutes, I was handed the letter containing the notice of my suspension, which is attached hereto and marked "?"

19 The reasons for my suspension contained in the notice of suspension are as follows

"Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters you should be placed on suspension . . . In order for the investigation to proceed as expeditiously as possible, it would not be appropriate for you to remain at work whilst such investigation is in place."



THE PUBLIC IMPORTANCE OF MY ROLE AND THE IMPACT OF MY SUSPENSION

- 20 In the urgent challenge in the Labour Court against my suspension, I argued the following, among others:
- 21 As Chief Executive of South Africa's power utility, I occupied a critical role in the country. The stable and efficient provision of electricity throughout South Africa is vital to both its social and economic well-being, and Eskom is the pivotal institution in ensuring that such processes are run smoothly and effectively. I did not need to belabour this point as it was obvious and I did not anticipate that there would be any dispute on this aspect.
- 22 I had never been accused of dishonesty and there are no allegations pending against me that I had been made aware of about any dishonesty on my part. Rather, I had always retained respect in my position and had always given my heart and soul to my job, having conducted my role independently and impartially as a servant of my employer and the broader public.
- 23 My suspension came at a critical time when Eskom requires stable and efficient management to ensure that electricity shortages are addressed in the swiftest manner possible, in order to maintain confidence throughout both South African society and our wider economic context. It is clear that my suspension prejudices the broader reputation and functioning of Eskom.



- 24 My activities since appointment and until my suspension are described above, and were all undertaken at the helm of the organisation to ensure its effectiveness and administration.
- 25 The damage to Eskom due to my suspension was highlighted by the downgrade of the company's long-term credit rating by Standard & Poor to 'junk' status, as announced on 19 March 2015. This was expressly attributed to Eskom having suspended myself and other senior employees, which was said to have 'led [Standard & Poor] to have less confidence in the company's corporate governance arrangements as well as in its stand-alone credit profile'. This downgrade was detrimental to Eskom, and further emphasized the wide-ranging effect of my unlawful suspension.
- 26 My application was thus extraordinary not only because of the public interest it involved but also because of the principles of good public administration and the egregious breach of my rights under the Labour Relations Act (LRA), common law and Constitution. These rights include my right not to be unfairly suspended which is protected by the LRA, my right to dignity and my right to reputation.
- 27 I prided myself in the fulfillment of my duties; my position involved a great deal of responsibility and indeed job satisfaction. I had suffered palpable prejudice as a result of my suspension, including to my reputation, advancement and fulfillment. Moreover, my integrity and dignity has been assailed with no cause, in circumstances in which no allegations of misconduct are pending against me. My



suspension has no defined limit, save for a reference to it being 'pending completion of the enquiry', and is thus for all purposes indefinite.

28 I submitted that these negative effects of my suspension warranted that the matter be dealt with on an urgent basis.

29 I also mentioned that, prior to joining Eskom, I had held various senior positions in government, including that of Director-General of the Department of Trade and Industry for approximately 5 (five) years, as well as Director-General of Public Enterprises for approximately 4 (four) years. I had by then 20 (twenty) years of public service experience. The suspension had therefore had been prejudicial to my reputation.

BASES FOR THE CHALLENGE TO MY SUSPENSION

30 I had challenged my suspension on the basis that it was unsubstantiated, arbitrary, unlawful and unfair, as explained below.

SUBSTANTIVE AND PROCEDURAL FAIRNESS

31 The suspension was both substantively and procedurally unfair. All of the events set out above supported my contentions.

The principle of 'fairness' in the context of suspensions requires first that the employer has a justifiable reason to believe, at the very least *prima facie*, that the



employee has engaged in serious misconduct; second, that there is some objectively justifiable reason to deny the employee access to the workplace based on the integrity of any pending investigation into the alleged misconduct or some other relevant factor that that would place the investigation or the interests of the affected parties in jeopardy; and third, that the employee is given the opportunity to state a case before the employer makes a final decision to suspend the employee. It is apparent from the letter of suspension that no justifiable reason for my suspension has been proffered by the Respondent apart from a decision to conduct an enquiry in general terms without any allegations of wrongdoing on my part.

- 32 As mentioned earlier, I was confronted with what was effectively a *fait accompli*, the Board having decided to suspend me without according to me a meaningful opportunity to consider the proposed suspension and make submissions thereon. To the extent that my representations were sought by the Board subcommittee, they were sought in respect of a decision that had already been made by the Board itself. The exercise in requesting my views on the enquiry was academic, superfluous and constituted 'window dressing'. In fact, the Board subcommittee denied that I was being suspended prior to my receiving the letter containing the notice of suspension. It is thus clear that my suspension was procedurally unfair.
- 33 Moreover, the absence of any allegation of misconduct on which to base the suspension renders it arbitrary, unlawful and thus unfair. There is no legal basis on which to suspend an employee in order to prevent their interference in a planned



enquiry, how much more so where no proof of their intention to interfere is provided, nor any basis for a reasonable apprehension of such interference is established.

- 34 My suspension was therefore both procedurally and substantively unfair, and accordingly unlawful in the circumstances.

EXCHANGE OF CORRESPONDENCE

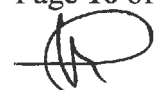
- 35 On 18 March 2015 my attorneys of record sent a letter to Eskom requesting them to uplift my suspension.

- 36 On 20 March 2015 Eskom's attorneys of record sent a response. A copy of that letter is marked "?". I dealt with some aspects of the allegations in the letter below.

36.1 In essence the Eskom's representative replied that they deny the allegations of unlawfulness as related to my suspension, and averred that the suspension was 'both fair and lawful' as -

'it was necessary to suspend [me] in order to ensure that the contemplated enquiry is concluded as speedily as possible and is not jeopardized by [my] continued presence at work'.

In effect therefore, Eskom did not deny that the reason for my suspension did not amount to an allegation of misconduct, in the absence of which the suspension is unlawful.



36.2 With regard to my not having been afforded an opportunity to make meaningful representations on the possibility of suspension, Eskom contended that

'If [I] indeed required additional time to make meaningful and considered representations to the committee, then [I] was well within [my] rights to address that with the committee and to request additional time. However, [I] did not do so and as a result, the committee made its final decision to suspend [me] based on the representations which were made'.

On the contrary, and as detailed above, when the suggestion of my 'recusal' (i.e. suspension) was first made I asked to be able to consider it overnight. However, this request was denied. I was therefore forced to make representations on issues pertinent to the enquiry and on why I should not be 'recused', without an adequate opportunity to think through the nature and effect of any suspension. In any event, by the time I met with the Board subcommittee, the Board had already decided to conduct the enquiry and to suspend me. It is for this reason that I averred that my suspension was procedurally unfair.

37 My application to Labour Court sought an urgent relief on the basis of the impact the suspension had on my dignity, and reputation, as well as on public administration, the economy and the wider reputation of state-owned enterprises, and in circumstances where there was no allegation of any form against me.



THE LABOUR COURT HEARING AND JUDGMENT

- 38 The matter was heard on 26 March 2015 under Judge J Whitcher, and an Ex Tempore Judgment was delivered on 27 March 2015.
- 39 Judge Whitcher established that *prima facie* my suspension was unfair. She, however did not order the suspension to be lifted, as my application requested, but rather referred the matter to the CCMA.
- 40 At the first CCMA hearing on 13 April 2015, Eskom, represented by then Chairperson of the Board Dr Ben Ngubane, requested a postponement to enable the Eskom Board to consult the shareholder on what Eskom could concede or offer in the CCMA conciliation process.
- 41 Eskom requested one or two other subsequent postponements, during which time they approached me and requested to negotiate directly with me.
- 42 In my interaction with Eskom Board representatives, Dr Ben Ngubane, Mr. Romeo Khumalo, and Ms. Venete Klein, it was clear that the option of my return to my job at Eskom was off the table, the only issue being the terms of my separation from the company.
- 43 I had also come to the conclusion that the Board did not see me as part of its plans for the company going forward. I feared that if I were to return to my job at Eskom, I would not enjoy the support of the Board. I had also come to appreciate that I could



not financially sustain the legal process I would have had to go through to win back my job, while in contrast Eskom was funding the Board's defense of the matter.

- 44 I agreed to separate with Eskom with 12 month's pay of the Eskom Chief Executive's salary at the time.

OTHER MATTERS DURING AND AFTER MY TIME AT ESKOM

My meeting with T-Systems

- 45 Upon assuming my job as Eskom Chief Executive, an IT company called T-Systems is one of several companies that wrote to me requesting an introductory meeting with me. T-Systems was a key stakeholder of Eskom, and had been contracted to provide IT services to the power utility.
- 46 I later learnt that T-Systems was one of the bidders in a tender for IT services that Eskom was in the process of finalising. My meeting with T-Systems took place in late October or early November 2014, after the conclusion of the tender process that had been overseen by the Eskom Board Tender Committee, and predated my arrival at Eskom. As Chief Executive, I was not a member of the Eskom Board Tender Committee.
- 47 I had also learnt that Eskom needed to temporarily retain the services of T-Systems as the incumbent supplier after termination of their contract at that point, in order to manage the transition to the next IT services dispensation at Eskom.



DM

48 In the meeting with T-Systems, the executives of the company had contended that T-Systems bid in the abovementioned Eskom IT tender process had not been properly or fairly considered, as they believed the bid offered Eskom great value and cost savings.

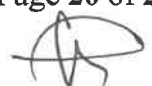
49 I informed them that in my position as Chief Executive I was unable to influence procurement processes, and insofar as they perceived any form of bias against their bid, I advised them to seek legal advice.

My meeting with then President Jacob Zuma

50 In and around June or July 2015, subsequent to my separation with Eskom, I received a telephone call from the office of then President Jacob Zuma, conveying the President's request to meet with me.

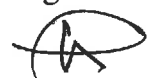
51 The meeting happened a week or so later in the President's office, and it was just between myself and the President. It was a brief meeting, no more than 20 minutes, on an early afternoon.

52 The President opened the meeting by asking how I was doing. I responded that I was ok - as ok as can be in the circumstances I found myself in at that time. I told him that I was in the process of contemplating my future in the aftermath of my separation with Eskom.



DM

- 53 The President went further to say that as far as he was concerned my suspension at Eskom was not in any way a reflection on my person or professional character. He indicated that what he could see in what happened is that I was caught in the middle of a 'spaghetti'. He didn't explain this further. One sense I got from this description was something to do with competing interests. Another sense was that he might have been referring to operational issues at Eskom (given that at the time when I had just joined Eskom there had been a bout of high loadshedding).
- 54 The President further said, he and the government still held me in high regard. He indicated that my exit from Eskom did not need to result in the loss of my expertise and services in the state. He encouraged me to consider returning to public service when an appropriate opportunity availed.
- 55 I informed the President that my suspension had left me feeling disappointed and betrayed by a state that I had served with commitment and sacrifice for all my professional life. I had felt forlorn and on my own in the months following my suspension and separation with Eskom. I told him I appreciated the goodwill he expressed, and indicated that I would reflect on what he had said. He concluded by saying he would contact me again in the subsequent due course, but that did not happen.
- 56 I did not have any discussions with the President as to his involvement in my suspension or the reasons behind the suspension, other than expressing my disappointment and disapproval in the manner in which I was treated pertaining to



my suspension. I did not discuss with the President whether he had any hand in my suspension or the reasons thereof.

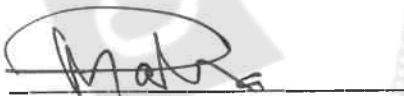
- 57 I had in the meantime been looking for a job, and around August 2015 I responded to an advertisement for the position of Head of Secretariat in the National Planning Commission. I was interviewed by a panel of Cabinet Ministers and subsequently recommended for appointment to Cabinet around September 2015, in accordance with the applicable process.

END

After completion of the above statement, the following questions were put to me, and my answers were recorded accordingly:

1. Q. Do you know and understand the contents of this statement?
YES
2. Q. Do you have any objections in taking the prescribed oath?
NO
3. Q. Do you consider the prescribed oath as binding in your conscience?
YES

I believe the statement gives a fair account of the events that happened.



Signature of Deponent

17 MARCH 2020

Date

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at PRETORIA on the 17 day of MARCH 2020, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Ek verklaar dat bostaande verklaring deur my afgeleë is en dat die verklaarder dit welklyk verklaar en dat die inhoud van hierdie verklaring en dié tagryp, hierdie verklaring is voor my bevestig en verklaard te handtekening/mondkluisdeuk is in my teenwoordigheid daarop aangebring.

I certify that the above statement was taken by me and that the deponent has acknowledged that he knows and understands the contents of this statement. This statement was sworn to/declared before me and deponent's signature/mondkluisdeuk was placed thereon in my presence.

to PRETORIA op 2020-03-17 om 15 : 10
at

(HANDTEKENING) KOMMISSARIS VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS

DANIEL MOERANE KGALADI
VOLLE VOORNAME EN VAN IN DRUKSKRIEF
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

01 GOVERNMENT AVE ACADIA
BESIGHEIDSAADRES (STRAATAADRES)
BUSINESS ADDRESS (STREET ADDRESS)

PRETORIA

SERGEANT
RANG/RANK

SA POLISIE
SA POLICE

SOUTH AFRICAN POLICE SERVICE
UNION BUILDINGS
STATIC GUARD SERVICES
2020 -03- 17
PROTECTION AND SECURITY SERVICES
PRETORIA
SOUTH AFRICAN POLICE SERVICE

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE

AFFIDAVIT

I, the undersigned

TSHEDISO JOHN MATONA

Do hereby state under oath in English:

I am an adult male with ID No. 6203145604082. I am employed as a Head of Secretariat at the National Planning Commission with work address Government Avenue, Pretoria.

My contact details are:

Office: Union Buildings, Room 237, East Wing

Cell: 0823760448

E-mail: tmatona@gmail.com

My qualifications include:

- Masters in Development Economics, University of East Anglia, UK, 1994
- Bachelor and Honours in Social Science, University of Cape Town, 1990-1992
- Certificates in Management and Infrastructure Development, Harvard University School of Government, 2003 & 2011
- Certificates in International Trade Policy and Law, World Trade Organisation, Geneva, Switzerland (1993), and Maastricht University, Netherlands (1997)

1. The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
2. I was appointed on 1 October 2014 as Chief Executive of ESKOM Holdings (SOC) LTD ("Eskom"), a state-owned public company, and as an Executive Director of its Board.
3. I was suspended on 11 March 2015 by way of a notice signed by Mr. Zola Tsotsi, Chairperson of the Board of Directors of Eskom. The events around my suspension are outlined in my previous affidavit signed on 7 March 2020.
4. I separated with Eskom around May 2015, and had no contact with the company after I was suspended, save over the terms of the separation.

Mr Laher's suspension

5. In November 2014 I received a letter from Mr Mongezi Ntsokolo who was then Chairman of Eskom's "Excops", a subcommittee of the company's executive committee responsible for procurement matters.
6. The subject of the letter was "Failure to follow procurement processes by the Chief Information Officer" (CIO), who at the time was Mr Laher, and contained several allegations of the CIO's non-adherence to Eskom's procurement processes. In the

letter, Mr Ntsokolo indicated he had been mandated by Excops to escalate the matter to my office.

7. After considering Mr Ntsokolo's letter, I referred it to the acting Group Executive for human resources, Ms Elsie Pule, to assess the matter and advise.
8. Ms Pule subsequently advised me that her assessment was that there were grounds to institute disciplinary action against Mr Laher, and that she would deal with Mr Laher's manager. I accepted her advice and thereafter had nothing further to do with this matter.

Sumitomo Corporation and Eskom

9. My recollection of this matter is the conversations I had on it with Eskom's Chairman at the time, Mr Zola Tsotsi, and separately with Mr Matshela Koko.
10. Mr Tsotsi had requested to meet me, in which meeting he complained of Mr Koko's conduct on a matter pertaining to Sumitomo Corporation. According to my recollection, this was my first interaction with Mr Tsotsi in relation to this matter and I do not recall Mr Tsotsi's account of its details. I however recall that he was most irked about the fact that Mr Koko had gone so far as to suspend Mr Sakhasimbe over the matter. He considered the suspension of Mr Sakhasimbe baseless and inappropriate, and demanded that it be reversed.
11. I indicated to Mr Tsotsi that I would have to establish Mr Koko's version of the matter, and I subsequently had a meeting with Mr Koko in this regard.
12. In my meeting with him, Mr Koko showed me a copy of a letter signed bearing Mr Tsotsi's signature in which Mr Tsotsi made a commitment on Eskom's behalf for a

payment by Eskom to Sumitomo Corporation. I do not recall what exactly the letter was committing Eskom to pay for, except that the subject had to do with transformers.

13. Mr Koko informed me that there was no basis for Mr Tsotsi to commit Eskom in this way because at the time there was no contract between Eskom and Sumitomo on the subject in question. He further indicated that he had established that the letter had been prepared for Mr Tsotsi by Mr Sakhasimbe. In Mr Koko's view Mr Sakhasimbe had no right to do so, as Eskom had no contractual obligation to Sumitomo. He offered this as the grounds for his suspension of Mr Sakhasimbe.

14. I informed Mr Koko of Mr Tsotsi's unhappiness about Mr Sakhasimbe's suspension, and Mr Tsotsi's demand that the suspension be lifted.

15. From my discussion with Mr Koko's account, and if his statement was true that Eskom did not have a contract with Sumitomo Corporation on the matter in question, I reached a view that that the letter signed by Mr Tsotsi was, prima facie, irregular and his demand for the reversal of Mr Sakhasimbe's suspension was unrealisable.

16. I indicated to Mr Koko that I would revert to Mr Tsotsi on the matter. Soon after my meeting with Mr Koko, I was suspended from Eskom.

END

After completion of the above statement, the following questions were put to me, and my answers were recorded accordingly:

1. Q. Do you know and understand the contents of this statement?

YES

2. Q. Do you have any objections in taking the prescribed oath?

NO

3. Q. Do you consider the prescribed oath as binding in your conscience?

YES

I believe the statement gives a fair account of the events that happened.

[Signature]

Signature of Deponent

17 AUGUST 2020

Date

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Centurion on the 17 day of August 2020 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

[Signature]

COMMISSIONER OF OATHS



IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE

(HELD AT, JOHANNESBURG)

**SUPPLEMENTARY AFFIDAVIT
OF MS. LYNETTE BROWN**

I, the undersigned,

LYNETTE BROWN

declare under oath as follows:

- 1 I am an adult person deposing to this affidavit in supplementation of my main affidavit dated 23rd January 2020. This affidavit has already been filed before the Commission.
- 2 The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are both true and correct.
- 3 My details are already embodied in my main affidavit and, for brevity, I shall not repeat them here.
- 4 After I had deposed to my above-mentioned main affidavit, the Commission's Secretariat, in a letter dated 28 January 2020, addressed to my legal team, attached hereto marked Annexure "LBSA 1", drew my attention to the fact that:
 - 4.1 When giving my oral testimony before the Commission, I will be asked questions relating to the appointment of Dr. Naithani as a director of the SAA Express Board;
 - 4.2 Mr. Zola Tsotsi, the former chairperson of Eskom had testified "... about certain interactions he had with members of the Gupta family, their associates and Ms. Brown. [I] will be given an opportunity to address these issues during my testimony before the Commission ; and
 - 4.3 I am at liberty to depose to an affidavit addressing all these issues, alternatively, I would merely be asked questions on these issues during my appearance before the Commission.
- 5 Before I could finalize this Supplementary Affidavit, I consulted with the Commission's investigation team on 23 June 2020.
- 6 To guide this consultation, the Commission availed to me a list of questions. These questions covered, among others:



6.1 the appointment of the 2014 Eskom Board members;

6.2 events around the cancellation of the Eskom Board meeting that was scheduled for 26 February 2015;

6.3 certain meetings I was not part of, during March 2015, relating to the suspension of certain Eskom executives, during March 2015;

6.4 events related to the Eskom Board meeting of 9 March 2015;

6.5 whether I know the Gupta brothers.

7 We agreed that I shall depose to an affidavit covering the essentials of this consultation.

8 After the interview, the Commission supplemented these questions with a further set of questions. These related to the secondment of Mr. Brian Molefe and Mr. Anoj Sing to Eskom. For completeness and ease of reference, I hereto attach a copy of these questions as annexure "LBSA 2"

9 I, accordingly, depose to this affidavit in response to the initial invitation from the Commission dated 28 January 2020 and to the questions flowing from the interview held on 23 June 2020.

10 For coherency and better flow, I shall not slavishly follow the order or content of the questions posed to me. Instead, I shall deal with related subjects together even if the issues they address arise from different questionnaires from the Commission.

RELEVANT DOCUMENTS FROM THE DEPARTMENT OF PUBLIC ENTERPRISES

11 I do not have an offhand recollection of most of the various issues raised by the Commission. I have, however, through my legal team, asked for the relevant documents that would assist to refresh my memory from the Department of Public Enterprises.

12 The Department of Public Enterprises has gracefully made some of these documents available to me. Some are still outstanding. Insofar as these documents are relevant to the topics I am requested to deal with, I shall incorporate them into this affidavit as annexures.

13 Both annexure "LBSA 1" and annexure "LBSA 2" (questions 2 and 3) ask that I explain the process of the December 2014 appointment of the Eskom Board.

14 Question 35 of annexure "LBSA 2" invites me to offer the Commission "[A]ny other information related to the above that may be of assistance in understanding the events that took place in March 2015" This invitation offers a convenient point of departure as I consider what I narrate below to be important for the understanding of events that took place not only in March 2015 but also the preceding events of 2014.

THE APPOINTMENT OF THE 2015 ESKOM BOARD IN DECEMBER 2014 **Introductory Background**

15 In my main affidavit, I have indicated that I was appointed as the Minister of Public Enterprises during May 2014.

16 At the time, Eskom was in crisis. Its Board was wracked by divisions. It was a subject of negative publicity accentuated by the factions leaking confidential Board information to the media.

17 Load shedding did not help, it had taken a turn for the worst. Simply put, the power demand simply exceeded what Eskom could supply.

18 Many factors contributed to Eskom's incapacity to meet the country's demand for power. Principal among these were Eskom's maintenance backlog and Eskom's failure or inability to increase its generating capacity caused by, among others, the delay in bringing online such power stations as Medupi and Kusile.

19 Towards the end of 2014, these problems escalated exponentially. The Majuba power station experienced problems with its coal storage silos. One silo had cracked and collapsed. Shortly thereafter another silo cracked and could not be used. This choked Eskom's already struggling power generating capacity, given that Earlier that year (around March 2014) one turbine at the Dhuvha power station had become non-functional. Some of the hydro plants' (Palmiet and Drakensburg) water reserves were depleted.

20 The Gourikwa and Ankerlig gas turbines ran on diesel. This became depleted in early December 2014. Inevitably, power stations had to shut down. Various coal-powered units experienced technical faults and kept on tripping off. This necessitated unscheduled maintenance forcing Eskom to load shed.

21 Then the dreaded load-shedding became a daily reality and everybody in government was in panic mode. Other State-owned entities also had crises of their own, some, like SAA, teetering on the brink of collapse. This needed drastic intervention on the part of the government. And so around 11 December 2014 the then President, Mr. Jacob Zuma mandated the then Deputy President Cyril Ramaphosa to preside over the turnaround of Eskom, the South African Airways, and the South African Post Office.

22 This marked the creation of a so-called "War Room". Eskom's 2015 Integrated Report captures the purpose of the War Room in the following terms "***The management of the electricity and related challenges requires cooperation between a number of Government departments and Eskom, therefore Cabinet created an Inter-Ministerial War Room...***" For current purposes, It is not necessary to attach a copy of this report.

23 Frankly, Eskom was simply not a going concern. In December 2014, the Chief Executive informed me that Eskom did not have money to pay its employees their January 2015 salaries. It was also petitioning Treasury for a R23 billion bailout.

24 It is in this context that the events of late 2014 and early 2015 must be understood. As the responsible Minister, I expected and demanded more of the Eskom Board. My July 2014 address to the Eskom Board gives a sense of the gravity of the situation. I attach a copy of this address as annexure "LBSA 3". Here are some of the key points for current purposes:

24.1 Eskom was underperforming. Of the 33 key performance indicators it had only achieved 57, 6%;

24.2 load shedding and power outages were at unacceptable levels. In this regard, I say to the Board: "I note, in particular, the unsatisfactory performance in respect of generation plant performance and the social economic footprint, both of which are concerning"

At the last AGM, my predecessor urged the Board to



ensure that efforts to improve generation performance and reduce the level of unplanned outages were intensified. It is concerning, therefore, that even with support from my department, generation performance continues to deteriorate.”

“I am mindful of the price of the daily balancing act of keeping the lights on and maintaining appropriate electricity generation plant health. However, we need to raise our gaze above that horizon and do something extraordinary in this area.”

24.3 “... Stop the decline in generation performance. Think out of the box. Do the extraordinary. The Department and I will walk beside you on this part.”

24.4 “... Eskom has to do better. Customers have reduced consumption. The Shareholder is working hard at devising ways in which it can help. It is now up to the board to ensure that this support is rewarded with visible performance improvement by the Company.”

24.5 “Costs need to be contained, particularly if the company is to achieve its business productivity plan let me say emphatically, I am very concerned about the rate of increase in costs.”

The December 2014 Appointment of the 2015 Eskom Board

25 It is important to explain that I assumed my portfolio in May 2014. I inherited the Eskom Board and its Chairman, Mr Zola Tsotsi. In June 2014, the term of most of those directors came to an end. However, I approved a resolution to extend their terms for five months pending a review. For those who are not reappointed during December 2014, it is not as if they were abruptly uprooted during the early stages of their new three-year terms.

26 I have, on more than one occasion, explained that the appointment of Board members to state-owned entities was done through a process facilitated by the Department of Public Enterprises. I describe this process fully, in the context of the appointment of the Denel Board, in my Rule 3 application to this Commission to give evidence against the testimony of Mr. Kgathatso Thlakudi. For ease of reference, I hereto attach, annexure “LBSA 4”, a copy of this application without annexures.

27 From the relevant portions of annexure “LBSA 4”, it is apparent that as a Minister I got involved at the tail end of the process when a Decision Memorandum bearing recommendations and a shortlist reaches my desk. The December 2014 Eskom board appointments would have followed the same process.

28 So far, I have been unsuccessful in obtaining the 2014 Decision Memorandum and its supporting documents that would have been prepared by the Department of Public Enterprises specifically dealing with the December 2014 Eskom Board



29 Meanwhile, during August 2020, the Commission availed brought to my attention a copy of a forensic report compiled by Fundundzi Forensic Services (Pty) Ltd dated July 2019 titled **"The Department of Public Enterprises – a Final Report – Forensic Investigation into Various Allegations at the DPE – Tender Number NT 022 – 2016 – RFQ 026 – 2017"**.

30 I have grave misgivings about this report and my reference thereto should not be understood as an endorsement thereof. For current purposes, it is not necessary to vent my misgivings.

31 In paragraph 14.8.22 on page 81, this Forensic Report states that **"We further determined that Motsoai issued a memorandum dated 21 October 2014 to Minister Brown recommending the appointment of the Eskom board."** "Motsoai" refers to Ms Orateng Motsoai who, if I remember well, was an official at the Department of Public Enterprises' Legal Governance and Risk Unit. The usual practice was that this Memorandum would have been reviewed and commented upon by at least 5 senior officials from various units of the Department of Public Enterprises before landing at my desk. Indeed, paragraph 14.8.25 (on page 82) of the Forensic Report notes that I approved the Memorandum. Unfortunately, this Forensic Report does not include a copy of this Memorandum as an exhibit. For convenience, I attach an extract of the relevant pages from this Forensic Report as annexure **"LBSA 5."**

32 My decision may have also been influenced by the absence of commonality of purpose and cohesion of the previous board. I have highlighted above also the shortcomings of its performance when measured against the key performance indicators. One must also bear in mind that it is possible that some of the directors may not have wished to continue with their directorship, some would have been ineligible for appointment because there would have served their maximum terms. For instance, Ms. Bejabulile Luthuli and Ms. Yasmin Masithela had already resigned before the appointment of the new board.

33 After applying my mind to the recommendations embodied in the Decision Memorandum processed by the DPE, I would have conveyed the recommendations to the ANC Deployment Committee (then chaired by the current President of the RSA) for approval.

34 As with other SOEs, this Decision Memorandum by Ms Motsoai would have marked the beginning of my involvement in the appointment process.

35 The final step, after approval by the ANC Deployment Committee would be tabling the recommendations before Cabinet for approval.

36 Offhand, I cannot recall the specific rationale for the retention of Mr. Zola Tsotsi and Ms. Chwayita Mabude on the 2015 Eskom Board. It may have been continuity considerations.

37 Once the 2015 Eskom board was in place, the process of dividing itself into Committees began. Annexure **"LBSA 1"** draws my attention to the testimony of Mr. Zola Tsotsi in this regard and invites my response.

38 Mr. Tsotsi's relevant testimony relates to the composition of various Eskom Board Committees, after the appointment of the 2014 Eskom board. He alleges that I instructed him to implement a list I had sent him that, according to him, coincides with a list that allegedly was given to him by one Salim Essa. I now respond to this allegation.

39 It is not the first time Mr. Tsotsi makes these allegations against me. He made similar allegations during the Parliamentary Portfolio Committee Enquiry hearings.

40 My response has not changed:

40.1 I reject Mr. Tsotsi's accusations;

40.2 in particular, I reject the accusation that I "was in collusion" with the Guptas or any other person in executing my duties as a Minister;

41 To avoid confusion, let me explain that for Eskom, there are what I can broadly describe as two categories of Board Committees. For convenience, I shall call the first category (comprised of two committees), the "Audit and Risk Committee and the Social Ethics Committee" category. The second category, I shall simply call the "Other Committees" category.

42 The process of appointing members to both categories of Committees is broadly similar.

Ad the Appointment of the Eskom Audit and Risk Committee and the Social Ethics Committee

43 Legally, I was only responsible for the appointment of members of only two Board Committees at Eskom. These are the Audit and Risk Committee and the Social Ethics Committee.

44 Again, my appointment of members to these two committees would have been guided by a process managed by the Department of Public Enterprises. This process would provide recommendations that I could adopt. The Legal and Governance Unit of the Department of Public Enterprises interrogates the proposed compositions and makes recommendations to me. I would either approve the recommendations with or without amendments or I reject them.

45 I must point out that nothing prevents the Eskom Board and its Chairman from giving me suggestions on the proposed composition of members of these two Committees. These suggestions would also be subject to the above-mentioned process. I cannot recall offhand whether this is what happened regarding the 2014 appointment to these two Committees.

46 I now explain the process of appointing the "other" Board Committees.

Ad Appointment of the "Other" Eskom Board Committees

47 These committees were selected/nominated by the Board in collaboration with the Chairman of the Board.

48 The Chairman of the Board would transmit the proposed composition of these Board Committees to the Minister through the Department of Public Enterprises. In this process, if so inclined, he/she may include proposed names for the two other committees that are appointed by the Minister.

49 The DPE would then, through its Legal and Governance Unit, interrogate the composition of these Committees giving preference for, among others, balance and appropriateness of expertise, representativity, etc.




- 50 The DPE's end product from this process would embody recommendations to me on the proposed appointments. Typically, this would be encapsulated in a so-called "Decision Memorandum" addressed to me. Such recommendations may or may not differ with the selection initially submitted by the Eskom Board.
- 51 In the same way that the DPE's recommendations to me as the Minister on appointments to the Eskom Audit and Risk Committee and the Social Ethics Committee would reach my desk, recommendations on appointments to the "other" committees would find their way to my desk through the normal Department channels.
- 52 I would then consider these and make my decision for both categories of appointments. I cannot specifically recall whether this occurred simultaneously for the 2014 appointments.
- 53 For all appointments, my decision would then be officially communicated to the Eskom Chairperson, through normal channels. Perhaps, this is what Mr. Tsotsi refers to as "the list". This was the only manner through which I would have relayed the 2014 Eskom Board Committees appointments to The Eskom Chairperson, at the time, Mr. Tsotsi.
- 54 This, to the best of my recollection, is how the appointment of members of the 2014 Eskom Board's Committees for both categories was effected.
- 55 At the time of the preparation of this affidavit, I had not yet received from the Department of Public Enterprises, documents squarely relevant to my appointment of Eskom's 2014 Board Committees. Instead, the Department of Public Enterprises has availed some documents relevant to the rearrangement of the 2014 Eskom Board Committees, pursuant to developments at Eskom during March 2015. The Fundudzi Forensic Report also deals with some aspects of the process of the appointment of 2014 Eskom board Committees. The Commission has also asked me to comment on the process in that report. I therefore respectfully request to deal coherently with this issue in the context of the Fundudzi Forensic the report in a separate affidavit.

General

- 56 I cannot comment on a list that allegedly was sent by Mr. Essa to Mr. Tsotsi as I have never seen it.
- 57 Mr. Tsotsi never specified, at any stage, the composition of this list, nor did he ever indicate what his own drawn up list looked like. It is inexplicable to me that in the execution of the Board's task of appointing members of Board Committees, Mr. Tsotsi would not generate his own list but would rather work from a list allegedly compiled by a stranger to Eskom.

Ad Alleged Meeting at my Official Residence in Pretoria

- 58 I persist in denying that a Mr. Tony Gupta and a Mr. Salim Essa whether together or individually visited my official residence in Pretoria.
- 59 I have explained the process that guided me in the appointment of members of the Risk and Audit Committee and the Social Ethics Committee. I have also explained how I communicated my decision to the Eskom Chairperson. When there is an unexplained delay in the implementation of my decision, there is nothing remiss in insisting that the Eskom Chairperson must implement my decision.
- 

60.1 Mr. Tsotsi, upon his alleged receipt of the list from Mr. Essa, never on his own volition as a conscientious chairperson reported his alleged surprise to anyone. He never protested to me. He never raised his concerns with the Eskom Board as one would expect a conscientious chairperson to do; and

60.2 he never volunteered this allegedly important information to the former Public Protector when she was conducting her investigations into Eskom.

61 Having been appointed in December 2014, new directors had to be inducted to Eskom. This is an intensive programme in which I play a limited role. Question 5 of annexure "LBSA 2", pleads that I set out what was discussed in the induction of the 2015 Eskom Board and I do so below

The Induction of the 2015 Eskom Board that was Appointed in December 2014

62 Above, I have described the dire situation in which Eskom found itself at that time. It was important for me to impress upon the new board the importance of appreciating Eskom's difficult situation and the grit needed to confront and prevail over these difficulties. The induction of this Board on 06 February 2015 provided me with an opportunity and a platform to convey this message.

63 It is perhaps best to attach a copy of my induction speech as annexure "LBSA 6". It reflects what I said.

64 I shall say a word about some of my "off script" articulations. I, among others:

64.1 reminded them that they are the ones empowered to make and enforce operational decisions, not me as the Minister ;

64.2 related to them the deleterious effect of divisions in the previous Board and stressed the importance of cohesion and unity in purpose;

64.3 alerted them to the possibility of being inveigled by corruptors, given the massive procurement budgets they presided over; and

64.4 urged them to be clear about their roles in the context of their relationship with both the Executive and the Chief Executive Officer.

65 Questions 8 and 9 of annexure "LBSA 2" probe the cancellation of the Eskom Board Meeting that was scheduled for 26 February 2015. I share what I can remember about that cancellation

EVENTS LEADING UP THE TO CANCELLATION OF THE ESKOM BOARD MEETING SCHEDULED FOR 26 FEBRUARY 2015 AND ITS RESCHEDULING FOR 11 MARCH 2015



67 I do recall having conversations with the then President, President Zuma about the dire situation of load shedding. He was concerned that the War Room was not receiving accurate information i.e. the executives were feeding the wrong or inaccurate to the war room. He was also distressed by the impact of load shedding on the country and the economy. We were facing a threat of a downgrade because of Eskom's illiquidity problems. In fact, Eskom was not a going concern at all. Already in December 2014, the Chief Executive Officer had indicated that it would not have money to pay its employees in January 2015. The then President had impressed upon me that this situation was Eskom must come to an end.

68 I do not know why this meeting was canceled. I remember that I got to know that it was no longer proceeding. I do not recall specifically having a conversation with the then President, President Zuma about the cancellation of this meeting. It may have happened I simply cannot recall.

69 I cannot imagine that the then Acting Director-General of the DPE, Ms. Matsietsi Mokholo, would misspeak about me having requested her to inform the chairperson, Mr. Zola Tsotsi, that the meeting must be canceled. This may have happened.

70 This meeting was rescheduled for and held on 11 March 2015.
I would not know the process that was followed to reschedule this meeting to 11 March 2015. Eskom is better placed to explain that process.

71 In this meeting, Board members asked me why the meeting was of 26 February 2015 was canceled. I, in turn, relayed the question to the chairman Mr. Zola Tsotsi. He replied that he had sent a Memo to me. I do not recall ever receiving such a Memo.

AD MEETINGS BETWEEN MR. ZOLA TSOTSI, MS DUDU MYENI THE THEN PRESIDENT, NICK LINELL ON ESKOM

72 Questions 10 to 11 of Annexure "LBSA 2" invite comments from me on the meeting (s) allegedly held by Ms. Dudu Myeni, Mr. Nick Linell, and then President, President Zuma in Pretoria and Durban. These meetings, I am informed, were about the suspension of Eskom executives during March 2015.

73 I was not aware of these meetings. I was not invited to these meetings. I did not participate in these meetings. I, therefore, cannot, in response to questions 10 and 11 of annexure "LBSA 2", comment one way or the other thereon.

On Whether I know Mr. Salim Essa

74 I can, however, answer questions 12 and 13 of annexure "LBSA 2". These questions ask about Mr. Essa.

75 I do not know Mr. Salim Essa. I cannot comment on how Mr. Salim Essa had allegedly introduced himself to Ms. Suzanne Daniels around 10 March 2015 and at Melrose Arch. I, certainly, have never had an adviser called Salim Essa.

76 Questions of 14 to 26 of annexure "LBSA 2" interrogate events around Eskom's Special Board Meeting of 9 March 2015, and the Eskom board meeting of 11 March 2015. I share what I know below.

77 I was not aware of this Special Board Meeting. I do not recall being invited. I probably did not attend and cannot comment thereon.

ESKOM'S BOARD MEETING OF 11 MARCH 2015

- 78 11 March 2015 was a Wednesday. I had attended another frustrating War Room meeting. From there my team, being the then Acting Director-General of the Department of Public Enterprises and other officials, and I dashed to the Eskom Board meeting which was already in progress.
- 79 I could have been invited to the meeting by the Chairperson Mr. Zola Tsotsi, probably at the behest of the Board, to speak about the thinking behind the envisaged investigation.
- 80 I had acceded to the invitation because of the gravity of the Eskom situation and the need for some action. Apart from this, my Department needed me to address the Board on the concerns I have discussed above. Also frustrating for the Department was the fact that even the flow of information to the Department itself was unreliable. The minutes reflected this concern
- 81 It was also important for me to impress upon the Board the urgency of my imperative: Eskom needed to be stable, Eskom needed to work.
- 82 One of the issues on the agenda related to security. It arose out of the discovery of a bug that had been discovered planted in the Eskom Boardroom. For me, it was a serious concern that a National Key Point site could have its Board's Boardroom bugged and the directorate appears to be indifferent to this breach of security.
- 83 Another issue was the discussion of the suspension of the executives.
- 84 I just wanted Eskom to stabilize, to work. What we were getting at the War room was inaccurate, sometimes misleading, and plain unreliable. The way things were going, I think there was a sense of panic within Government circles and myself about Eskom's problems and especially the possibility of a total power blackout if we do not get to understand and fix the root causes of the problems afflicting Eskom, from generation, maintenance, illiquidity, etc.
- 85 Strictly speaking, this was a Board issue. As I said before, all I wanted was for Eskom to stabilize, to work. Given our unpleasant experiences about the quality of the information that the executives were relaying to the War Room, it was imperative for me to see to it that something gets done. If this meant suspending executives, so be it.
- 86 This would enable an investigation, what I think I referred to as "a deep dive", into what was plaguing and paralyzing Eskom to unfold and conclude without interference. The investigation would focus on, among others:
- 86.1 the poor performance of generation plants;
 - 86.2 delays in bringing the new generation plant on-stream;
 - 86.3 the high cost of primary energy; and
 - 86.4 cash flow challenges.
- 87 Viewed against my distress as explained above, I had no objection to seeing something concrete being done to address some of the issues that caused me and



88 I do not know how the Board identified members of the executive to be suspended. I assume they, being closer to operations than myself, were better placed to make that determination. Furthermore, I would imagine they would be guided by the problem areas that needed investigation.

89 During the meeting, I did not get the impression that the Board was against the suspensions.

90 Frankly, I did not skew my attention too much to the granular nitty-gritty of the mechanics of the suspensions. To me, that they were on full pay would eliminate or mitigate against any prejudice. Besides, the Ethics Committee of the directorate or the Legal Department would oversee the legalities.

91 My issue was that they should be an objective process. The investigation itself should be conducted by an independent and credible forensic firm that had had no prior dealings with Eskom.

92 I did not discuss the suspensions of these executives with anyone outside Eskom before that decision was taken.

93 I was not involved in the process of selecting who would be acting in the place of the suspended executives. This was a Board activity. I could therefore not discuss this issue with anyone as I was unaware who would replace these suspended executives.

94 It is convenient at this point to answer questions 32 and 33 of annexure "LBSA 2" as they relate to the fate of two of the four suspended executives.

As to Why I Did Not Keep Matona as the CEO for Eskom And Tsholofelo Molefe as the FD

95 I do not understand question 32. It seems to assume that this option was open to me. Mr. Tshediso Matona resigned during May 2015. Ms. Tsholofelo Molefe resigned around June 2015.

On the Denton's Report

96 Let me clarify this. The investigation that the Eskom Board authorised on 11 March 2015 was never about a witchhunt against any particular executive. The Denton's report is at pains to make this clear in paragraph 4, titled "Purpose of the Investigation". Of relevance, are the following paragraphs:

96.1 "4.1 the institution of the Investigation took place shortly after the publicised suspension of four of Eskom's executives...."

...

96.2 4.4 the timing of the Investigation led to the speculation in certain circles that it was the conduct of the Suspended Executives that was being investigated

96.3 4.5 in our meetings with the Board and Audit & Risk Committee, it was confirmed that the investigation was not directed at the Suspended Executives and that the



97 Paragraph 4.9 puts the matter beyond doubt “The TOR do not require investigation of misconduct of any specific individuals. Accordingly, no recommendations are made in respect of action to be taken to deal with misconduct by any specific individuals.” I attach relevant extracts of the Denton’s report as annexure “LBSA 7 “

98 So, the language of “wrongdoing against Matona and Tsholofelo” is plain inapposite in this context.

99 In any event, this report is dated 2 July 2015. By then, Mr. Tshediso Matona and Ms. Tsholofelo Molefe had resigned. I cannot recall whether the Denton Report eventually reached my desk.

MY EXCHANGE WITH ZOLA TSOTSI ON HIS INTERFERENCE WITH MANAGEMENT MATTERS

100 Question 6 of Annexure “SA 2” reproduces and extract attributed to Mr. Zola Tsotsi about a conversation I allegedly had with him. For ease of reference, I restate the passage:

“A day or two before the SONA of February 2015, I was summoned by Minister Brown to her office. The substance of our conversation was as follows: “Chairman, I have received complaints from management and Board members that you are interfering in management. Please refrain from doing so, because if you don’t, I shall have to find someone else to do your job!” My response was “Most Board members hardly know what I look like, let alone not having worked with me yet. As for management, if scrutinizing their behavior and decisions and calling them to account constitutes interference with management, then I will happily continue doing so. If you had acceded to my request that we 2 have regular briefing sessions, even this meeting would not have been necessary.

The Minister’s verbatim response was “Chairman, you go and do what you have to do, and I will go and do what I need to do. There is no reason for you and I to talk about anything.” That is how the meeting ended”

101 The only related conversation I remember having with Mr. Zola Tsotsi related to his interference with management or operational issues (as opposed to directorate issues). In his oral testimony before the Commission, he confirms this. Referring to me, he says “... whereupon the Minister had – well in this instance she was not happy about the fact that I was said to be interfering with management...”

102 There have been complaints about Mr. Zola Tsotsi both from the executives and the directorate. What comes to mind, in particular, was that one of the executives came to see me in person, complaining about Mr. Tsotsi’s interference with operational issues, producing a letter allegedly penned by Mr. Tsotsi, to a Japanese company about buying oil or some other fuel. I decided I had to intervene.

103 This is why I invited Mr. Tsotsi, reprimanded him, and directed him to refrain from interfering with management. As to the verbatim exchange, I cannot recall. I do recall that the meeting was tense, the exchange could have been intemperate.

104 I must also say that I did not have the best of relationships with Mr. Tsotsi, we did not really get on well with each other. I let known that I abhorred his excesses. In particular, the fact that as an Executive Chairman who probably would have meetings four times year, a staff complement of eleven and a full-time driver

- 105 The relationship became even more rancid after he had resigned. In public platforms, especially, in the media, he would tarnish my name. In the beginning, I would respond as the media houses and radio stations would ask for comments from me. In the end, it became an exhausting and emotionally draining exercise, so I let it go and stopped commenting in the media.

REGARDING MR. ZOLA TSOTSI'S PARTING WAYS WITH ESKOM AT THE END MARCH 2015

- 106 I inherited Mr. Tsotsi as part of the previous Board that had been appointed by my predecessor. Above, I have indicated that there were complaints about Mr. Zola Tsotsi interfering with the executive, acting like he was an Executive Chairman, as it were. I think the Board also refused to acquiesce with his appointment of Mr. Nick Linell to do work for the Board without its concurrence. It came to a point where the Board initiated disciplinary proceedings against him.
- 107 If I remember correctly, the Chair or a member of the People and Governance Sub-Committee of the Board, briefed me on the Board's resolution to initiate disciplinary proceedings against Mr. Zola Tsotsi.
- 108 This was a board issue and I did not interfere. I did not have any private discussions with Mr. Tsotsi about this.
- 109 I do know that eventually Mr. Tsotsi and the Board reached some understanding and settled the matter. As I understood the arrangement, he would resign so that his name does not get tarnished as a director and so can continue serving on other boards. Part of the settlement was that he should be paid a 3 month "golden handshake". I was approached to approve this arrangement and I declined: he was a non-executive director and I could not understand why he should be paid for meetings he did not attend. To my knowledge, he parted ways with Eskom without this "golden handshake."
- 110 In the normal course, a medial statement would have been issued by Eskom or the DPE or even both.
- 111 Questions 27 and 28 of annexure "LBSA 2" ask me about Mr. Ajay Gupta and Mr. Tony Gupta.

ABOUT TONY AND AJAY GUPTA

- 112 I do not know Mr. Tony Gupta.
- 113 I do know Mr. Ajay Gupta. I met him when I was MEC for Finance in the Western Cape around when the then Premier led a delegation to India. I cannot recall when did we last interact.
- 114 I do not have and never had any business or other dealings with Mr. Ajay Gupta, in particular, when executing my duties in any capacity.
- 115 Questions 29, 30, 31, and 34 of annexure "LBSA 2" deal with the secondment of Mr. Brian Molefe and Mr. Anoj Singh to Eskom. I answer these questions next.

RE: SECONDMENT OF MR. BRIAN MOLEFE AND ANOJ SINGH FROM TRANSNET TO THE ESKOM

The Decision to Second Brian Molefe and Anoj Singh to The Eskom

- 116 The Transnet and Eskom Boards negotiated discretely the transfer of Mr. Brian



Molefe and Mr. Anoj Singh to Eskom. My role as the Shareholder Representative was to approve the negotiated outcomes. If I remember correctly, from 2016, Eskom's MOI required me to be noted as a party to the appointment of a CEO. I also seem to recall that there was a query about the legality of the transfers and legal opinion was procured which legal opinion was part of the motivation to Cabinet to approve their appointments

117 I have described the dire situation in which Eskom found itself. I have also touched upon the suspension of four executives and the institution of an independent forensic investigation. Mr. Brian Molefe came highly regarded as an astute technocrat with a good understanding of the environment in which SOEs operate. I think Mr. Singh had also built up a reputation at Transnet. The thinking was that these two gentlemen would inspire confidence, post the morale of the workforce, and put Eskom on the trajectory it needed to be on.

118 Annexure "LBSA 1" asks me to comment on the appointment of Dr. Naithani to the 2015 SAA Express Board.

**AD THE APPOINTMENT OF DR NAITHANI TO THE 2015
SAA EXPRESS BOARD**

119 Above and also in my response to the evidence Mr. Kgathatso Thlakudi, I have explained that the appointment of directors to SOEs during my term was largely through a process facilitated by the Department of Public Enterprises. Board appointments to the SA Express, and in particular the appointment of Dr. Rajesh Naithani, were no exception. In this regard, I hereto attach as annexure "LBSA 8" a copy of a Decision Memorandum dated 11 May 2015, prepared by the Department of Public Enterprises. It was addressed to me in my capacity as the then Minister of Public Enterprises.

120 Of relevance, for current purposes, are paragraphs 1 and 2 thereof. Paragraph 1 gives the overall purpose of this Decision Memorandum. Paragraph 2 deals with the appointment of Non-Executive Directors to the SA Express Board. Paragraph 2.1.4, in particular, recommends that I appoint five non-Executive Directors. Dr. Rajesh Naithani was one of them. The Memorandum, as per practice, also contained the CVs of the recommended appointees. I do not consider it necessary to append these CVs to this affidavit. However, should the Commission need these documents, I will avail them.

121 As I have explained above, I became engaged at the tail end of the appointment process. The Department of Public Enterprises will have executed the preceding process of sifting nominations, checking and vetting these nominees, culminating in a recommendation to me, such as evidenced by the Decision Memorandum.

122 Above, I have indicated the role played by the ANC Deployment Committee and final endorsement by Cabinet.

123 Outside of this process, I simply have no other explanation to offer on the appointment of Dr. Rajesh Naithani to the SA Express Board or indeed any other director to the board of any State-Owned Entity during my term.

124 This is all I wish to say on these subject matters.

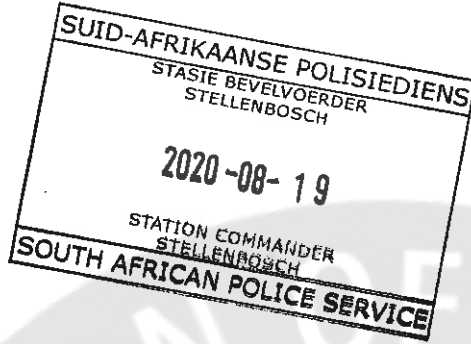

DEPONENT

I certify that the deponent acknowledged that she knew and understood the contents of the above declaration that I duly administered the oath as prescribed by Regulation No. R 1258 of the 21st July 1972, and that thereafter the deponent in my presence signed the

COMMISSIONER OF OATHS

Full Names: W F SUTHER
 Designation: CACT
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Page 2 of 2



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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

28 January 2020

To: Advocate S M Lebala SC

CC: State Attorney – Mr. K I Chowe

E-mail: simm.lebala@law.co.za ; lebalasec@law.co.za ;
ichowe@justice.gov.za ; Pseleka@justice.gov.za

Dear Advocate Lebala SC

**RE: MS LYNETTE BROWN // COMMISSION OF INQUIRY INTO ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE**

1. Thank you for providing Ms Brown's affidavit to the Commission.
2. A summons is in the process of being served on Ms Brown, in order for her to appear at the Commission to give oral evidence. Her evidence is scheduled for Wednesday, 12 February 2020.
3. The residential address we have on record for Ms Brown is 82 6th Avenue, Rondebosch East, 7780, Cape Town. Kindly confirm that this address is correct.
4. As you may be aware, Mr Zola Tsotsi, the former Chairperson of the Board of Eskom, gave evidence at the Commission on 23 and 24 January 2020. A transcript of his evidence is available at the Commission's website:

https://sastatecapture.org.za/site/files/transcript/205/23_January_2020_Sessions.pdf

and

https://sastatecapture.org.za/site/files/transcript/206/24_January_2020_Sessions.pdf.

5. Mr Tsotsi testified about certain interactions he had with members of the Gupta family, their associates, and Ms Brown. Ms Brown will be given an opportunity to address this evidence during her testimony at the Commission.
6. In our letter dated 17 December 2019 (at paragraph 10), we referred to the fact that Dr Naithani, who was a member of the SAA board prior to October 2014, did not resign from the board but was then removed. We understand that Ms Brown, thereafter, appointed Dr Naithani to the board of SA Express.
7. Ms Brown will also be given an opportunity to address her decision to appoint Dr Naithani to the SA Express board during her evidence.
8. If Ms Brown would like to provide an affidavit to the Commission on these two matters in advance of her testimony, she is invited to do so. If she does not provide an affidavit, she will merely be asked questions about these matters during her evidence.
9. We look forward to hearing from you in respect of paragraph 3 above.

Yours faithfully,



Ms Brigitte Shabalala

Acting Secretary

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

30 June 2020 at 14:30 –

Consult with Lynne Brown and her legal representatives

Tshego and Rohan

Please see below the questions that were asked during our consultation with yourselves including additional questions that we did not get a chance to ask.

We would appreciate if the following questions could be answered in a form of a supplementary affidavit to be submitted to the State Capture Commission.

The events preceding and in relation to the suspensions of Eskom's four executives during March 2015 at Eskom:

Your appointment as Minister of DPE

1. When were you appointed as the Minister of DPE?
2. When did your service end as the DPE minister?

Appointment of New Board: December 2014

3. Please describe the process that was followed in you appointing the new Eskom Board in December 2014.
4. Please explain why did you retain two members from the old Board, Mr Tsotsi and Ms Mabude.
5. Briefly set out what you discussed with the new Board at its induction meeting.
6. Mr Tsotsi has referred to a meeting you had with him about a day or two before the State of the Nation Address in February 2015. About this he says:

A day or two before the SONA of February 2015, I was summoned by Minister Brown to her office. The substance of our conversation was as follows: "Chairman, I have received complaints from management and Board members that you are interfering in management. Please refrain from doing so, because if you don't, I shall have to find someone else to do your job!" My response was "Most Board members hardly know what I look like, let alone not having worked with me yet. As for management, if scrutinizing their behavior and decisions and calling them to account constitutes interference with management, then I will happily continue doing so. If you had acceded to my request that we

have regular briefing sessions, even this meeting would not have been necessary."

The Minister's verbatim response was "Chairman, you go and do what you have to do, and I will go and do what I need to do. There is no reason for you and I to talk about anything." That is how the meeting ended

7. Your response?

Cancellation of Board Meeting of 26 February 2015

8. The first Board meeting was scheduled for 26 February 2015, but abruptly cancelled.

8.1. Did you know who gave instructions to cancel the meeting?

8.2. Were you contacted about cancellation of this meeting, if yes, by whom and when?

8.3. What reasons were given for the cancellation?

8.4. What process was followed thereafter to schedule another Board meeting

9. According to Mr Tsotsi, in the late evening on 25 February 2015, he received a telephone call firstly from President Zuma who said that he could not get hold of you and wanted the Board meeting cancelled. Shortly thereafter, Tsotsi received a call from Acting Director General Matsietsi Mokholo who told him that Minister Lynne Brown had asked that the Board meeting be postponed. What is your response?

Jacob Zuma meetings with Dudu Myeni and others

10. Were you aware of Jacob Zuma's meetings with Dudu Myeni, Nick Linnell and Zola Tsotsi, discussing the suspension of Eskom executives and the establishment of an inquiry or investigation?

10.1. The first meeting was in Pretoria on **6 March 2015**, where Tsotsi was not invited.

- 10.2. The **second** meeting was in Durban on **8 March 2015**, were Tsotsi was present.
11. Were you aware that on or about **10 March 2015**, Salim Essa and Matshela Koko had a meeting with Suzanne Daniels at Melrose Arch regarding the suspension of Eskom executives, who Salim Essa mentioned by name?
12. At that meeting, Salim Essa introduced himself to Suzanne Daniels as adviser to Minister Brown. Your response?
13. Do you know Salim Essa and, if yes, how do you know him?

Special Board Meetings

14. The Eskom board meeting of 9 March 2015:
- 14.1. Did you receive any telephone calls regarding Eskom special Board's meeting of 9 March 2015;
15. Tell us about the Eskom Board meeting of 11 March 2015;
- 15.1. how and by whom were you invited;
- 15.2. what reasons were given for your invitation;
- 15.3. what was your response regarding the invite and the reasons given;
- 15.4. what did you discuss with the Board at the meeting; what were the queries and what was your response;
- 15.5. what transpired, what was the outcome of your meeting with the Board.
16. How were the suspended executives identified? Why suspend them and no one else?
17. What reasons were you given for their suspension or stepping aside?

18. Were you in support of their suspensions?
19. What instruction and/or mandate did you give to the Board?
20. What was your understanding why the suspensions were effected so urgently and inconsistently with Eskom's Disciplinary procedures whereby it stated that an employee is to be suspended after it has been found that a misconduct has taken place by that specific employee, and an investigation is taking place?
21. Did you speak to anyone outside the Eskom Board about the suspensions prior to the decision being made?
22. Were you aware who would act in the positions of the suspended executives?
 - 22.1. How were those persons selected?
 - 22.2. Were you given their names and, if so, when, how and by whom?
23. Did you speak to anyone outside the Eskom Board in regard to the acting executives?
24. What was your understanding regarding Mr Tsotsi's termination as chairperson of the Board? The reasons for initiating a disciplinary action against him and ultimate separation.
25. Were you involved and/or informed about the charges that the Board would bring against Mr Tsotsi? When, how and by whom were you informed?
26. Given that you had appointed Mr Tsotsi as the chairperson, did you have talks with him and/or the Board regarding the disciplinary action against him and subsequent separation?
27. Do you know **Tony Gupta** and, if so, how do you know him?
28. You informed us during the consultation that you knew the older of the Gupta brothers, **Ajay Gupta**, very well. Could you explain how you came to know him and whether you had any business or other dealings with him?

More questions that were not included in the original list:

Secondment of Brian Molefe and Anoj Singh to Eskom

29. Who made the decision to second Brian Molefe and Anoj Singh to Eskom?
30. What was your role in that decision making?
31. What were the reasons for choosing Molefe and Singh?
32. Why did you not keep Matona as the CEO for Eskom and Tsholofelo Molefe as the FD?
33. Were you aware that the Dentons' report did not find any wrongdoing against Matona and Tsholofelo?
34. You made media statements about the secondment of Brian Molefe and Anoj Singh from Transnet to Eskom. Please explain how did the statements come about.
35. Any other information related to the above that may be of assistance in understanding the events that took place in March 2015.

Please note, this list is by no means exhaustive of the questions we have. It is only an indication of the areas currently under consideration.

**public enterprises**Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA**Address by Minister Lynne Brown, the Shareholder Representative****Eskom Annual General Meeting****11 July 2014****Introduction**

It gives me great pleasure to represent the sole Shareholder here today.

Even though there is seldom sympathy in the media or in the wider society for the enormous contribution which many make in playing your core public role, the Shareholder is extremely grateful for the efforts made by every level of employee, management and members of the Board to the Company's achievements.

While I do not intend to single out any particular staff members, I must tell you that at 9 o'clock every night I say a little prayer of thanks for those of you who have just squeezed every watt of electricity out of the available generation sources to keep the lights on.

So, thank you to you all.

I would also like to thank the Board members and management for giving of your time so freely in my first few weeks in office to brief me and to engage on critical issues.

At this point in addresses like these, it is traditional to reflect on the global and national scene. I am not going to do that. The country's current economic woes are well documented and very familiar to all present. The same applies to our nation's developmental needs.

I mention these to establish the context for briefing you on an extraordinary call which I need to make on behalf of the Shareholder. In his recent inaugural address, the State President said: "State Owned Enterprises and Development Finance Institutions will become engines of development, complementing the State in promoting inclusive economic growth".

This was said in the context of the notion of radical socio-economic transformation as espoused in the Medium-Term Strategic Framework of

the Fifth Democratic Administration, which is the effective current five-year implementation plan of the National Development Plan.

The objectives of radical socio-economic transformation are:

- Sustainable and inclusive economic growth of better than 5 percent,
- Much higher levels of employment creation and
- More rapid reduction of Inequality, including de-racialisation of the economy.

The Medium-Term Strategic Framework sets out to achieve this through a range of mutually reinforcing initiatives, with Government departments, State-Owned Companies and Public Entities working together and in an aligned manner.

Eskom is expected to be more than just a contributor to that.

Eskom or, more precisely, affordable, plentiful and reliable electricity is the bedrock upon which all of these elements of radical socio-economic transformation will be built.

In effect, the Shareholder is asking you not just to continue to do what you are doing currently but to do much, much more.

We are asking you and many others to rise to much greater heights in the service of growing the economy rapidly and meeting the legitimate expectations of our people for a better life.

I am not going to delve into the detail here. I will arrange deeper engagements on this matter soon.

Regrettably, you set out on this mammoth task on the back foot.

It is well documented that Eskom has been beset by a number of challenges in the recent past which impact negatively on its ability to provide the kind of assurances which investors seek.

This was expressed directly in the Reserve Bank Governor's comment on the negative impact of electricity supply uncertainty on the economy – a comment which has also been echoed by the credit rating agencies when revising the sovereign credit rating downwards.

However, I want to re-assure you and all other players that the Shareholder remains committed to assisting you in playing this central role of supporting growth,

- which will trigger the establishment and expansion of firms;
- which, in turn, will create jobs;
- which will put bread and much more on many more tables; and

- which will contribute to defeating the triple challenges of poverty, inequality and unemployment.

1. Performance of the Company for the year under review

Let me turn, now, to the review of the finer detail of the Company's performance.

Given the extraordinary circumstances in which you operated, I laud Eskom on its overall performance for the year under review which ensured that the lights were kept on with very few exceptions which could be attributed to the Company.

The Shareholder Compact requires Eskom to become a high-performing organisation through focusing on safety, improving operations, being customer-centric, building strong skills and investing in appropriate technologies.

I note that of the thirty three (33) key performance indicators (KPIs) agreed in the 2013/14 Shareholder Compact, Eskom has achieved 57.6% of the targets.

This is not a good performance – even in the challenging environment in which the entity operates.

I note, in particular, the unsatisfactory performance in respect of generation plant performance and the socio-economic footprint, both of which are concerning.

At the last AGM, my predecessor urged the Board to ensure that efforts to improve generation performance and reduce the level of unplanned outages were intensified. It is concerning, therefore, that even with support from my Department, generation performance continues to deteriorate.

I am mindful of the pressure of the daily balancing act of keeping the lights on and maintaining appropriate electricity generation plant health. However, we need to raise our gaze above that horizon and do something extraordinary in this area.

Growth depends on it.

Investor confidence depends on it.

Jobs depend on it.

In the most recent State of the Nation Address, the State President said: "We need to respond decisively to the country's energy constraints in order to create a conducive environment for growth".

He was speaking to all of us in this room and our counterparts in the Energy portfolio.

So, I repeat the message: Stop the decline in generation performance. Think out of the box. Do the extraordinary. The Department and I will walk beside you on this path.

I appreciate that there were unfortunate trade-offs that had to be made to ensure that Eskom could operate within the reduced budget.

However, Eskom has to do better. Customers have reduced consumption. The Shareholder is working hard at devising ways in which it can help. It is now up to the Board to ensure that this support is rewarded with visible performance improvement by the Company.

I note the financial performance and the profit achieved of R7-billion, however, as we know, this will not resolve Eskom's long-term financial sustainability.

Costs need to be contained, particularly if the Company is to achieve its business productivity plan. Let me say emphatically, I am very concerned about the rate of increase in costs.

2. Regulatory and Policy Environment

I recognise that the Energy Policy and Regulatory environment has been characterised by uncertainty in matters related to energy security and the associated cost thereof. This has contributed significantly to the challenges the Company faces in delivering on its mandate.

In this regard, the Department and I have accelerated discussions with our counterparts in relevant ministries and departments in order to eliminate uncertainty in the policy and regulatory sphere, not only in relation to keeping the lights on but also in relation to the future build programme.

We welcome initiatives to mitigate and reduce the impact of your operations on the environment like those which will address the particulate emissions situation and improve water usage performance at the power stations. However, the Department and I note with great apprehension that Eskom's plans to undertake critical maintenance and

projects at the power stations to give effect to these are greatly impacted by the constrained power system.

In this regard the Department will continue to support discussions with the Department of Environmental Affairs in order to find a lasting solution to the transitional challenge of reducing Eskom's environmental footprint and pursuing low-carbon growth.

However, in the meantime, Eskom must ensure that its Air Quality Strategy and the Generation Sustainability Strategy continue to be aligned as this has proven to be a challenge.

I assure you that efforts to make explicit these and other seminal issues in the policy and regulatory environment are a priority on our agenda given the impact that this will have on the long-term sustainability of the Company.

3. Delivery of the Capital Expansion Projects

Let me turn to the Capital Expansion projects.

The Shareholder commends Eskom for the successful completion of the return-to-service programme. This base-load capacity increase has provided welcome relief during the current constrained environment.

Clearly, the late final design and schedule of critical milestones in the Medupi project will have financial implications. I am going to have to say it bluntly: The Shareholder is unhappy that the Medupi budget will escalate once again.

Please report the final estimated cost of completion to the Department and myself as a matter of urgency. I would like you to indicate which costs will be borne by the contractors given that some were due to their non-performance – in particular, the widely reported repeated failures of the control & instrumentation (C&I) tests and the welding non-conformances.

The silver lining is the promise of the first synchronisation of Medupi Unit 6 in December 2014 following the successful factory acceptance tests conducted and other milestones in May 2014.

The Board and Management must ensure that the learnings from Medupi Unit 6 are used to inform the delivery schedules and costs of the subsequent Medupi units and of Kusile.

Construction progress of just 30% against a planned 65% at Kusile is very troubling, particularly given that some of the Kusile challenges mirror those experienced at Medupi.

In this regard, Eskom needs to up its game considerably. Failure will give credence to the perception that the Company cannot deliver on mega projects. This will also determine the role which Eskom will or will not be assigned in relation to the implementation of the Integrated Resource Plan.

On the topic of reporting, I need to speak plainly again: The Board needs to improve on its reporting particularly as it relates to procurement schedules of the mega projects given their anticipated impact on growth and the critical mandates of localisation of capabilities and skills development.

The Shareholder is pleased by the fact that safety is prioritised within Eskom.

The loss of life within any of the State-Owned Companies is never acceptable. In that light, I am distressed by the fatalities at Ingula.

It is the view of the Department that the inculcation of the zero harm policy within the contractor workforce is not succeeding fully given the fatalities. Remedial actions are called for and may require Eskom to think differently about the implementation and enforcement of the policy among contractors.

4. Leadership and Governance

I applaud the Board for filling the Finance Director position in the financial year. However I remain concerned at the number of vacancies and acting appointments at executive level. I am concerned about the time it takes the Board to fill vacant executive positions as this places burdens on the current executives.

I am taking the Board's report on the outcome of the Chief Executive search and selection process through the statutory decision-making channels. You will be informed as soon as this process has been concluded. If all goes well, it should be concluded by end of August.

Following this, I urge the Board to move rapidly to fill all the critical vacant executive positions to ensure the sustainability of the Company.

5. Strategic Intent Statement

I would like to confirm the Shareholder's statement of strategic intent.

The Eskom Board should focus on the following in the short-to-medium term:

- Establish a sustainable capital investment approach characterized by intelligent investment decisions, financial prudence and commercial sustainability to meet industry demands and customer expectations over the medium term. Specifically, the Shareholder wants delivery of the Build Programme without further delays and cost overruns.
- Implement cost containment measures and ensure financial sustainability of the Company in the context of the MYPD3 tariff decision.
- Ensure operational excellence across the organization. In particular, Eskom needs to improve the performance of power plants to ease the current constraints in the power system.
- Consider the establishment of a robust Centre of Excellence to drive innovation, research and the deployment of new and cutting-edge technologies to address issues of competitiveness, growing demand and cost savings.
- Drive regional integration, economic transformation, beneficiation, industrialization, aggressive job creation and the development of a supplier base that meets Broad-Based Black Economic Empowerment (B-BBEE) criteria.
- Develop and expand the Intellectual capital within the Company.
- Ensure sustained growth informed by corporate social investment and environmental responsibility.

6. Conclusion

Let me conclude.

I am aware that I have delivered some hard messages.

And it would not have escaped your attention that, a few minutes ago; I just made your mission considerably tougher.

The environment within which you operate is becoming more complex and demanding. You may argue, on occasion, even unfairly so.

The challenge for the Board and Management is: How are you going to respond?

You may draw some consolation from the fact that I am not just dropping this on your doorstep and disappearing for another year.

This is as much the Department's challenge.

This is as much my challenge and I undertake to do everything in my power to roll boulders out of your way as you rise to these challenges.

Thank you for your attention.



**Minister's Speaking Notes on the Remuneration and Incentives of
Executive Directors and Prescribed Officers**

SAFCOL 2014 AGM

28 August 2014

NB: Executives to be recused before Minister addresses the Board.

Agenda Item no: 11.1 & 11.2

In terms of these two resolutions, the Board has proposed that Minister:

- Note the remuneration of Executive Directors and Prescribed Officers for the year ended 31 March 2014;
 - Approve an increase of 6% for the 2014/15 financial year for Executive Directors and Prescribed Officers for the year ending 31 March 2015;
1. The Department has developed the Remuneration and Incentive Standards for State Owned Companies (SOC) for Executive Directors, Prescribed Officers and Non-Executive Directors ("the Remuneration Standards").
 2. The Standards have been approved by my predecessor and SOCs within the portfolio have begun testing its application. Thus far the feedback to the Department has been useful to ensure continuous improvement and strengthening of the Standards.
 3. While Cabinet was generally supportive of the Standards, the matter was deferred to afford the new Administration an opportunity to engage on its contents. It is critical that Cabinet is fully informed about the impact the Standards will have on existing remuneration levels. In other words, the Department will need to show exactly how the guiding principles of the Standards translate into the monetary value of remuneration and incentives.
 4. SAFCOL is therefore required to continue engaging the Department on aligning its Remuneration Policy to the new Remuneration Standards, in accordance with the provisions of the new MOI.

5. With regard to the Board's request on the remuneration and incentives of Executive Directors and Prescribed Officers:
 - a. I note the remuneration paid to Executive Directors and Prescribed Officers as stated in the Annual Financial Statements for the year ended 31 March 2014.
 - b. The request for an increase of 6% for the year ending 31 March 2015 is hereby declined, for reasons stated in my address earlier.
 - c. To ensure consistency across senior management, there should be no increase for members of extended EXCO as well.
6. Chairperson, taking such a decision pains me as I know how emotive the subject of remuneration can be. However, I do believe that the overall performance of the Company can and should improve, and I further urge the Board and senior management to attend to the challenges facing the company and show tangible progress over the next coming months.
7. The Board as Accounting Authority and the Shareholder Representative (Executive Authority) are both accountable to Parliament in the management of the affairs of the Company. We must therefore stand in solidarity to acknowledge the inefficiencies and to hold management to account through a transparent performance management system.
8. Accordingly, any new provisions for incentives and/or adjustments cannot be implemented prior to my approval of the whole of the Company's new Remuneration Policy.
9. I am encouraged by the Company's diligence in adapting to the shareholder model for remuneration and note that there will be further consultations with the Department and myself to finalise your proposal. The Board must ensure that the Quarterly Reports provide regular feedback on progress made in this regard.
10. In addition, the Board must also provide me with copies of the 2014/15 Performance Agreements of the Executive Directors and Prescribed Officers

highlighting the alignment to the Strategic Intent Statement, the Shareholder's Compact and the Corporate Plan.

I thank you

NB: Executives to return to the meeting.



**IN THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF
STATE CAPTURE BEFORE DEPUTY CHIEF JUSTICE ZONDO
(HELD AT PARKTOWN, JOHANNESBURG)**

**In the Application for Leave to Give Evidence Disputing the
Evidence of Mr. Kgathatso Thlakudi.**

LYNETTE BROWN

APPLICANT

**STATEMENT IN SUPPORT OF RULE 3 (3) FOR LEAVE TO GIVE
EVIDENCE DISPUTING CERTAIN PORTIONS OF THE EVIDENCE OF THE
WITNESS, MR. KGATHATSO THLAKUDI**

I, the undersigned,

LYNETTE BROWN

declare as follows:

1. I am a retired MP, care of, the State Attorney, Pretoria. I served in Parliament for several years as a representative of the African National Congress.
2. The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are both true and correct.
3. I was the Minister of Public Enterprises from May 2014 to January 2017, when I was reshuffled, whereafter I retired. In this portfolio, I had oversight responsibilities over state-owned entities, one of which was Denel. To the extent that some of these entities are implicated in wrongdoing in this Commission, at the commencement of this Commission, through my legal representatives, I committed, to assisting the Commission. That commitment stands.

Introduction

4. The Secretariat of the Commission has served me with a notice in terms of Rule 3 of the Rules of the Commission. This notice, among others informs me:
 - 4.1. that the evidence of Mr. Kgathatso Thlakudi implicates or may implicate me; and
 - 4.2. that in such circumstances, Rule 3 of the Rules of the Commission affords me three options. I attach only a copy (without the accompanying statement) of this Notice as annexure "LB 1".
5. Before I commence with my statement, I wish to register my concern about:
 - 5.1. being furnished with an incomplete statement of Mr. Thlakudi, and

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The Incomplete Statement of Mr. Thlakudi and Non- Provision of Relevant Annexures

6. The Rule 3 Notice that was served on me was accompanied by portions of a statement signed by Mr. Thlakudi on the 10th of March 2019.
7. This was not his complete statement. Of the seemingly 35-page statement the Commission's Secretariat only availed to me 22 pages, being pages 1, 5, 8, 16, 17, 18, 19, 20, 21, then pages 23 to 35.
8. The Secretariat did not avail to me the annexures referred to in the portions of Mr. Thlakudi's statement it had availed to me.
9. I am alive to the fact that Rule 3.3.2 permits the Secretariat to furnish me with portions of the affidavit as opposed to the full statement.
10. Immediately upon receipt of this statement, my legal representatives, wrote to the State Attorney and requested that he relays to the Secretariat the request for the complete statement together with the relevant annexures. I attach a copy of this letter as annexure "LE 2".
11. I have, in my Rule 3 application, regarding the statements of Ms. Marte Janse van Rensburg and Mr. Riaz Saloojee lamented the unfairness of being deprived of the full statement of an implicating witness. In this case it has become particularly pronounced with the non-provision of the relevant annexures referred to in those portions of Mr. Thlakudi's statement availed to me. This is in spite of the fact that page 1 of annexure "LE 1" lists ten annexures of relevance to me and expressly intimates that these annexures "... are available to [me] in electronic format should [I] wish to have copies".
12. I have complained about the prejudicial effect of this in my Rule 3.3 statements against Ms. Janse van Rensburg and Mr. Riaz Saloojee.
13. Developments have exacerbated my complaint. Before the expiry of the 14- day period, Mr. Thlakudi delivered his testimony on the 18th of March 2019.
14. He was led through evidence contained in three Arch Lever files that neither my legal team nor I had access to.
15. I am advised that the evidence leaders collegially made exhibits W 1A and W 1B available to my legal representatives at the hearing. However, the important bundle, Exhibit W3, was not availed to them. I am advised that both exhibits W 1A and W 1B were taken back from my legal representatives on the same day. My legal representatives eventually managed to access the exhibits from the Commission's website five (5) days after the completion of the testimony.

16. Without elaboration, I merely mention that it was difficult for me and my legal representatives to follow oral evidence working only on the disjointed and unintelligible portions of Mr. Thlakudi's statement.

17. I now return to the rudiments of my application.

My Election in Terms of Rule 3.3.6

18. In terms of Rule 3.3.6, I elect to bring an application to give evidence disputing portions of Mr. Thlakudi's evidence relating to:

18.1. my appointment of the 2015 Denel Board; and

18.2. the Denel Asia issue.

19. Next, I point out the portions of Mr. Thlakudi's evidence concerning my appointment of the 2015 Denel Board that I dispute.

Portions of Mr. Thlakudi's Evidence that I Dispute Concerning the Appointment of the 2015 Denel Board

20. I now outline portions of Mr. Thlakudi's evidence that I dispute concerning the Appointment of the 2015 Denel Board.

21. In this regard, I take issue with the import of Mr. Thlakudi's evidence that my changing of the procedure of appointing Board members was untoward. This emerges from, among others:

21.1. paragraph 18 of his statement, where he asserts that there was a "significant departure" from the process of filling SOE boards; and

21.2 his oral testimony, where he states that my removal of the Board Appointment process from his Unit was rather "... quite strange...";

22. I next outline portions of Mr. Thlakudi's evidence on the Denel Asia issue that I dispute.

Portions of Mr. Thlakudi's Evidence on the Denel Asia Issue that I dispute

23. Referring to Denel's formal PFMA application to DPE, Mr. Thlakudi asserts in paragraph 65.2 of his statement that "... the Department was instructed by the Ministry to process it before closure".

24. In paragraph 69 of his statement, Mr. Thlakudi asserts that I was inveigling Treasury to accede to Denel's application in the following terms: "... subsequent engagements between the Minister and the Denel Board make it clear that the Minister had come to terms with the

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Ad Paragraph 71

25. In this paragraph he asserts that I (as the Minister) was "strangely quiet" and that "— at least I was not aware of her position".

Ad Paragraph 73

26. Mr. Thlakudi asserts, in this paragraph, that he and his team were afraid of taking a position contrary to that of their principals and that they should "act on instruction". So, he concludes that "The result was that when the Minister and the DG advised that they accepted the 'deemed approval status' of Denel Asia...", they drafted these letters "as directed by the principals".

Ad Alleged Intimidation by Ms.

27. In his oral evidence, Mr. Thlakudi adds the following points to his victim-of-intimidation repertoire.

- 27.1. 'And that as officials literally we should know our place.

And that you know we cannot act without her direct — without her directive let us put it that way."

- 27.2. "Even the fact that we would meet quite — as our job requires quite often the SOC's did not really sit well with her. And in fact, she made these utterances at one of the SMS sessions we staffed the senior managers in the — of staff. So, and these points you know at every — in fact even the first meeting we had with her after she came in — in fact the first time I got to understand the word 'capture' ... was when she used it. Because she referred to us as senior — as the ex [indistinct] the DDG's that we are captured. So, there was — that is — what I am really getting to when I say there was no — the options that you are relating were not really options."

28. Below, I shall first outline my version about the appointment of the 2015 Denel Board. Then, further on, I shall outline my version of the Denel Asia issue and conclude with my version on allegations of intimidation.

My Version on My Appointment of the 2015 Denel Board

29. In my Rule 3 Application regarding the evidence of Ms. Marte Janse van Rensburg I dealt briefly with this issue.

30. For convenience, I shall broadly restate what I said there and add aspects that may be relevant to Mr. Thlakudi's evidence.

THE APPOINTMENT OF THE 2015 BOARDRotation of the Board Members

31. I am guided by the notion that insofar as appointments to serve public office, government or state-owned entities are concerned, no one has a pre-eminent claim to be appointed or retained in any office, including serving on Boards. These are public service positions in respect of which other qualifying South Africans should have an opportunity to serve as well. There are no superstars or people with pre-eminent claims with respect to appointments to these positions.
32. Part of the rationale for this is to avoid embedding individuals in public institutions. Furthermore, this approach negates complacency, injects new perspectives, energy and drive into an institution.
33. Provided transitional arrangements are handled correctly, there should be few challenges confronting new appointees.
34. Rotating the 2011 Board was not an irrational act I abruptly sprung on the Board. Annexure MIVR 8A of Ms. van Rensburg's statement reveals:
- 34.1. that as far back as at the 2014 Denel's Annual General meeting, almost a full year earlier, I had unequivocally informed the Board of my intention to review the composition (and the performance) of the Board. As I recall, there was no demur.
- 34.2. I placed paramount importance on a smooth transition to the new Board.
- Rationale for the Removal of the Sector Deputy Directors General from the Process of Appointing Board Members**
35. Mr. Thlakudi states that my removal of the involvement of sector DDGs from Board appointment processes was "quite strange".
36. My removal of the Sector DDGs was in fact a deliberate and rational decision. Sector DDGs are directly involved with the industry players. This creates potential for the establishment of relationships and conflicts of interests that may be undesirable. In the past, a number of senior DPE officials had ended up in the employment of state-owned companies, which were generally able to offer higher salaries. It made no sense for DPE employees who worked closely with Denel, for example, and hoped to be appointed to a senior position at Denel, to have responsibility for recommending board appointments or overseeing the process of Denel's board appointments. Such a development, in my view, placed the department's officials in a clearly conflicted position.
37. It is such deleterious relationships that I wanted to eliminate from the process of appointing directors. My approach was simply to

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exclude sector DDGs from the process and vest the process entirely with the Legal and Governance Unit. This unit is removed from direct interaction with industry players and was also equipped with professionals dedicated to governance and compliance.

38. It strengthened my resolve that, when I took over the portfolio, some members of the then-Denel Board and executive had sought my approval to allow for the creation of a new company, Land Systems South Africa, with Mr. Thlakudi as its CEO. This demonstrated to me the undesirability of what I call deleterious relationships with players in the industry. In this case, a sector DDG, tasked with, among others, overseeing industry players, was poised to "score" a CEO position, purely or primarily by virtue of these relationships. I therefore did not support the proposed appointment of Mr. Thlakudi as CEO of Land Systems South Africa.

39. To provide further context for the potential for conflicts of interest resulting from the close relationships between the Department's Sector DDGs and the companies with which they interacted, had Mr. Thlakudi been appointed CEO of Land Systems South Africa it would have been a case of the same person who approved the PFMA application for the establishment of a company being appointed the company's CEO.

40. Due to my insistence that sector DDGs should not be involved in the process of appointing directors it can hardly be considered a surprise that, as a consequence of their non-involvement, Mr. Thlakudi and his sector colleagues do not appear on the Decision Memorandum (annexure KT 3) that recommended that I appoint the 2015 Board.

41. I cannot explain how the first Decision Memorandum (annexure KT 2) on these appointments came to land on Mr. Thlakudi's desk: purportedly for his signature. It may have been an oversight within the department or a vestige of previous practice. In any event, nothing turns on this Decision Memorandum (i.e. annexure KT 2) for the following reasons:

41.1. that Decision Memorandum never landed on my desk; and

41.2. the list of directors listed by Mr. Thlakudi from paginated pages KT 10 to KT 12 of his statement did not change.

The Assessment of Potential Candidates for the 2015 Denel Board

42. After publishing advertisements for applications and nominations, the Department of Public Enterprises engaged the services of an independent service provider to assist with the assessment of potential

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candidates for the 2015 Denel Board. The DPE's Legal, Risk and Governance Unit worked with this independent service provider.

43. I have explained the rationale for my approach of removing the Sector DDGs from this process.
44. The outcome of the assessment vindicated my above-described notion of rotation. I do not have a copy of the assessment report. I shall make it available to the Commission as soon as it is availed to me; alternatively, the Commission may have more success than I have had in accessing this document from the DPE.

Implementation of the Assessment's Recommendations

45. Pursuant to this assessment, I then implemented rotation of the 2011 Board, by:

- 45.1. individually, writing to the 2011 Board Members thanking them and informing them that their terms will not be extended; and
- 45.2. initiating the process of the appointment of the 2015 Board.

The Appointment of the 2016 Board Members

46. Again, I was guided by the Assessment Report's recommendation of the appointment of a new set of directors.
47. I need to explain the process of procuring the names of new directors.
48. Before making changes to the 2011 board, as per established practice at the DPE, public advertisements for applications and/or nominations were placed. The Department, through the Legal, Risk and Governance Unit—together with an external service provider—verified applicants' CVs for suitability and fitness to serve on the board. I think the service provider was called Nexis, but my memory could be failing me. Considerations of qualifications, skills, references, credit history, possible conflicts of interest and criminal background checks were evidently weighed before a shortlist was compiled.
49. The functions related to the identification of suitable candidates to serve on Boards are not Executive functions. They are administrative functions. The shareholder representative does not conduct interviews or verify qualifications. Once again, as per established practice at the DPE, the shareholder representative receives a list from the Department, asks for necessary clarifications if required, and then takes the list for consultation to the Deployment Committee of the ruling party, headed by its Deputy President; and from there to Cabinet for approval.
50. Throughout the process, I relied on the integrity of documents presented to me by the appropriate structures and officials. My involvement with Board appointment processes commenced only when the Legal, Risk

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and Governance Unit presented me with a shortlist.

51. With respect to the 2015 Denel Board, I had no personal knowledge of individual Board candidates, had never met any of them or had any dealings with them. I must emphasize that this was not unique and peculiar to Denel. I implemented this process in all SOEs under my authority. Of all Board members appointed across state-owned companies during my term, only one individual was previously known to me – a Cape Town lawyer with impeccable credentials, who has since passed away.

52. I therefore did not thumb-suck the list of Denel directors appointed in 2015; nor did I "handpick" any name on the list. The appointments were entirely guided by the Assessment Report that was a product of vetting and verification carried out by the DPE (Legal, Risk and Governance Unit) in collaboration with its independent service provider.

The Issue of the Chartered Accountant

53. I need to address the absence of a chartered accountant on the 2015 Denel board.

54. I am of the view that a board of directors of a company of the size and complexity of Denel should include a chartered accountant. I pertinently raised this matter as an issue requiring urgent resolution at the Annual General Meeting of 2015 or the next time I met with the Board.

55. The theory of including a Chartered Accountant on state-owned entities' boards is significantly simpler than the practice. Suitably qualified and experienced chartered accountants generally have no interest in serving on the board of a state-owned company as the work is time consuming and they make more money in the private sector.

56. Finding a chartered accountant with suitable qualifications and experience, and exposure to the aviation and/or armaments industry, who is willing to serve on the board of a state-owned company was an enormous challenge.

57. I can only speculate that my firmness that I did not want people to be kept, in perpetuity, on boards, was the reason that the then-Acting Chairperson of the board – Ms. Janse van Rensburg, a chartered accountant who had served more than a full term already -- was not included on the list of names that was brought to me for consideration and approval.

Continuity of the Board

58. Factually, it is incorrect to allege that there was no continuity on the 2015

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Board.

59. Two members of the 2011 Board continued to serve on the 2015 Board: Mr. Sparks Motsei; and Mr. Riaz Saloojee, the Group Chief Executive Officer.

60. I emphasized the need for an effective and smooth transition to both the 2011 and 2015 boards. With a proper handover, one does not envisage unmanageable problems.

61. From the above it is clear that the appointment of the 2015 board was a rational and objectively justifiable process.

A Word About the So-Called Established Process

62. Both in his statement and oral testimony Mr. Thlakudi complains vehemently that I broke with what he called established practice by "... effecting a significant departure from the above process".

63. A dispassionate analysis reveals the refutability of this proposition:

63.1. Discretion is incompatible with the so-called established practice;

63.2. If Mr. Thlakudi accepts that I, as the Minister at the time, had discretion, in the proper sense of the word, then he must accept, that neither convention nor established practice can fetter this discretion. Nowhere does the law prescribe an administrative process that the Minister must follow in appointing Board members of an SOE.

63.3. That the outcome of the Minister's process is one he does not like is of no consequence - Mr. Thlakudi is entitled to his opinion.

64. I appeal to the Commission to be cautious of what has become a popular narrative that particular board members were appointed by particular people to effect state capture. The only Board appointed during my term that did not undergo the above-described identification and vetting process by the DPE was the last appointment I made, of the 2017 Eskom Board.

65. Mr. Jabu Mabuza, the Chairman of Eskom testified to the Commission that I relayed to him the message from the then-Deputy President, now President Cyril Ramaphosa about his (Mr. Mabuza's) appointment.

This followed a meeting called by the Deputy President and attended by the President, the Deputy President, the Minister of Finance and his DG, Minister of Public Enterprises and her DG, and the DPE's Energy Sector Unit Head. While several members of the 2017 Board did undergo the Department's vetting process, three or four members were not vetted at all - another deviation of process with no demur or outcry.

66. In the circumstances, I ask to be granted leave to lead evidence setting out my version on this issue.

55.

67. I now turn to the Denel Asia issue.

My Version on the Denel Asia issue (on those aspects that I dispute from Mr. Thlakudi's evidence)

Introduction

68. Hindsight is an exact science, it is said. The evidence of former Denel CEO Mr. Saloojee to the Commission on the actual genesis of the proposed Denel Asia deal, including a series of meetings he described as sinister with the Gupta family or their associates, was never presented to me at the time of the appointment of the 2015 Board.

69. Had it been raised, it may have impacted on the trajectory of the deal proposition. From Ms. Janse van Rensburg's testimony to the Commission, to the effect that the Denel-Asia deal was not presented to the 2011 board, I assume Mr Saloojee kept the 2011 board in the dark, too.

The Business Proposition of a Presence in Asia

70. No one can quibble about the soundness of Denel proposition to establish a foothold in Asia and particularly, in India. Both Mr. Saloojee and Mr. Thlakudi confirmed this – at least I do not understand them to be dismissing it as an unsound business proposition. For purposes of this application, it is not necessary to expatiate on this issue.

71. Let me start with the often-ignored practical genesis of this deal, insofar as the 2015 Board was concerned.

Mr. Riaz Saloojee Introduces the Denel Asia Issue to the 2015 Board

72. Denel's presentation to the Parliamentary Committee on Public Enterprises in 2015 reflects that its then CEO, Mr. Riaz Saloojee "...made a presentation whereby he requested the new board to authorize him to pursue the formation of Denel Asia and to find a strategic partner, the board gave him approval as requested". I do not as yet, have access to the minutes of the Board meeting of the 10th September 2015. I shall make them available to the Commission as soon as they are at hand. For brevity, I shall only attach two pages of Denel's presentation to Parliament as annexure "LB 3".

73. For purposes of this application, I do not traverse the rest of the chronology of this saga. I shall focus only on portions of Mr. Thlakudi's evidence that I dispute, but I need to first explain my side on the Decision Memorandum that Mr. Thlakudi asserts was sent to my office on 24 December 2015.

The Fate of the Decision Memorandum Allegedly dated 24 December

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74. If a Decision Memorandum dated 24 December 2015 was sent to my office, I did not see it.
75. I assert that the Ministry, certainly not me, never issued any instruction that the Denel's PFMA application must be processed before closure, as alleged Mr. Thlakudi.

Ad Alleged Involvement of Treasury

76. Unlike the issue of appointing directors, Denel's PFMA section 54 application was a matter that fell within the domain of the expertise of Mr. Thlakudi and his unit. I was prepared to be guided by their expertise. In this regard, I, for example, heeded their advice as embodied in the Decision Memo of 23 November 2015, see annexures KT 5 and KT 6 of his statement.

77. In like manner, this unit, led by Mr. Thlakudi, advised me of the action that he now describes as "... jointly [with Denel] looking for ways to get the Minister of Finance and National Treasury to come around to the DPE and Denel position."

78. This arose in the following circumstances:

78.1. Around June 2016, Minister Pravin Gordhan, comprehensively set out Treasury's position about Denel's PFMA application in a letter dated 10 June 2016 addressed to me. I attach a copy of this letter as annexure "LB 4".

78.2. In advising me on a response thereto, Mr. Thlakudi authored a Decision Memorandum, dated 07 July 2016.

78.3. In this memorandum, Mr. Thlakudi, among others:

78.3.1. informs me that Denel's responding letter shows that it had followed due process, and both Treasury and DPE were dilatory in responding to Denel's PFMA application; and

78.3.2. recommends to me a "... bilateral engagement between [me] and the Minister of Finance, with regard to the Denel Asia matter"

I attach a copy of this Decision Memorandum as annexure "LB 5";

78.3.3. Mr. Thlakudi had also prepared a responding letter along the same lines for me. I signed it on 15

79. The PFMA application that his unit assessed and responded to, for my approval, included very stringent conditions before Denel could establish a new company. I insisted that these conditions must be included in the accompanying letter. Proposals with respect to PFMA applications were signed by the unit he headed, the Legal, Risk & Governance Unit, Human Resources and other units before being presented to me for consideration.

80. By way of context, I point out that all State-Owned Entities pressured both the DPE and National Treasury to sign off on processes as soon as possible. I wrote these letters because National Treasury had not responded. I do not believe that it is in any manner inappropriate to follow up on the process in these circumstances.

AD ALLEGATIONS OF INTIMIDATION

Ad Alleged Intimidation per Paragraph 73

81. I have never intimidated any subordinate. I have never "instructed" or "directed" Mr. Thlakudi to do or refrain from doing anything.

82. Mr. Thlakudi asserts in respect of the Denel-Asia deal, to back up his claim of feeling intimidated, that, "... the Department was instructed by the Ministry to process it before closure". In fairness to Mr. Thlakudi, due to the department's generally slow administrative processes, as I have explained above, State-Owned Enterprises (SOEs) pressurize the Ministry and the Department for speedy resolution of various issues.

83. I was sometimes asked by various SOEs to try and move things along. However, I can find no request to Mr. Thlakudi to speed up the Denel-Asia PFMA application in my files. Perhaps the commission could ask Mr. Thlakudi to furnish this evidence.

84. I wish to further bring to the Commission's attention that Mr. Thlakudi regularly and vociferously raised issues on which he disagreed with me in senior management meetings, as per his right and professional responsibilities. To claim to the Commission that I intimidated him is difficult to fathom. I certainly never instructed him to recommend approval of Denel's PFMA application.

Ad instruction to DPE Officials not to Act Without my Directive

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85. I deny that I ever issued such a directive.

86. This allegation is not borne out by facts: nowhere in his statement does Mr. Thlakudi assert that anything he did was on my directive. This among others, relate to his unit's:

86.1. assessment of Denel's Pre-Application Notification on the Denel VR Laser Asia Proposal;

86.2. assessment of Denel's section 54 Application for the creation of Denel VR Laser Asia during December 2015; and

86.3. recommendation to me in the decision Memorandum of 07 July 2016 that I refer to above.

87. I certainly never instructed him and his unit to act one way or the other.

88. Furthermore, it is difficult to conceive of a situation where I could prevail on professionals to act one way or another on matters falling within their expertise, particularly if my alleged directive differed with their professional opinion.

As my Alleged Assertion that DPE Officials were "Captured".

89. Lest I be misunderstood, I am not disputing that I may have used the adjective "captured". I dispute Mr. Thlakudi's misunderstanding and resultant mischaracterization of the context and intended import of my message to the DPE officials.

90. My message was very simple. The DPE Officials are responsible for the oversight and monitoring of the SOEs. In my view, this requires objectivity and some distance from these SOEs. Officials must therefore refrain from being too cozy with the SOEs to a point where objectivity is lost and one finds officials advancing the SOEs', (sometimes untoward) agendas. This is the context in which I meant "captured" to be understood.

91. This was no aberration. Above, I have described my discomfort with sector DDGs playing a role in the appointment of directors of SOEs to the point where I removed them from the process.

SUPPORTING DOCUMENTS

92. As in my two other Rule 33 applications, some of my assertions above may require that I annex supporting documents, such as the Assessment Report by the independent service provider in the

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93. These documents are not yet available to me. I shall avail them to the Commission as soon as they become available to me.

CONDONATION

94. I live in Cape Town and my legal representatives are based in Pretoria.
95. On the 8th and the 9th of March 2019, I consulted with my legal representatives in Cape Town regarding the evidence of Ms. Janse van Rensburg and Mr. Riaz Saloojee.
96. Unfortunately, the Rule 3 statement of Mr. Thlakudi was delivered after this consultation, around the 10th of April 2019.
97. I have explained above how my legal representatives promptly tried to procure Mr. Thlakudi's full statement and annexures and how they got this on the 15th of March 2019, from the Commission's website.
98. Mr. Thlakudi testified on the 18th of March 2019 – 8 days after delivery the Rule 3.3 Notice to me.
99. The 14-day period expired on the 29th of April 2019.
100. The statement and annexures occupy two arch-lever files. It took time for me and my legal representatives to peruse it, reflect and consult thereon. Furthermore, my legal representatives, as with my two other applications, had to trawl through massive documentation received from the Department of Public Enterprises to find documents that were of assistance to me such as the Decision Memorandum on the Denel portion of this application.
101. To curtail costs, consultations were done telephonically, and drafts exchanged by electronic mail.
102. Diary difficulties, distance and attendant logistics contributed to the delay in finalizing the final version of this application.
103. I apologize to the Chairman for the delay, it was not dilatory or a result of indolence.
104. I am not aware that the delay will occasion any party any prejudice.
105. I therefore humbly request that the late filing of this application be condoned.

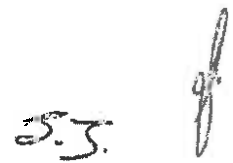


LYNETTE BROWN

CAPE TOWN

3 MAY 2019

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Department of Public Enterprises

Final Report

Forensic Investigation into various allegations at
DPE

Tender Number NT 022-2016

RFQ 026-2017

July 2019



FUNDUDZI

implementation. A possibility exists that either Davids or Minister Brown communicated the proposed composition to the Eskom board for implementation.

- 14.8.18. As reflected above, Ngubane was recommended by infoportal1@zoho.com to be the Chairperson of the Board Tender Committee. According to a memorandum dated 9 April 2015 from Motsoai to Minister Brown, Ngubane was removed from the Board Tender Committee by virtue of his appointment as the interim Chairperson of the Eskom board.
- 14.8.19. The said memorandum to Minister Brown further indicated that Pamensky, Khumalo and P Naidoo had conflict of interest wherein they had current/potential/related business interest in companies that held contracts or had been awarded contracts by Eskom.
- 14.8.20. According the memorandum, the Eskom interim Chairperson, Ngubane indicated that an independent assessment would be conducted to determine the materiality of the contracts. We were not provided with the letter written by Ngubane.
- 14.8.21. We determined that the memorandum was approved by Minister Brown on 20 April 2015.
- 14.8.22. We further determined that Motsoai issued a memorandum dated 21 October 2014 to Minister Brown recommending the appointment of the Eskom Board.
- 14.8.23. According to the memorandum, the following were the proposed new appointments:
- 14.8.23.1. Ben Ngubane;
 - 14.8.23.2. Chwayita Mabude;
 - 14.8.23.3. Venete Klein;
 - 14.8.23.4. Nazia Carrim;
 - 14.8.23.5. Romeo Kumalo;
 - 14.8.23.6. Mark Pamensky;
 - 14.8.23.7. Zethembe Khoza;
 - 14.8.23.8. Tshediso Matona; and
 - 14.8.23.9. Tsholofelo Molefe.
- 14.8.24. We noted that Simphiwe Makhathini ("Makhathini") raised concerns in respect of the composition of the board by writing the following comments *"I'm concerned about the skills of the proposed Board. It doesn't address the challenges*

Eskom is facing. I would recommend that with the vacancies, we seriously look at strengthening those areas".

- 14.8.25. We noted that despite the concerns raised by Makhathini the memorandum was recommended by Mokholo and approved by Minister Brown.

CONCLUSIONS ON ESKOM BOARD COMPOSITION

- 14.8.26. Based on the findings discussed above, we conclude that the composition of the Eskom board sub-committees was influenced by infoportal1@zoho.com; and
- 14.8.27. A possibility exists that the influence of the composition of the Eskom board through infoportal1@zoho.com may have been done to facilitate contracts to be awarded to the Gupta linked entities.

RECOMMENDATIONS ON ESKOM BOARD COMPOSITION

Based on the findings discussed above, we recommend that as follows:

- 14.8.28. Davids should be subpoenaed to the Zondo Commission to inter alia explain:
- 14.8.28.1. Why she communicated with infoportal1@zoho.com in respect of the Eskom board committees;
 - 14.8.28.2. Her relationship with infoportal1@zoho.com;
 - 14.8.28.3. Who she was in contact with when communicating with infoportal1@zoho.com;
 - 14.8.28.4. Who instructed her communicate with infoportal1@zoho.com;
 - 14.8.28.5. Who provided her with the email address infoportal1@zoho.com.
- 14.8.29. DPE and Eskom should investigate whether any of the above mentioned Eskom committees approved decisions that benefited Gupta linked entities (i.e. Tegeta decisions).
- 14.8.30. DCPI should subpoena the hosting service provider of infoportal1@zoho.com in order to obtain all emails linked to the said email address. The investigation of the said emails would be in the best interest of the country and State Capture commission to establish the extent of capture conducted by infoportal1@zoho.com.

14.9. APPOINTMENT OF GIOVANNI LEONARDI AT ESKOM



public enterprises
Department
Public Enterprises
REPUBLIC OF SOUTH AFRICA

**Address by Minister Lynne Brown, Shareholder Representative
Eskom Board Induction Meeting**

Eskom, MegaWatt Park, Sunninghill
06 February 2015

Part 1

Deputy Minister Magwanishe, Chairperson, the Board, Acting DG, Chief Executive, Eskom Executives and the officials of the Department.

Good day,

It gives me great pleasure to address you at DPE Board Induction, as the Representative of the sole Shareholder.

Directors,

To say you have had a baptism of fire since being appointed to this Board would probably be an accurate enough portrayal of your experience thus far. I wish to thank you for accepting the appointment to serve as Directors of the Eskom Board.

1. The purpose of induction

- a. Directors individually and the Board collectively are accountable for the affairs, performance and well-being of the SOC. They act in a role of stewardship on behalf of the Shareholder and the people of South Africa. Therefore, the role and effectiveness of SOC Boards is to be taken seriously, and Directors have an individual responsibility to ensure that

b. Director induction, orientation and on-going development are vital to the effectiveness of boards and individual Directors. It should not be approached as a "tick-box" exercise but must equip Directors with the knowledge, skills and understanding to contribute with substance to an effective Board.

c. In presenting this Board induction, orientation, the DPE's aim is to promote and enable a consistent and comprehensive approach and content for new and experienced Directors' induction orientation and on-going development at all SOC. This session is an opportunity for the Board to hear first-hand of the shareholder expectations which serve to underpin the mandate of the SOC.

2. Setting the stage

a. There is a sentiment in this country that security of electricity supply is one of the key drivers of the sluggish economy and therefore hampering growth. While we can try to highlight the many other factors that are suppressing economic growth, it is a fact that security of supply is a serious challenge. Your appointment to the Eskom Board could not have come at a more challenging time in the history of this organisation. The events of the last few weeks clearly echo the strategic nature of Eskom to the South African economy and to the livelihood of every South African who uses electricity. Electricity supply is the life blood of the South African economy. The decisions and actions that you take henceforth as members of this Board will impact every person in this country.

b. The current administration has made some bold commitments to this country to reduce poverty, unemployment and inequality through implementation of the five-year Medium Term Strategic Framework which is informed by the National Development Plan (NDP) and Cabinet will do all that is possible to make those commitments a reality. The extent to which Cabinet has been involved with the developments in the Electricity Supply Industry over the last few weeks illustrate the lengths that this Administration will go to realise the aspirations of government, which is to improve the livelihood of every South African. So the urgency and agility that will be expected of you in resolving the electricity challenges must be thought of in that context.

3. Strategic Intent

Eskom's purpose remains to provide sustainable electricity solutions to grow the economy and improve the quality of life of the people in South Africa and the region. I would like to highlight some the key focus areas for Eskom in the 3 year period as per the Strategic Intent Statement:

- a. Establishing a sustainable capital investment approach characterized by intelligent investment decisions, financial prudence and commercial sustainability to meet industry demands and customer expectations over the medium term.

Specifically, the Medupi projects must be delivered without further delays and cost overruns. Chairperson, as agreed with the previous board I expect that there would be a committee at board level that would oversee this build programme with the monthly reports as agreed. The

submission of these reports has been inconsistent. In addition, I am still to be furnished with a revised business case for both Medupi and Kusile indicating the cost to completion and current challenges.

b. Implement cost containment measures and ensure financial sustainability of the Company in the context of the NYPDG tariff decision.

Eskom still faces significant financial challenges in the short to medium term. The implementation of the Government support package is critical, in particular the achievement of the Business Productivity Program, BPP. The government task team will remain active to monitor the various aspects of the package. There is acknowledgement that tariffs have to improve, but the other side of the equation is the improvement in Eskom's own expenditure and operations.

c. Ensure operational excellence across the organization.

In particular, Eskom needs to improve the performance of power plants to ease the current constraints in the power system. The Energy Availability Factor of Eskom operations have to improve to allow greater operating reserves and load shedding. This is probably the biggest lever that Eskom has now to improve the electricity challenges in the country.

d. Ensuring security of future primary energy needs

The supply/availability and price of Coal, in particular are of concern to us. There has to be a concrete plan toward the resolution of the so-called coal cliff. Eskom must now make firm proposals in the resolution and securing of future needs. I need to know how committed Eskom is to the offtake of coal in the Waterberg area for Mpumalanga plants as this affects

strategic investment in that area. To date, I have not seen concrete proposals or business case to this effect. The associated cost of coal over the last 10 years has escalated due to what seems to be a change in the sourcing of coal. These costs have the potential to drive up the cost of electricity. I urge you to pay urgent attention to this area.

4. Securing of diesel for the Open Cycle Gas Turbines is crucial while in parallel making inroads towards the conversion to gas.
5. Ensuring environmental compliance and employment of cleaner technologies. Continuous non-compliance with licence conditions is of concern as it poses a risk of revocation of these licences and the Board needs to work tirelessly to ensure compliance.
6. Consider the establishment of a robust Centre of Excellence to drive innovation, research and the deployment of new and cutting-edge technologies to address issues of competitiveness, growing demand and cost savings.
7. Drive regional integration, economic transformation, beneficiation, industrialization, aggressive job creation and the development of a supplier base that meets Broad-Based Black Economic Empowerment (B-BBEE) criteria.
8. Develop and expand the intellectual capital within the Company.
9. Ensure sustained growth informed by corporate social investment and environmental responsibility.
10. Some of the elements I have mentioned are subject of the war room discussions as you may know. It is crucial that Eskom

play an active role to ensure the attainment of these objectives by leveraging the support government is offering. The government support as is at present is unprecedented and would require that you utilize the opportunity to engage on key issues.

11. Given government's strategic objectives and current challenges, I implore you to tirelessly work with a purpose and dedication to positively change the electricity industry and confidently moving towards a low carbon and sustainable economy.

12. Conclusion

As part of this induction, the Department is present to take the Board through a slide presentation of the relevant operational, financial, legal and governance matters which the Directors must become au fait with during its term of office. Henceforth, I will rely on your ability to report, early warning and through quarterly reports on progress made to achieve the objectives of the Strategic Intent of the Company. I anticipate that we will have on-going, regular discussions we, together, address the complex challenges facing Eskom and the country.

I thank you

Part 2 - Minister spoke "off the cuff" on other matters such as:

1. Getting on with decision making about operational matters and not attempt to get the Shareholder Representative to make such decisions.
2. Factions on Boards. Experience at SAA and then about the previous Eskom Board.

3. The extraordinary size of the procurement budgets for both big and small items and the fact that they will be subject to attempts by rent seekers to influence the positions they take.

a. Management of conflict of interests and the need for Internal and External Audit to carefully assess the materiality of contracts being held by any Board Member or employee of the Company through related or inter-related companies, directly or indirectly).

b. In this regard, the company has provided me with the disclosure of interests of the new Board; however, I need an assessment from the Auditors on the materiality of each interest declared in this submission.

4. The need to think carefully as a Board as a whole about the relationship with the CE.

5. The need to think carefully about their relationship as a Board with the Executive as a whole.

6. The Exco needs strengthening in the light of departures and the arrival of the CE.

7. They should not be influenced by individual Exco members or factions within Exco or by "technical teams" who have their own agendas.

8. The attitude of the leadership of stations like Koeberg and their views on relative autonomy.

9. Getting to know as much about Eskom and its myriad relationships also the global, national and regional Electricity Supply Industry, not just about what lands on their formal agendas.

End/

DENTONS

REPORT

in respect of the investigation into the status of the business and challenges experienced by Eskom,
instituted by the board of Eskom Holdings (SOC) Ltd in terms of a resolution passed on 11 March
2015

2 July 2015

(reflecting the state of the investigation as at 18 June 2015)

CONFIDENTIAL

Dentons South Africa
Ground Floor
Great Westernford
240 Main Road Rondebosch
7701, Cape Town
South Africa

INTRODUCTION

1 Background

- 1.1 This document constitutes the report ("Report") of Dentons South Africa in respect of the investigation ("Investigation") commissioned by Eskom Holdings SOC Limited ("Eskom") pursuant to a request for proposals ("RFP") issued on 8 April 2015 under number CORP3254R, in terms of a resolution adopted by the board ("Board") of directors of Eskom on 11 March 2015.
- 1.2 The Investigation commenced on 20 April 2015. A draft report was required to have been provided on 20 July 2015, with the final report to follow on 31 July 2015. Progress reports have been provided to Eskom at approximately two-weekly intervals in the form of activity reports and presentations.
- 1.3 On 11 June 2015, we were requested to prepare a detailed presentation to the Board, in addition to a draft report dealing with the state of the Investigation to date. We understand that this was due to the need to meet the deadlines for various other commitments that had been made by the Board in respect of the time frames of the Investigation. A detailed presentation to the Board was delivered on 25-26 June 2015, which was followed by our draft preliminary report. For these purposes, investigatory activities ceased shortly after 11 June 2015 and resources were redirected from the normal course of the Investigation to the development of preliminary findings, preparation of the above mentioned presentation, and preparation of a draft preliminary report.
- 1.4 Subsequent to our presentation to the Board, we were advised that (i) the Board was satisfied with the Investigation and the degree of detail covered in a very short period of time, (ii) the Investigation had provided the Board with the information it needed to take decisions as to how best to manage the affairs of Eskom, and (iii) no further investigatory activities were required.
- 1.5 A draft preliminary report was submitted to the Board on 3 July 2015. This was followed by an executive summary on 6 July 2015. A presentation was made to the Minister of Public Enterprises on 9 July 2015. We were then requested to prepare this Report as our last submission.
- 1.6 This Report represents a snapshot of the Investigation at the midpoint of the investigation period (about 18 June 2015) and is provided to Eskom on the specific request of Eskom. The findings, views, conclusions and recommendations set out in this Report are accordingly (i) subject to verification and testing, (ii) provided to Eskom as a record of the Investigation as at the midpoint of the investigation period, and (iii) do not constitute definitive findings, views, conclusions and recommendations.

2 Form of Contract

- 2.1 The form of contract between Dentons South Africa and Eskom relating to the Investigation is the Professional Services Contract ("PSC") forming part of the New Engineering Contract 3 ("NEC") suite of contracts, which is published by Thomas Telford Publishing on behalf of the Institution of Civil Engineers, United Kingdom.

- 2.2 As indicated by its name, the NEC suite of contracts is designed for engineering and construction projects. It was a condition of the RFP that bidders contract on the basis of the NEC suite.
- 2.3 NEC provides for various contract options. In the present case, the PSC was subject to option G, which is a task order based option. In effect, Dentons South Africa was only required to perform work in respect of the Investigation in accordance with task orders issued by Eskom.
- 2.4 In the circumstances, a letter of acceptance ("Letter of Acceptance") was executed by both parties on 17 April 2014. The PSC was executed by Dentons on 7 May 2015, and thereafter by Eskom on or about 25 May 2015.
- 2.5 A task order ("Task Order 1") was issued by Eskom to Dentons South Africa on 29 May 2015. A version countersigned by Dentons South Africa was provided to Eskom on 1 June 2015. It is important to note that Task Order 1 repeated the scope of work specified in the TOR and did not in any manner limit this scope of work or provide any degree of specificity in relation to the scope of work.

3 The Investigation

- 3.1 The RFP describes the Investigation as a "Forensic Fact Finding Enquiry ... into the status of the business and challenges experienced by Eskom". The RFP states further that on completion of the Investigation, the Board of Eskom is to be provided "with an independent view of reasons for the following:
- 3.1.1 The poor performance of Eskom's generation plant
 - 3.1.2 Delays in bringing the new generation plant on-stream
 - 3.1.3 High costs of primary energy
 - 3.1.4 Eskom's financial challenges
 - 3.1.5 Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
 - 3.1.6 Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general. *[sic]*
 - 3.1.7 Security failures and accountability at Eskom as a Key National Point *[sic]*."
- 3.2 In addition to the RFP, we were provided (after execution of a confidentiality agreement) with certain terms of reference ("TOR"). A copy of the TOR is attached as Schedule 1.
- 3.3 The description of the Investigation in paragraph 3.1 is repeated in the TOR.
- 3.4 The TOR provides further that:
- "The Board seeks to obtain an independent and unfettered view regarding the credibility and the correctness of information that Eskom's Executive Management ("EXCO") provides in their reports relating to:

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Eskom's financial challenges
- Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
- Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.

The Board has indicated that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO, whose areas would be directly impacted by the enquiry") so as to lend credence to the reports that the independent party would produce."

- 3.5 The items set out in paragraphs 3.1.1 to 3.1.7 are elaborated in greater detail in the TOR and also in Task Order 1. See in this regard paragraph 4 of the TOR (attached to this Report as Schedule 1), and paragraph 2 of Task Order 1 (attached to this Report as Schedule 2).
- 3.6 Similarly, the matters dealt with in paragraph 3.4 are also traversed in paragraph 2 of Task Order 1.
- 3.7 We note that the scope of work set out in the TOR and Task Order 1 is extremely broad. We were assured in the course of the pre-contract negotiations that the actual investigative work required would be as set out in the task orders to be issued post contract. Nonetheless, after our appointment it was apparent that the investigation would be required to cover the entire scope of work, which was definitively conveyed to us when Task Order 1 was subsequently issued.

4 Purpose of the Investigation

- 4.1 The institution of the Investigation took place shortly after the highly publicised suspension of four of Eskom's executives ("Suspended Executives").
- 4.2 The TOR refers to the above mentioned suspensions only obliquely, stating in respect of the Investigation "that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO, whose areas would be directly impacted by the enquiry" *[sic]*) so as to lend credence to the reports that the independent party would produce".
- 4.3 The written material setting out the scope of the Investigation never contemplated the Investigation as being one that was directed specifically at the conduct of the Suspended Executives.
- 4.4 The timing of the Investigation led to speculation in certain circles that it was the conduct of the Suspended Executives that was being investigated.
- 4.5 In our meetings with the Board and Audit & Risk Committee ("ARC") of the Board, it was confirmed that the Investigation was not directed at the Suspended Executives and that the

Board was dealing with the Suspended Executives in accordance with a separate methodology.

- 4.6 The TOR and Task Order 1 state expressly that the purpose of the Investigation was to obtain an independent view on the credibility and correctness of the reports of Eskom's executive committee ("EXCO") to the Board. This was further qualified with reference to the matters set out in the scope of work sections of the TOR and Task Order 1.

- 4.7 The minutes of the meeting of the Board on 31 March 2015 authorising the Investigation records as follows:

"The Terms of Reference were based on the audit. ... Members were generally comfortable with the Terms of Reference in that they adequately addressed all the issues the Board wanted to be dealt with."

- 4.8 The purpose of the Investigation is accordingly to develop information that would serve to determine the credibility of EXCO's reporting to the Board with reference to the matters specified in paragraph 4 of the TOR and paragraph 2 of Task Order 1.
- 4.9 The TOR do not require investigation of misconduct of any specific individuals. Accordingly, no recommendations are made in respect of action to be taken to deal with misconduct by any specific individuals.

5 Methodology

- 5.1 Task Order 1 prescribes the methodology to be applied by the Investigation in the following terms:

"Eskom's Terms of Reference prescribed the following methodology for the Enquiry:

3.1 conducting interviews with employees and any other party/ies or person/s who may have information regarding the Enquiry; and

3.2 obtaining and analysing, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by employees or any other persons interviewed in accordance with the above.

Shortly following commencement of the Enquiry, the Dentons team will engage with the Audit and Risk Committee ("ARC") to discuss the details of the Scope of Work and methodology and to discuss the logistical arrangements for collection of data, review of documents, points of interface with Eskom, engagement with Eskom staff, reporting, etc. Dentons will thereafter prepare a preliminary list of documents and other data/information as well as a list of meetings/interviews that are required for the Enquiry. It is expected that the data required will comprise, inter alia, minutes of Board and EXCO meetings including supporting information, reports, letters, emails. Interviews will be conducted with Eskom staff and, where deemed necessary for the purposes of the Enquiry, non-Eskom staff.

The investigation will be conducted in two phases:

Phase 1: Review of available information

**public enterprises**

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

TO : MS. LYNNE BROWN, MP
MINISTER

FROM : MR. MELANCHTON MAKUBE

ACTING DEPUTY DIRECTOR-GENERAL: LGR

FILE REF : 10/1/3/2

IDMS REF : 181390

**SUBJECT : CABINET MEMORANDA NOS 3, 4 AND 5 OF 2015: THE
APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE BOARDS OF
SA EXPRESS, DENEL AND ESKOM, RESPECTIVELY**

DATE : 11 MAY 2015

1. PURPOSE

- 1.1 To request the Minister to approve an urgent submission of Cabinet Memoranda number 3, 4 and 5 of 2015 on the appointment of the new members to the Boards of South African Express Airways SOC Ltd (SA Express), Denel SOC Ltd (Denel) and Eskom SOC Ltd (Eskom) to the Cabinet Meeting scheduled for 13 May 2015; and
- 1.2 To request the Minister to sign the letter to the President requesting late and direct submission to the Cabinet meeting of 13 May 2015. The letter to the President is attached hereto as Annexure "A".

Lefapha la Dikgwebo tsa Puso • Lefapha la Dikgwebo tsá Mmusó • UMnyango wezinkampani zikaHulumeni • Muhasho wa Mabindu a Muvhuso
• Departement van Openbare Ondernemings • Kgoro ya Dikgwebo tsá Setshaba • Ndzawulo ya Mabhindzu ya Mfumo • LiTiko leTemabhezini
aHulumende • ISebe lezaMashishini oMbuso

- Confidential -

10/06/15
10/06/15
19/06/15
14/06/15

CABINET MEMORANDA NOS 3, 4 AND 5 OF 2015: THE APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE BOARDS OF SA EXPRESS, DENEL AND ESKOM, RESPECTIVELY

1.3 To request the Minister to sign Cabinet Memoranda 3, 4 and 5, if in agreement with the content thereof. Copies of Cabinet Memoranda are attached hereto as Annexure "B", "C" and "D".

2. ANALYSIS AND FINDINGS

2.1 CABINET MEMORANDUM 3 OF 2015: APPOINTMENT OF NON-EXECUTIVE DIRECTOR TO THE SA EXPRESS BOARD

2.1.1 The SA Express Memorandum of Incorporate ("MOI") provides for a minimum of three (3) Directors, and a maximum of twelve (12) Directors, the majority of which shall be Non-Executive Directors and at least two (2) Executive Directors, being the CEO and CFO. There are currently eight (8) Directors on the SA Express Board, six (6) of whom are Non-Executive Directors and two (2) are Executive Directors. It is recommended that three (3) Non-Executive Directors of the Board be re-appointed for purposes of continuity and five (5) new Non-Executive Directors be appointed to the SA Express Board.

2.1.2 Three (3) Non-Executive Directors are recommended for rotation, namely: Ms Karabo Tshailane Nondumo, Ms Nosipho Gxumisa and Dr Bridget Ssamula.

2.1.3 It is recommended that Mr George Mothema, Mr Ezrom Mabyana and Ms Boni Dibate be re-appointed as Non-Executive Directors with effect from 21 May 2015. It is also recommended that Mr Mothema be appointed as the Chairperson of the Board, for a three-year term, subject to annual review by the Minister of Public Enterprises.

2.1.4 It is further recommended that Mr Trevor Abrahams, Dr Rajesh Naithani, Mr Phetolo Ramosebudi, Ms Judith Nomvula Nkabinde and Mrs Given Refilwe Sibiya be appointed as Non-Executive Directors, with effect from 22 May 2015, for a three year term, subject to annual review by the Minister of Public Enterprises.

2.1.5 With these appointments, the SA Express Board will consist of a complement of ten (10) directors, including eight (8) Non-Executive Directors and two (2) Executive Directors. The Board will have two (2) vacancies which will be filled at a later stage. A copy of Cabinet Memorandum 3 of 2015 is attached hereto as Annexure "B".

CABINET MEMORANDA NOS 3, 4 AND 5 OF 2015: THE APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE BOARDS OF SA EXPRESS, DENEL AND ESKOM, RESPECTIVELY

2.2 CABINET MEMORANDUM 4 OF 2015: APPOINTMENT OF NON-EXECUTIVE DIRECTOR TO THE DENEL BOARD

2.2.1 The Denel Memorandum of Incorporate ("MOI") provides for the minimum of three (3) Directors and a maximum of sixteen (16) Directors. There are currently twelve (12) Directors on the Denel Board, ten (10) of whom are Non-Executive Directors and two (2) are Executive Directors. It is recommended that one (1) Non-Executive Directors be re-appointed for purposes of continuity and nine (9) new Non-Executive Directors be appointed to the Denel Board with effect from 24 July 2015.

2.2.2 The following Non-Executive Directors are recommended for rotation, namely: Dr Gert Cruywagen, Ms Martie Janse van Rensburg, Adv Melissa Ntshikila, Adv Ghandi Badela, Mr Mavuso Msimang, Mr Bafana Ngwanya, Prof Stella Nkomo, Mr Matodzi Ratshimbilani and Ms Ziphazethu Mathenjwa.

2.2.3 It is recommended that Mr Nkopane Motseki be reappointed as Non-Executive Director of the Denel Board with effect from 23 July 2015 for a three-year term, subject to annual review by the Minister of Public Enterprises;

2.2.4 It is recommended that Mr Daniel Mantsha be appointed as Non-Executive Director and Chairperson of the Denel Board with effect from 24 July 2015, for a three-year term, subject to annual review by the Minister of Public Enterprises; and

2.2.5 It is further recommended that Mr Thamsanqa Msomi, Mr Tauyame Mahumapelo, Mrs Pinkie Martha Mahlangu, Lt Gen Themba Michael Nkabinde (rtd), Ms Mpho Kgomongoe, Ms Khumbudzo Ntshavheni, Ms Nonyameko Mandindi and Ms Refiloe Mokoena be appointed as Non-Executive Directors to the Denel Board, with effect from 24 July 2015, for a three-year term, subject to annual review by the Minister of Public Enterprises.

2.2.6 With these appointments, the Denel Board will consist of a complement of twelve (12) Directors comprising ten (10) Non-Executive Directors and two (2) Executive Directors. The Board will have four (4) vacancies which will be filled at a later stage. A copy of Cabinet Memorandum 4 of 2015 is attached hereto as Annexure "C".

CABINET MEMORANDA NOS 3, 4 AND 5 OF 2015: THE APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE BOARDS OF SA EXPRESS, DENEL AND ESKOM, RESPECTIVELY

2.3 CABINET MEMORANDUM 5 OF 2015: APPOINTMENT OF NON-EXECUTIVE DIRECTOR TO THE ESKOM BOARD

2.3.1 The Eskom Memorandum of Incorporate ("MOI") provides for a minimum of three (3) Directors and maximum of fifteen (15) Directors. There are currently eleven (11) Directors on the Eskom Board, nine (9) of whom are Non-Executive Directors and two (2) are Executive Directors. It is recommended that two (2) Non-Executive Directors be appointed to the Board, to address the vacancies and skills gap, particularly in respect of financial management and global electricity industry knowledge.

2.3.2 It is recommended that Mrs Mariam Cassim and Mr Giovanni Leonardí be appointed as Non-Executive Directors to the Eskom Board with effect from 25 May 2015, for a three year term, subject to annual review by the Minister of Public Enterprises.

2.3.3 With these appointments, the Eskom Board will consist of a complement of thirteen (13) Directors, comprising of eleven (11) Non-Executive Directors and two (2) Executive Directors. The Board will have two (2) vacancies which will be filled at a later stage. A copy of Cabinet Memorandum 5 of 2015 is attached hereto as Annexure "D"

2.3.4 The Minister should note that on 30 March 2015 Mr Zola Tsotsi resigned as a Non-Executive Director and Chairperson of the Eskom Board and on 20 April 2015 Mr Tinyiko Baloyi was removed as a Non- Executive Director of the Board.

2.3.5 On 31 March 2015 Dr Baldwin Ngubane was appointed as an Interim Chairperson, following the resignation of Mr Tsotsi.

2.4 It should be noted that each Cabinet Memorandum contains the relevant Curriculum Vitae, Experian checks and lists of current and new Boards as per the recommendations.

3. FINANCIAL IMPLICATIONS

No financial implications for this memorandum.

CABINET MEMORANDA NOS 3, 4 AND 5 OF 2015: THE APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE BOARDS OF SA EXPRESS, DENEL AND ESKOM, RESPECTIVELY

4. CONSULTATION/PROJECT TEAM

Transport Enterprises, Manufacturing Enterprises and Energy Enterprises.

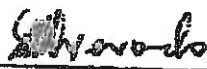
5. RECOMMENDATION

It is recommended that the Minister:


- 5.1 Note the contents of this memo;
- 5.2 Approves appointment/retention and rotation of the Board members of South African Express Airways (SA Express), Denel and Eskom SOC LTD;
- 5.3 Signs the letter to the President requesting late and direct submission to the Cabinet meeting of 13 May 2015; and
- 5.4 Signs Cabinet Memoranda 3, 4 and 5, if in agreement with the contents thereof.

CABINET MEMORANDA NOS 3, 4 AND 5 OF 2015: THE APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE BOARDS OF SA EXPRESS, DENEL AND ENKOM, RESPECTIVELY


Memorandum prepared by:


LAWRENCE NEVONDO
 ASD: GOVERNANCE
 DATE: 11/05/2015


REVIEWED AND SUPPORTED:


ORILLA RUTHNAM
 CD: GOVERNANCE
 DATE: 11/05/2015


MELANGITON MAKOBÉ
 ADDG: LGR
 DATE: 11/05/2015


M.A. MATSIETSI NKOMOLO
 ACTING DIRECTOR-
 GENERAL
 DATE: 11/05/2015

RECOMMENDED / NOT RECOMMENDED /
COMMENTS


MS. LYNNE BROWN, MP
 MINISTER
 DATE: 11/05/2015

APPROVED / NOT APPROVED / COMMENTS


MR. BULELANI GRATITUDE
 MAGWANSHE, MP
 DATE: 11/05/2015

NOTED / COMMENTS

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF
STATE**

AFFIDAVIT

I, the undersigned

DANIEL LESEJA MAROKANE

Do hereby state under oath in English:

1.

I am an adult male with ID 7106175369089. I am employed as a Group Executive working at Tongaat Hulett with work address 1 Amanzimnyama Hill Road, Tongaat, Durban.

My contact details are:

Office: 032 439 4301

Cell: 082 401 0226

E-mail: dan.marokane@gmail.com

The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.

2.

My qualifications include:

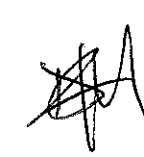
- 2.1. B.Sc Chemical Engineering
- 2.2. M.Sc. Petroleum Engineering
- 2.3. MBA

3.

I hereby confirm that following my suspension from the position of Group Executive – Group Capital at Eskom on the 12 March 2015, I reverted to the board, via the attached letter. This letter, addressed to the Chairman of the Board, Mr Zola Tsotsi, and copied to the company secretary Mr Malesela Phukubye, was never acknowledged nor responded to. Subsequent follow up letters from my lawyers to Eskom board also suffered the same fate. As time progressed, it became clear to me that the board was deliberately frustrating me. It was well into the month of May 2015, around the 20th of the month, that I called the interim Chairman of the board, Dr Ben Ngubane, in the evening to indicate to him that I had come to the conclusion that I could no longer trust the board, and as such I wanted us to discuss how to separate. By the following morning, Dr Ngubane had already assigned two board members, Messrs Romeo Khumalo and Zithembe Khoza to have separation discussions with me. We concluded the separation discussions at the end of May 2015 and I left the employ of the company effective 1st of June 2015.

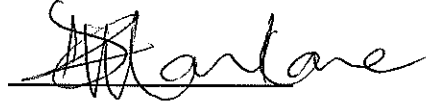
4.

After completion of the statement, the following questions were put to the deponent and his answers were recorded accordingly:



1. Q. Do you know and understand the contents of this statement?
2. Q. Do you have any objections in taking the prescribed oath?
3. Q. Do you consider the prescribed oath as binding in your conscience?

I believe the statement gives a fair account of the event that happened.



Signature of Deponent

01 MARCH 2020

Date

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Sandton on the 1st day of March 2020 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

TUMISANG REGINALD KGABOESELE
Commissioner of Oaths
Attorney
THOMSON WILKS ATTORNEYS
23 Impala Road, Chislehurst, Sandton
Tel: 011 784 8984

Dan Marokane

Email address: dan.marokane@gmail.com

18 March 2015

To: Eskom Holdings SOC Ltd

Att: Mr Zola Tsotsi
(Chairman of the Board)
Email address: zola.tsotsi@eskom.co.za

Att: People & Governance Committee of the Board
C/o Company Secretary
Email address: malesela.phukubye@eskom.co.za

Dear Mr Tsotsi

1. I refer to your letter dated 12 March 2015 in which the reference reads "*notice of suspension as Executive; Group Capital*" which letter was (1) signed by Mr Zola Tsotsi, the Chairman of Eskom Holdings SOC Limited and (2) handed to me for my signature on 12 March 2015 at 08h45. I shall henceforth refer to this letter as "*the suspension letter*".

2. At the time you handed same to me (*at approximately 08h45 on the morning of 12 March 2015*) I did not have sufficient opportunity to read and evaluate same, although I did notice that paragraph 5 of the letter which read as follows :-

"5 I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly",

was factually incorrect. I pointed this out to you and you agreed to delete the whole of the paragraph and drew a line through same. You and I then initialled that amendment.

3. At the same time certain words appearing in paragraph 6 were also deleted; for the record those words are the following :-

"... and after having considered your representations, ...",

4. Now that I have had an opportunity of (1) studying the letter closely, (2) considering the somewhat limited information made available to me at the time the letter was presented to me and (3) considering the media reports relating to my and other of my colleagues' suspensions, it is clear that the letter was prepared prior to our meeting with no contemplation of any influence from engagement with me. For context purposes it bears mention that whilst on leave the previous day I was telephoned at 21h00 on 11 March 2015 with the request that I meet the Board later that evening which proved difficult and we scheduled a meeting at 08h00 the following morning.

5. Since then the media (*including very importantly the printed media*) has reported extensively on my suspension and the simultaneous suspension of three of my colleagues namely :-

- a. Tshediso Matona (*Eskom's Chief Executive*);
- b. Tsholofelo Molefe (*Eskom's Finance Executive*);
- c. Matshela Koko (*Eskom's Commercial and Technology Executive*),

who I shall henceforth refer to the above-named as "*the suspended executives*".

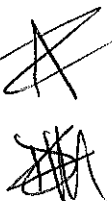
6. Whilst I refer hereunder to the suspended executives as a group and for ease of reference, I must make it clear that I do not speak on their behalf. It is simply a matter of convenience in the context of this letter to refer to the four of us together where the context requires same.

7. The explanation that Eskom has tendered to the outside world in respect of the suspension of the suspended executives is that – in summary – whilst there is no evidence or suggestion of any wrongdoing by the suspended executives, it was considered necessary by the Board to essentially remove them from the Eskom environment so that the inquiry that the Eskom Board had resolved on 11 March 2015 to establish could take place with unfettered access to Eskom. In the suspension letter it refers to the "importance of it being free of any influence from leadership in the organisation" – from which I conclude that the "leadership" is intended to refer to the suspended executives.

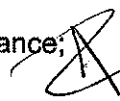

8. Pursuant to that determination the Board considered it necessary to remove the suspended executives from the environment so that – at least as asserted by Eskom – the inquiry could take place with unfettered access to Eskom. You, Mr Chairman, are quoted in the press as saying "*there is nothing sinister happening. This is a fact finding inquiry ... which will last for three months.*" You are also quoted as saying that "*to ensure that this process is as transparent and uninhibited as possible ... the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this inquiry.*"

9. That inquiry is to establish and enquire into the state of Eskom's business focusing on (1) generation capacity supply, (2) the delays in the new build programme and (3) the current cash flow / liquidity situation so that the Board can have a benchmark of where the business is at.

10. That is the background to my suspension but when one has regard to the suspension letter which (1) was prepared on 11 March 2015 in anticipation of it being delivered to me at or shortly after 21h00 that evening and (2) against the background of the Board's decision as referred to above and Eskom's explanation to the outside world, also referred to above, the letter, besides being entirely incompatible with the (*purported*) rationale / logic / motivation for my suspension, also has a tone, structure and content that is, sadly, as best I can make out and based on representations made by you to me and Eskom to the outside world, more indicative of the traditional or type of suspension letter handed to an employee (*irrespective as to the seniority or status of that employee*) against whom there is (1) at very least the suspicion of wrongdoing and (2) a pending or contemplated disciplinary hearing.



11. The letter furthermore contains a huge number of factual assertions in the suspension letter which are objectively speaking inaccurate. So for example :-
- a. we did not discuss the matters referred to in paragraph 1; I was simply told of the Board's decision and was not given an opportunity to engage in any form of discussion that could have a bearing on the decision;
 - b. I was not afforded an opportunity as alleged in paragraph 2;
 - c. the advices referred to in paragraph 3 were presented to me as a *fait accompli*;
 - d. the concerns referred to in paragraph 4 were also presented to me as Board's decision;
 - e. paragraphs 5 and 6 are also factually incorrect although I only picked up paragraph 5 and part of paragraph 6 during the short meeting on Thursday, 12 March 2015.
12. The majority of the content of the suspension letter is most inappropriate if the suspension was for the purpose as publically disclosed by Eskom.
13. On the contrary the suspension letter makes no effort whatsoever to be a true and fair reflection of the publically stated purpose of my suspension but rather is indicative of a circumstance in which an employee (*in this instance myself*) is suspended pending an inquiry into alleged wrongdoing. However, whatever Eskom's motive may be, I have been suspended and subjected to an unfair labour practice and I reserve my rights.
14. Both the publically stated reason for my (*and indeed all the suspended executives*) suspension and that stated in paragraph 1 of the suspension letter implies that there will be an attempt by me to unlawfully interfere with the inquiry's business. There can be no other rational or objective explanation – however illogical that reasoning may be. In this regard no explanation has been tendered to me as to what it is I might do – or not do – that would improperly or unlawfully influence the inquiry.
15. I would remind you that I was appointed to the role of Group Executive – Group Capital from 1 November 2014 after holding the acting position for a period of a year. I was asked to act in that position after the departure of the then responsible executive, Paul O'Flaherty in August 2013 which followed the announcement that the target date of December 2013 for bringing the first unit of Medupi Power Station online was not going to be met due to slow project execution.
16. Within a period of a month I reverted to the Board Committee that oversees Mega Projects and clearly articulated three areas that needed to be resolved in order to get the projects including Medupi, back on track. These areas were:-
- a. the resolution of the boiler welding defects;
 - b. the resolution of the control and instrumentation system non-compliance;
and

- c. the creation of a stable environment for a productive labour force.

17. I developed a plan to address the three challenges above as follows :-

- a. by increasing the collaboration with the contractors to identify mutually solved technical challenges in a proactive manner. Both welding, control and instrumentation challenges were resolved through joint problem solving teams beyond the normal contractual arrangements;
- b. by further cascading the implementation of new organised labour / contractors to create site stability and mechanisms for early discontentment identification and resolution. The sites have now been stable for one of the longest duration intervals;
- c. by improving transparency on projects – I made Medupi achieve its first integrated project schedule since the project was started in 2007. The schedule integrated all risks to create transparency. The Kusile schedule which was already in existence was boosted with realistic integration of risk;
- d. by using the integrated project schedules to develop a new estimate of costs to completion for the project so that the business can understand what the cost increases will be and what the main drivers of these escalations were.

18. Having taken all the above to the Board and secured their support, I proceeded to develop mitigation plans to ensure the containment of cost increases by focusing on improvement of productivity at sites, integrated planning with contractors and finding solutions to commercial disputes that had been tabled.

19. I ensured that we lift the standard of project execution across the business by making all projects learn from challenges encountered in other projects.

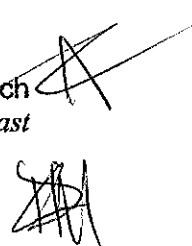
20. I set up the appropriate organisational structures to support these initiatives and created a central contract management unit to standardise our approach to contractors.

21. I implemented performance management to include lower levels to ensure that everyone is doing what is required and prioritise where necessary.

22. All of the above elements were identified as crucial by a number of independent reviews conducted by external parties which reviews were done on behalf of the Board. During my tenure as Group Capital Executive I created meaningful and tangible progress in the execution of various projects which saw, in particular, the delivery of the first unit of Medupi - achieved one week prior to my suspension.

23. It is for *inter alia* the above reasons that I am of the opinion that I will add valuable insight in assisting the inquiry to establish and identify where Eskom is with regard to various project delays and cost overruns. After all, I was specifically engaged to resolve these problems which were pre-existing and pre-dated my appointment and were obviously not of my making.

24. Paragraph 9 of the suspension letter provides *inter alia* that I am not to approach "any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining your prior permission."

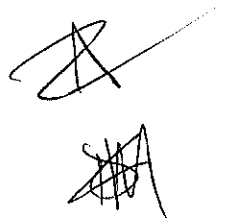


25. This is so widely worded - would you please re-visit paragraph 9 and deal more constructively therewith rather than leave the matter with its current vague and generalised terminology. .
26. If the Board has an absolutely genuine desire to (1) get to the heart of all of Eskom's problems, (2) understand how those problems came about, (3) and how they were over time handled (*and mishandled*) and (4) what Eskom needs to do in order to overcome its challenges, I am willing to co-operate with the independent investigation on the basis that I will be allowed to advance and share my genuinely held open and frank views without fear of retribution or any other adverse consequence to me, my professional integrity, my reputation in the marketplace and importantly my career in Eskom and my anticipated and indeed hoped for career path within Eskom.

Yours faithfully



Dan Marokane



Dan Marokane

Email address: dan.marokane@gmail.com

18 March 2015

To: Eskom Holdings SOC Ltd

Att: Mr Zola Tsotsi
(Chairman of the Board)
Email address: zola.tsotsi@eskom.co.za

Att: People & Governance Committee of the Board
C/o Company Secretary
Email address: malesela.phukubye@eskom.co.za

Dear Mr Tsotsi

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2. At the time you handed same to me (*at approximately 08h45 on the morning of 12 March 2015*) I did not have sufficient opportunity to read and evaluate same, although I did notice that paragraph 5 of the letter which read as follows :-

"5 I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly",

was factually incorrect. I pointed this out to you and you agreed to delete the whole of the paragraph and drew a line through same. You and I then initialled that amendment.
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"... and after having considered your representations, ...",
4. Now that I have had an opportunity of (1) studying the letter closely, (2) considering the somewhat limited information made available to me at the time the letter was presented to me and (3) considering the media reports relating to my and other of my colleagues' suspensions, it is clear that the letter was prepared prior to our meeting with no contemplation of any influence from engagement with me. For context purposes it bears mention that whilst on leave the previous day I was telephoned at 21h00 on 11 March 2015 with the request that I meet the Board later that evening which proved difficult and we scheduled a meeting at 08h00 the following morning.

5. Since then the media (*including very importantly the printed media*) has reported extensively on my suspension and the simultaneous suspension of three of my colleagues namely :-
 - a. Tshediso Matona (*Eskom's Chief Executive*);
 - b. Tsholofelo Molefe (*Eskom's Finance Executive*);
 - c. Matshela Koko (*Eskom's Commercial and Technology Executive*),who I shall henceforth refer to the above-named as "*the suspended executives*".
6. Whilst I refer hereunder to the suspended executives as a group and for ease of reference, I must make it clear that I do not speak on their behalf. It is simply a matter of convenience in the context of this letter to refer to the four of us together where the context requires same.
7. The explanation that Eskom has tendered to the outside world in respect of the suspension of the suspended executives is that – in summary – whilst there is no evidence or suggestion of any wrongdoing by the suspended executives, it was considered necessary by the Board to essentially remove them from the Eskom environment so that the inquiry that the Eskom Board had resolved on 11 March 2015 to establish could take place with unfettered access to Eskom. In the suspension letter it refers to the "importance of it being free of any influence from leadership in the organisation" – from which I conclude that the "leadership" is intended to refer to the suspended executives.
8. Pursuant to that determination the Board considered it necessary to remove the suspended executives from the environment so that – at least as asserted by Eskom – the inquiry could take place with unfettered access to Eskom. You, Mr Chairman, are quoted in the press as saying "*there is nothing sinister happening. This is a fact finding inquiry ... which will last for three months.*" You are also quoted as saying that "*to ensure that this process is as transparent and uninhibited as possible ... the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this inquiry.*"
9. That inquiry is to establish and enquire into the state of Eskom's business focusing on (1) generation capacity supply, (2) the delays in the new build programme and (3) the current cash flow / liquidity situation so that the Board can have a benchmark of where the business is at.
10. That is the background to my suspension but when one has regard to the suspension letter which (1) was prepared on 11 March 2015 in anticipation of it being delivered to me at or shortly after 21h00 that evening and (2) against the background of the Board's decision as referred to above and Eskom's explanation to the outside world, also referred to above, the letter, besides being entirely incompatible with the (*purported*) rationale / logic / motivation for my suspension, also has a tone, structure and content that is, sadly, as best I can make out and based on representations made by you to me and Eskom to the outside world, more indicative of the traditional or type of suspension letter handed to an employee (*irrespective as to the seniority or status of that employee*) against whom there is (1) at very least the suspicion of wrongdoing and (2) a pending or contemplated disciplinary hearing.

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 - b. I was not afforded an opportunity as alleged in paragraph 2;
 - c. the advices referred to in paragraph 3 were presented to me as *a fait accompli*;
 - d. the concerns referred to in paragraph 4 were also presented to me as Board's decision;
 - e. paragraphs 5 and 6 are also factually incorrect although I only picked up paragraph 5 and part of paragraph 6 during the short meeting on Thursday, 12 March 2015.
12. The majority of the content of the suspension letter is most inappropriate if the suspension was for the purpose as publically disclosed by Eskom.
13. On the contrary the suspension letter makes no effort whatsoever to be a true and fair reflection of the publically stated purpose of my suspension but rather is indicative of a circumstance in which an employee (*in this instance myself*) is suspended pending an inquiry into alleged wrongdoing. However, whatever Eskom's motive may be, I have been suspended and subjected to an unfair labour practice and I reserve my rights.
14. Both the publically stated reason for my (*and indeed all the suspended executives*) suspension and that stated in paragraph 1 of the suspension letter implies that there will be an attempt by me to unlawfully interfere with the inquiry's business. There can be no other rational or objective explanation – however illogical that reasoning may be. In this regard no explanation has been tendered to me as to what it is I might do – or not do – that would improperly or unlawfully influence the inquiry.
15. I would remind you that I was appointed to the role of Group Executive – Group Capital from 1 November 2014 after holding the acting position for a period of a year. I was asked to act in that position after the departure of the then responsible executive, Paul O'Flaherty in August 2013 which followed the announcement that the target date of December 2013 for bringing the first unit of Medupi Power Station online was not going to be met due to slow project execution.
16. Within a period of a month I reverted to the Board Committee that oversees Mega Projects and clearly articulated three areas that needed to be resolved in order to get the projects including Medupi, back on track. These areas were:-
- a. the resolution of the boiler welding defects;
 - b. the resolution of the control and instrumentation system non-compliance; and

- c. the creation of a stable environment for a productive labour force.

17. I developed a plan to address the three challenges above as follows :-

- a. by increasing the collaboration with the contractors to identify mutually solved technical challenges in a proactive manner. Both welding, control and instrumentation challenges were resolved through joint problem solving teams beyond the normal contractual arrangements;
 - b. by further cascading the implementation of new organised labour / contractors to create site stability and mechanisms for early discontentment identification and resolution. The sites have now been stable for one of the longest duration intervals;
 - c. by improving transparency on projects – I made Medupi achieve its first integrated project schedule since the project was started in 2007. The schedule integrated all risks to create transparency. The Kusile schedule which was already in existence was boosted with realistic integration of risk;
 - d. by using the integrated project schedules to develop a new estimate of costs to completion for the project so that the business can understand what the cost increases will be and what the main drivers of these escalations were.
18. Having taken all the above to the Board and secured their support, I proceeded to develop mitigation plans to ensure the containment of cost increases by focusing on improvement of productivity at sites, integrated planning with contractors and finding solutions to commercial disputes that had been tabled.
19. I ensured that we lift the standard of project execution across the business by making all projects learn from challenges encountered in other projects.
20. I set up the appropriate organisational structures to support these initiatives and created a central contract management unit to standardise our approach to contractors.
21. I implemented performance management to include lower levels to ensure that everyone is doing what is required and prioritise where necessary.
22. All of the above elements were identified as crucial by a number of independent reviews conducted by external parties which reviews were done on behalf of the Board. During my tenure as Group Capital Executive I created meaningful and tangible progress in the execution of various projects which saw, in particular, the delivery of the first unit of Medupi - achieved one week prior to my suspension.
23. It is for *inter alia* the above reasons that I am of the opinion that I will add valuable insight in assisting the inquiry to establish and identify where Eskom is with regard to various project delays and cost overruns. After all, I was specifically engaged to resolve these problems which were pre-existing and pre-dated my appointment and were obviously not of my making.
24. Paragraph 9 of the suspension letter provides *inter alia* that I am not to approach "any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining your prior permission."

25. This is so widely worded - would you please re-visit paragraph 9 and deal more constructively therewith rather than leave the matter with its current vague and generalised terminology. .
26. If the Board has an absolutely genuine desire to (1) get to the heart of all of Eskom's problems, (2) understand how those problems came about, (3) and how they were over time handled (*and mishandled*) and (4) what Eskom needs to do in order to overcome its challenges, I am willing to co-operate with the independent investigation on the basis that I will be allowed to advance and share my genuinely held open and frank views without fear of retribution or any other adverse consequence to me, my professional integrity, my reputation in the marketplace and importantly my career in Eskom and my anticipated and indeed hoped for career path within Eskom.

Yours faithfully



Dan Marokane



STATEMENT OF ANTON MINNAAR**INTRODUCTION**

1. The purpose of this statement is to address my involvement in the suspension process of Mr D Marokane, Ms T Molefe, Mr M Koko and Mr T Matona.
2. It bears emphasis upfront that I have no decision making authority concerning the appointment and termination of employment of the executives that the Executive Support Department ("ESD") renders services to.
3. My duties as the ESD Manager, which will be expanded upon below in, purely relate to rendering advice to the Board and its sub-committees concerning decisions that it/ they intend/s to take and administering decisions that have been taken by it/them.

MY PERSONAL PARTICULARS

4. I am an adult male, employed by Eskom as the Executive Support Manager. I have been employed by Eskom for the past 29 years and have risen through the ranks to the position that I currently occupy.
5. In February 1990, I commenced employment at Eskom in the Recruitment Department.
6. After 6 months, I was transferred to the Industrial Engineering Department, which later becomes the Consulting Services Department, where I spent the next 10 years.



7. In 2002, the Consulting Services Department was closed and I was transferred to the ESD and I have been there ever since.
8. I became the Head of the ESD initially in an acting capacity in 2002 and during about 2003, I was appointed in a permanent capacity. I attach a copy of my job description and the ESD's business outputs marked "**AM1**".

THE ESD

9. The ESD provides an independent, confidential, ethical and professional one stop service to the Chairman, Eskom Board, People & Governance Committee of the Board ("*P&GC*"), CEO, Executive Committee ("*EXCO*") and F-Band executives¹, which enables them to focus on leading the organization in line with its strategic intent.
10. The ESD reports directly to the office of the CEO of Eskom and I have a dotted reporting line to the Chairman of the Board relating to Board issues.
11. The duties of the ESD include the following key activities:
 - 11.1. Board remuneration and benefits;
 - 11.2. All F-Band HR related matters;
 - 11.3. Executive F-Band remuneration and benefits;

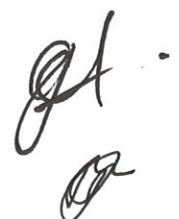
¹ The most senior employees at Eskom, earning the highest salaries in the organization at Patterson Grading Band F.



- 11.4. Executive (F-Band) calculation of variable remuneration Short Term Incentives (“STI”) and Long Term Incentives (“LTI”);
 - 11.5. Management of some Executive and Consulting contracts for the Chairman / CEO;
 - 11.6. Lending support to the P&GC (In-Committee);
 - 11.7. Executive movements (F-Band only);
 - 11.8. Exit and separation arrangements for all F-Band executives;
 - 11.9. Executive (F-Band) succession management support;
 - 11.10. Executive Health services; and
 - 11.11. Ad-hoc support.
12. The business outputs of the ESD are elaborated upon in annexure “AM1” referred to above.

EXECUTIVE SUSPENSIONS

13. On 12 March 2015 a MEDIA STATEMENT and internal communication document was send out to the organisation with the heading “Independent Enquiry Eskom 12 March 2015”. I become aware of the suspensions through the communication which is attached marked **AM2**.



14. On the same day, 13 March 2015, a media statement from the DPE was relieced by the minister of public enterprises regarding the decision by the board marked **AM3**.
15. On the same day, 13 March 2015, a message from the chairman was send out to all employees marked **AM4**.
16. I was not involved in this process leading up to the suspensions of the mentioned individuals.
17. The individuals received "NOTICE OF SUSPENSION" letters which were signed between 11 and 12 March 2015. I later (cannot recall the date) received copies of these letters for their files. A copy of Mr Koko's letter is attached marked **AM5**.
18. On their suspension I was mindfull that the suspended individuals may call me to get personal information.
19. I had a discussion on 13 March 2015 with the Chairman of the Board Mr. Z Tsotsi on the above issue and requested approval that I may provide information to the suspended individuals if contacted.
20. I drafted a letter, attached marked **AM6**, on the same day, 13 March 2018, seeking approval to provide the following information to the suspended individuals should they contact me i.e.:
 - 20.1. Contract of employment.



- 20.2. Pension Fund calculations.
- 20.3. Information regarding salaries and benefits and
- 20.4. Long Term Incentive (*LTI*) grant certificates.
21. On 13 March 2015, I received a request from the company secretary, Mr M Phukubje, that Mr Marokane request a copy of his employment contract attached marked **AM7**.
22. I was later requested by the Chairperson of the People and Governance committee of the Board (*Ms V Klein*) to provide information on remuneration packages and the calculation of possible separation scenarios based on years service.
23. The final settlement calculation was based on a Board resolution marked **AM8**.
24. Settlement agreements were finalised around 15 May 2015. I do not know who drafted these agreements. Attached settlement agreement of Mr Marokane marked **AM9**.
25. My only involvement to the suspension of the individuals was related to the calculation of the settlement payment as resolved by the Board.
26. On 30 March 2015, Mr Z Khoza requested me to draft a letter to the Acting Director General Ms M Mokholo providing her with a suspension fact sheet. I informed Adv. N Tsholanku from Eskom legal and Mr Jerry Kaapu from Bowman Gilfillan drafted the fact sheet hereto attached marked **AM10**.



27. To my knowledge, Denton's was involved with some type of investigation which involved the individuals referred to.
28. Mr Jerry Kaapu from Bowman's Gilfillan was also involved in this process.

FURTHER SUBMISSIONS

29. Due to my limited involvement in this matter I propose that Mr Kaapu be contacted who I believe will be able to shed more light on this issue.
30. Mr Z Tsotsi, then chairman of Eskom also provided a lot of information on this matter at the parliamentary inquiry. It would also be advisable to contact him.

ANSWERS TO THE QUESTIONS POSED

31. Having received questions from Ms Tshego Mahlangu-Yiwombe, attached hereto marked **AM11**, I respond thereto as detailed below.

31.1. Q: *Who informed you of the suspensions?*

31.2. A: There was an internal communication send out to the organisation on 12 March 2015. I was made aware of this through the communication which is attached marked **AM2**.

31.3. Q: *What date?*

31.4. A: I received the communication on 12 March 2015 through the internal communication e-mail attached marked **AM2**.



31.5. Q: *Who actually took the cards and laptop.*

31.6. A: It was taken by our department.

31.7. Q: *What date?*

31.8. A: Around 1 March 2015. See emails around this issue marked **AM12**.

31.9. Q: *Detail the correspondence that occurred during this time.*

31.10. A: This happened more than 4 years ago and I unfortunately cannot recall detail correspondence as some of it was verbal.

31.11. Q: *The process followed in this instance, was it normal?*

31.12. A: The only formal process is compliance to the IR policy applicable to all employees. I was not part of this process and cannot comment.

31.13. Q: *Detail the normal course to follow when suspending an executive (F-band). What does the policy state if any?*

31.14. A: Policy attached marked **AM13 and AM14**.

31.15. Q: *Did Executive Support issue acting letters for those who will be acting in those 4 positions?*

31.16. A: No. I do not know who did the acting letters. I however requested the letters through Advocate N Tsholanku from Eskom Legal. We received it I unfortunately cannot recall when, attached marked **AM15**.



31.17. Q: *Who were the 4 acting individuals.*

31.18. A: The following individuals acted:

31.18.1. Mr Z Khoza as interim Chief Executive.

31.18.2. Ms N Velezi as acting Finance Director.

31.18.3. Mr A Masango as acting Group Executive Group capital
and

31.18.4. Mr E Mabelane as acting Group Executive Commercial and
technology.

These acting appointments were communicated through the same
internal communication marked **AM2**.

31.19. Q: *How long were they acting?*

31.20. A: herewith information we have on the acting periods:

31.20.1. Ms Velezi to end July 2015.

31.20.2. Mr Z Khoza was in the position up to around 20 April 2015.

31.20.3. Mr Masango was appointed in the same position on 1
November 2015.



31.20.4. Mr Mabelane was appointed Acting chief procurement officer on 28 September 2015 and appointed on 1 June 2016.

31.21. Q: *Was this according to policy normal?*

31.22. A: Appointing individuals to act is part of a normal process in Eskom.

31.23. Q: *Why were you not involved in the whole suspension process?*

31.24. A: It is the discretion of the Chief Executive and/or the Chairman to involve me or not.

31.25. Q: *Who from HR were involved?*

31.26. A: I do not know. Executive support were only involved with the calculation of the separation amount as determined by the Board.

31.27. Q: *What was the basis of the calculation?*

31.28. A: The basis of the calculation was the individuals annual guaranteed remuneration.

31.29. Q: *Who determined the criteria?*

31.30. A: It was derermined by the Board.



CONCLUSION


32. As can be seen from the information provided above, my only involvement regarding this issue was related to the separation calculations as per the agreed resolution.


.....**ANTON MINNAAR**.....
SIGNATURE OF DECLARANT
I certify that the deponent has acknowledged that he/she knows
and understands the content of this declaration which
was sworn to affirmed before me and the deponent's signature /
thumbprint/mark was placed thereon in my presence.


.....**JOHANNES MEYERS WENTZEL**.....
JUSTICE OF THE PEACE / COMMISSIONER OF OATHS

Designation (rank).....**Officer**.....Ex Officio Republic of South Africa
Business address
SECURITY, MAXWELL DRIVE, SANDTON
Date.....**2019-07-03**.....Place.....**Eskom
megawatt Park.**

" AM1 "

	JOB PROFILE / DESCRIPTION		KC-30 REV.4
DIVISION: Office of the Group Chief Executive		BU / DIVISION	
DEPARTMENT Executive Support		SECTION	
JOB TITLE Executive Support Manager			
JOB MISSION / PURPOSE To strategically lead the provision of executive support services to Eskom F band Executives and Board. Executive Support is an administrative function. (All services rendered by this position are done on an ethical and highly confidential basis due to the sensitivity relating to Executive Remuneration.)			
KEY PERFORMANCE AREAS Directs and formulates the organisation's long term direction regarding F band Remuneration and benefits. Supports Board remuneration and benefits. Administration of all F-band HR related matters Administration of Executive (F-band) performance management calculations for payments related to bonus payments. Administration of the Long Term Incentive Scheme (LTIS) for F-Bands and calculations of related payments. Support to Board Remuneration In-Committee Pro-actively engages all relevant stakeholders for Executive Remuneration Management of the Department. Annual report disclosure on executive emoluments. Support to parliamentary questions related to the area			
KEY RECEIVERS Officials at the Department of Public Enterprises Chairman Group Chief Executive F-Bands Executive Support staff Advisory support department, e.g. Legal, IR, PFMA & Risk Service Providers Business Planning Teams Corporate Secretariat			

FUNCTIONAL OUTPUTS / ACTIVITIES	%
<p>1. Directs and formulates the organisation's long term direction regarding Human Resources Support to all F-Bands executives Board members.</p> <ul style="list-style-type: none"> • Formulating and managing the enforcement of policies and procedures for Executive Remuneration • Sets specific performance objectives, and develops strategies to achieve the objective • Continuously researching the market for new products and effective ways to improve the remuneration of F-Band Managers • Ensuring an efficient pay, benefits and administration service to all Eskom F band executives and Board members <p>2. Accepts responsibility for F-Band performance bonus and annual increase process</p> <ul style="list-style-type: none"> • Administration of F band compacts. (Review of performance against targets as defined by Corporate strategy and approved by Exco / Board) • Sourcing information to facilitate F band salary reviews • Advising the Chief Executive and Board on F band salary structures • Presenting F band remuneration information at relevant forums • Supports the implementation of the King Report on executive remuneration by providing all information on salaries, benefits, bonuses for inclusion in the Eskom Financial statement <p>3. Responsible for the Management and implementation of the Long Term Incentive Scheme (LTIS) for E and F-Bands by:</p> <ul style="list-style-type: none"> • Establishing annual non financial vesting conditions for a 3 year period. • Managing research to interpret and understand how to formulate these • Directing the integration of processes, activities and time frames to ensure optimization and cross-functional integration • Finalising/Negotiating the proposed targets for presentation to various Executive Management Committees • Presenting reports on a monthly basis regarding progress against yearly targets • Investigating and reporting misalignment of preferred outcomes and actual targets and performance • Auditing the correct application • Liaising with Divisional Executives regarding special contracts relating to the Eskom Performance Index for E and F Band Managers <p>4. Support to Board People and Governance in-Committee</p> <ul style="list-style-type: none"> • Co-ordinating agenda items including supporting documentation for in-committee portion with secretariat • Reviewing in-committee minutes of meetings • Liaising with Secretariat regarding all in-Committee items related to the function <p>5. Pro-actively engages all relevant stakeholders for Executive Remuneration by:</p> <ul style="list-style-type: none"> • Networking with internal and external stakeholders to ensure Eskom position on Executive Remuneration are aligned and accepted • Responding to Government on all Executive Remuneration queries • Formulating presentations for Eskom Top Management • Liaising with Corporate Secretariat regarding salaries of Board members • Sourcing, consulting and negotiating with external service providers regarding services required 	

D

PL

6. Manages the resources (people & money) in the Department by: <ul style="list-style-type: none"> • Accepting accountability for financial plans and budgets for the Department and managing performance against the budget • Participating in and contributing to strategy sessions, review meetings and other forums • Ensuring that staff are appropriately allocated and trained to do the work • Managing the outputs of subordinates • Ensuring good corporate governance by adhering to Public Finance Management Act and King Report 		
MINIMUM QUALIFICATION REQUIREMENTS Post Bachelor's degree in Management Science	RELATED EXPERIENCE YEARS Extensive experience at Management/Consultant level in a Executive Remuneration environment	
SKILLS / COMPETENCIES REQUIRED (INCLUDING INTERNAL TRAINING) Presentation and negotiation skills Good understanding of Eskom business Understanding of Eskom Policies and Procedures Project Management Business Management Industrial Psychology General management skills Analytical skills Communication skills Sapiential knowledge Ability to deal with top management Ability to deal with highly confidential matters		

BUSINESS OUTPUTS

The Executive Support Department provides an Independent, confidential, ethical and professional one stop service to the Chairman, Eskom Board, P&G Committee of the Board, Chief Executive, EXCO and F-band executives.

1.1. Executive Support Mandate

Its duties comprise the following key activities:

- Board remuneration and benefits.
- All F-band HR related matters.
- Executive (F-band) remuneration and benefits.
- Executive (F-band) performance management calculations
- Management of Consulting contracts for Chairman / CE.
- Support to P&G Committee (In-committee).
- Executive movements (F-band only).
- Exit and separation arrangement for all F-Bands
- Executive (F-band) succession management support.
- Executive Health services.
- Consultative / Advisory and ad-hoc support.

1.2. Key Deliverables

The key deliverables of Executive Support are:

BOARD AND F-BAND ADMINISTRATION

Performance Measure/Indicator (KPI)

Appointments / Promotions

Exits (Resignation / Separation packages / Retirement packages / Death in service)

Payroll

Medical

Leave

All pay queries

Fleet management

All other related payments (Cell phones, Tax services, professional fees)

Update of all models (Salary / Car / Cell / Group life)

All payments (STI / LTI / ad hoc)

BOARD AND F-BAND REMUNERATION AND BENEFITS MANAGEMENT**Performance Measure/Indicator (KPI)****Remuneration - Fix pay**

Benchmark Studies

Recommendations (Board, P&G and DPE)

Effective Implementation (Exco)

Remuneration - Variable pay LTI and STI schemes

Benchmark Studies

Recommendations (Board, P&G and DPE)

Effective Implementation (Exco)

Board Remuneration

Benchmark Studies

Recommendations (Board, P&G and DPE)

Effective Implementation (Board)

Other

Annual report - disclosure

Parliamentarian queries

Interaction with DPE on SOE remuneration

F BAND PERFORMANCE MANAGEMENT (LTI AND STI)**Performance Measure/Indicator (KPI)**

Compacts/Performance Evaluation Calculation

Management of LTI/STI

Assistance to Chairman with CE compacting and presentation to P&G

Report back to P&G/Board

Disclosure

SUPPORT TO CE/CHAIRMAN**Performance Measure/Indicator (KPI)**

Assisting on all F-band Contracts

Retention Contracts

Consulting contracts for CE and Chairman

SUPPORT TO P&G COMMITTEE**Performance Measure/Indicator (KPI)**

P&G Committee/Board Assistance (In-committee)

P&G in Committee Support

EXECUTIVE HEALTH SERVICES (F BAND AND BOARD)**Performance Measure/Indicator (KPI)**

Dedicated biogenetical services to Board and F Bands

OTHER SUPPORT**Performance Measure/Indicator (KPI)**

Support to Exco on talent review (HoneyComb update)

Structures for Chief Executive / Board as and when requested.

Dear Guardians

MEDIA STATEMENT - Independent Enquiry Eskom 12 March 2015

The Eskom Board has today resolved to commission an independent enquiry on the current status of the business and its challenges. The Board, in its quest to address the current challenges faced by Eskom, has deemed it prudent to seek an independent view on the status of, among other things:

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Cash flow challenges

"To ensure that this process is as transparent and uninhibited as possible," said Eskom Chairman, Mr Zola Tsotsi, "the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this enquiry".

The executives who have been asked to step down while the enquiry is underway are Ms Tsholofelo Molefe (Finance Director), Mr Dan Marokane (Group Capital) and Mr Matshela Koko (Commercial and Technology). One of the current non-executive Board members, Mr Zethembe Khoza, has been asked to assume the position of interim Chief Executive. Mr Khoza will be supported by Ms Nonkululeko Velei (Finance), Mr Abram Masango (Group Capital) and Mr Edwin Mabelane (Commercial and Technology).

"All these senior executives have been with the organization a long time," added Mr Tsotsi, "and we are confident that they will maintain business continuity during this period".

The Board also resolved that the independent enquiry be conducted by external parties, who will be selected within the next week. They will be given unfettered rights of access to all information deemed necessary for this probe to be successful.

The Board has emphasized that this process is a critical step towards ensuring that the situation facing Eskom improves as expeditiously as possible. "To that end, we would like to assure our customers and employees that this was done in the best interest of all our stakeholders, and we hope to come out of this with a better grasp of all the challenges facing the business, and most importantly, with solutions", added Mr Tsotsi.

CORPORATE AFFAIRS



Eskom



Powering your world

**public enterprises**

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Suite 301, Infotech Building 1090 Acadia Street Hatfield, 0083 Private Bag X15 Hatfield 0028
Tel: (012) 431 1000 Fax: 086 501 2624 / 086 501 0629

To: All Media

Date: 12 March 2015

For Immediate release

Statement by the Minister of Public Enterprises, Minister Lynne Brown, regarding the decision by Eskom Board

I addressed the Eskom Board yesterday, sharing my concerns, fears and frustration about the state of affairs at the State-Owned Company.

As shareholder Representative, I am concerned about the instability at power plants; the financial liquidity of the utility; the lack of credible information; the unreliable supply of electricity and its dire impact on our economy; progress with the build programme; overruns at Medupi and Kusile; delays of the investigation into incidents at Majuba and Duvha; and the issue of coal and diesel pricing.

I welcome the Board's decision to launch a comprehensive and holistic audit into the matters as highlighted.

In my view it should be deeper than a mere fact finding exercise and it should be deep-dive into the company to tell us what is wrong and how it should be fixed.

Since the start of load shedding, I have been inundated with complaints from the public and business about the reliability of the grid and its impact on the economy and the lives of ordinary men and women..

I have been assured that the audit investigation would not take longer than three months and that it is not directed at any particular individual or group but that it merely seeks to ensure that the current challenges faced by the utility are addressed.

For all media enquiries contact Colin Cruywagen on 082 377 9916 or
colin.cruywagen@dpe.gov.za

Issued by Ministry of Public Enterprises

12 March 2015



Anton Minnaar

From: Chairman
Sent: 13 March 2015 03:56 PM
Subject: [All employees] - Introduction of new interim Chief Executive and three acting Group Executives

Importance: High



Chairman's message

 Eskom



Dear Guardians

Introduction of new interim Chief Executive and three acting Group Executives

In the past 48 hours, the Board made a resolution to conduct an independent enquiry into the current status of the business. The Board felt that areas that need particular attention are the poor performance of generation plant, the delays in bringing the new generation plant on-stream, the escalating and high costs of primary energy and the cash flow challenges.

To ensure a process that has the integrity of independence, it was necessary to ask certain executives to step aside for the duration of the enquiry. It is important that Guardians appreciate that this process is not an investigation, but an independent enquiry. As you are aware, the executives that have been asked to step aside include the Chief Executive, Mr Tshediso Matona, Finance Director (Ms Tsholofelo Molefe), Group Executive for Group Capital (Mr Dan Marokane) and Group Executive for Group Commercial and Technology (Mr Matshela Koko).

To ensure business stability and continuity, the Board resolved to appoint Mr Zethembe Khoza as the interim Chief Executive. Mr Khoza was appointed onto the Eskom Board as a non-executive director in December 2014 and later appointed as the Chairman of the People and Governance Committee of the Board. He has strong experience in telecommunications, specialist knowledge in the financial sector with a specific focus on capital investments and experience in other areas of the private sector. Mr Khoza will be supported by the Exco members Ms Ayanda Noah, Ms Elsie Pule, Mr Mongezi Ntsokolo, Mr Thava Govender and Dr Steve Lennon. The Exco will be joined by Mr Abram Masango, Mr Edwin Mabelane and Ms Nonkululeko Veleti as acting Group Executives for Group Capital, Group Commercial and Technology and Finance respectively. All three executives have served the business in various roles and bring many years of experience to the respective portfolios.



Zethembe Khoza
Interim Chief Executive



Nonkululeko Veleti
Finance Director - Acting



Abram Masango
GE (Acting) Group Capital



Edwin Mabelane
*GE (Acting) Group
Commercial & Technology*



Mr Matshela Koko
Group Executive: Commercial & Technology
Eskom Holdings SOC LTD
P.O. Box 1091
Johannesburg
2000

Date:
11 March 2015

Enquiries:

Dear Mr Koko

NOTICE OF SUSPENSION AS GROUP EXECUTIVE: COMMERCIAL & TECHNOLOGY

1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence-free requirement of the enquiry.
4. These concerns have been discussed with you.
5. I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly.
6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.

Head Office
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za

Eskom Holdings SOC Ltd Reg. No 2002/015527/30

mmk

7. In order for the investigation to proceed as expeditiously as possible, it would not be appropriate for you to remain at work whilst such investigation is in place. You will be advised of the outcome of the enquiry as soon as possible.
8. At that time the subcommittee will consider the enquiry report before considering the matter further.
9. You are instructed to remain in telephonic contact with me during the period of your suspension. We expect you to be contactable in the event that it is necessary for you to attend at the company premises during normal working hours for the purposes of assisting with such investigation. You are further directed not in any manner to approach any member of the company staff, its clients or any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining my prior written permission. You are also directed not to attend at the company's premises during the period of your suspension.
10. The company will regard any contravention of the above instructions in a serious light and further disciplinary steps may be instituted against you in respect of such contravention. You are in addition requested to hand over all work tools issued to you including but not limited to access cards, cell phone, laptop and the like. You are not to make use of the company's information technology hardware and software such as intranet and internet facilities during your suspension.
11. You are requested to surrender your company access card, office keys, laptop and any other company property, documents, computer disks and the like in your possession, with immediate effect.
12. Should you feel uncertain about any aspect of the contents of this letter, you are requested to contact me telephonically.

Yours faithfully



Duly authorised:
For and on behalf of the Board
ZOLA TSOTSI

I acknowledge receipt of this notification:

Signature: 

Mr Koko

Date: 11/3/15 Time: 19h45

Signature: 

Mr Zola Tsotsi

Date: 11/03/15 Time: 20h40

In the event that the employee refuses to sign:

Declaration of witness: I confirm that I have witnessed that this letter has been handed and explained to the above named employee.

Signed _____ Position _____ Date _____





Date:

13 March 2015

Enquiries:

Dear Mr Chairman

PROVISION OF PERSONAL INFORMATION

Further to our discussion on 13 March 2015, I wish to confirm that the following personal information will be available at the request of the four incumbents:

- Contract of employment
- Pension fund calculations
- Information regarding salary and benefits
- LTI Grand certificates

With kind regards
Anton

APPROVE



Z.A. Tsotsi
CHAIRMAN

Anton Minnaar

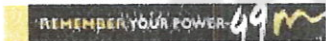
From: Malesela Phukubje
Sent: 13 March 2015 02:40 PM
To: Anton Minnaar
Cc: Elsie Pule; khozazw@telkomsa.net; Zethembe Khoza; Leo Dlamini
Subject: COPY OF CONTRACT OF EMPLOYMENT

Dear Mr. Minnaar,

Mr. Marokane has called and requested a copy of his employment contract.

Kind regards,

Malesela Phukubje | Company Secretary
Office of the Company Secretary | Office of the Chairman | Third Floor T36
Maxwell Drive Megawatt Park | Tel : +27 11 800 8542 | Cell : +27 84 200 0087 | Fax : +27 86 652 3139 |
eFax: 0866523139
E-mail : phukubm@eskom.co.za
Secretariat website: http://sivmas045.eskom.co.za/corporate_secretariat/



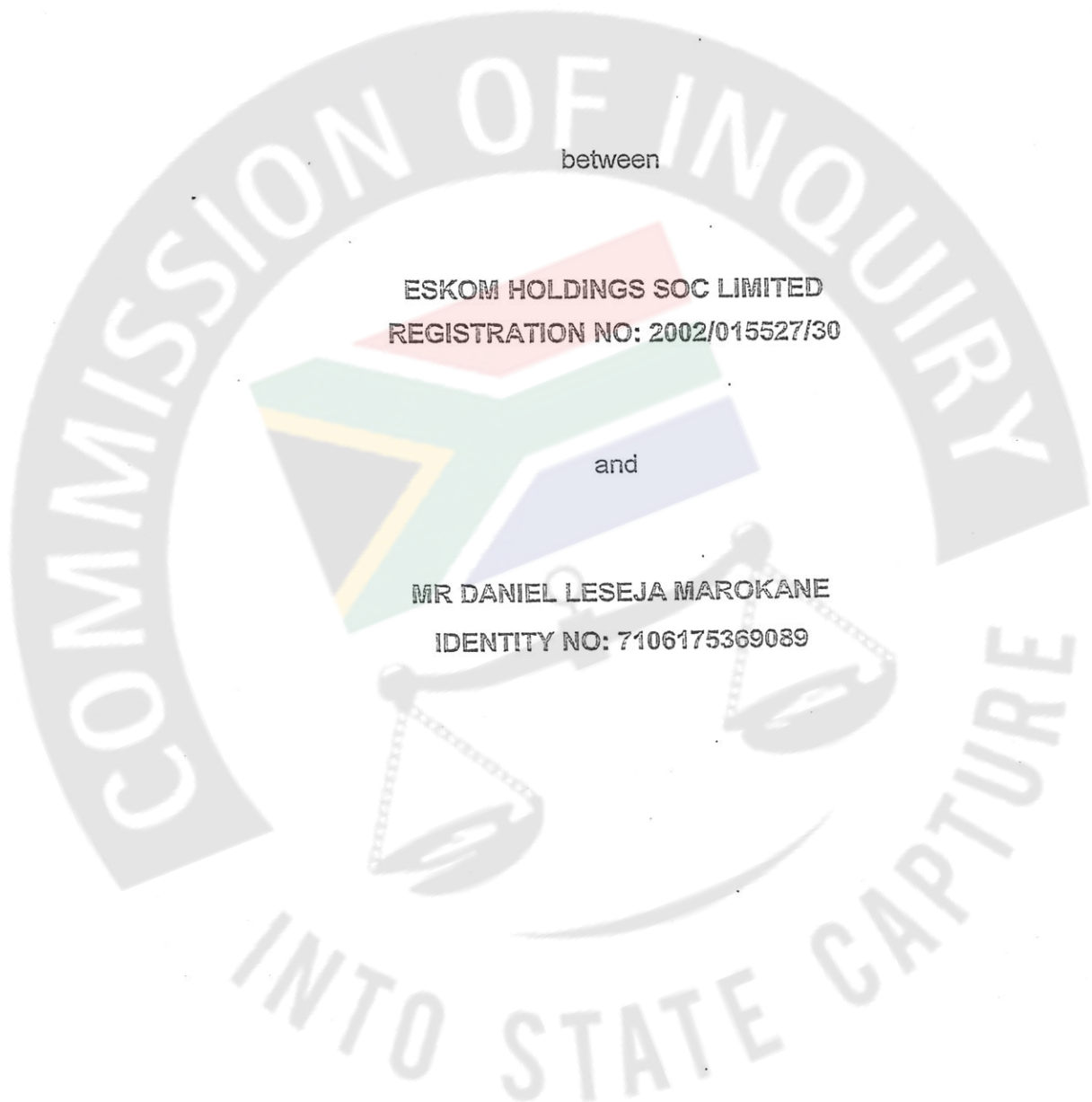
SETTLEMENT AGREEMENT

between

ESKOM HOLDINGS SOC LIMITED
REGISTRATION NO: 2002/015527/30

and

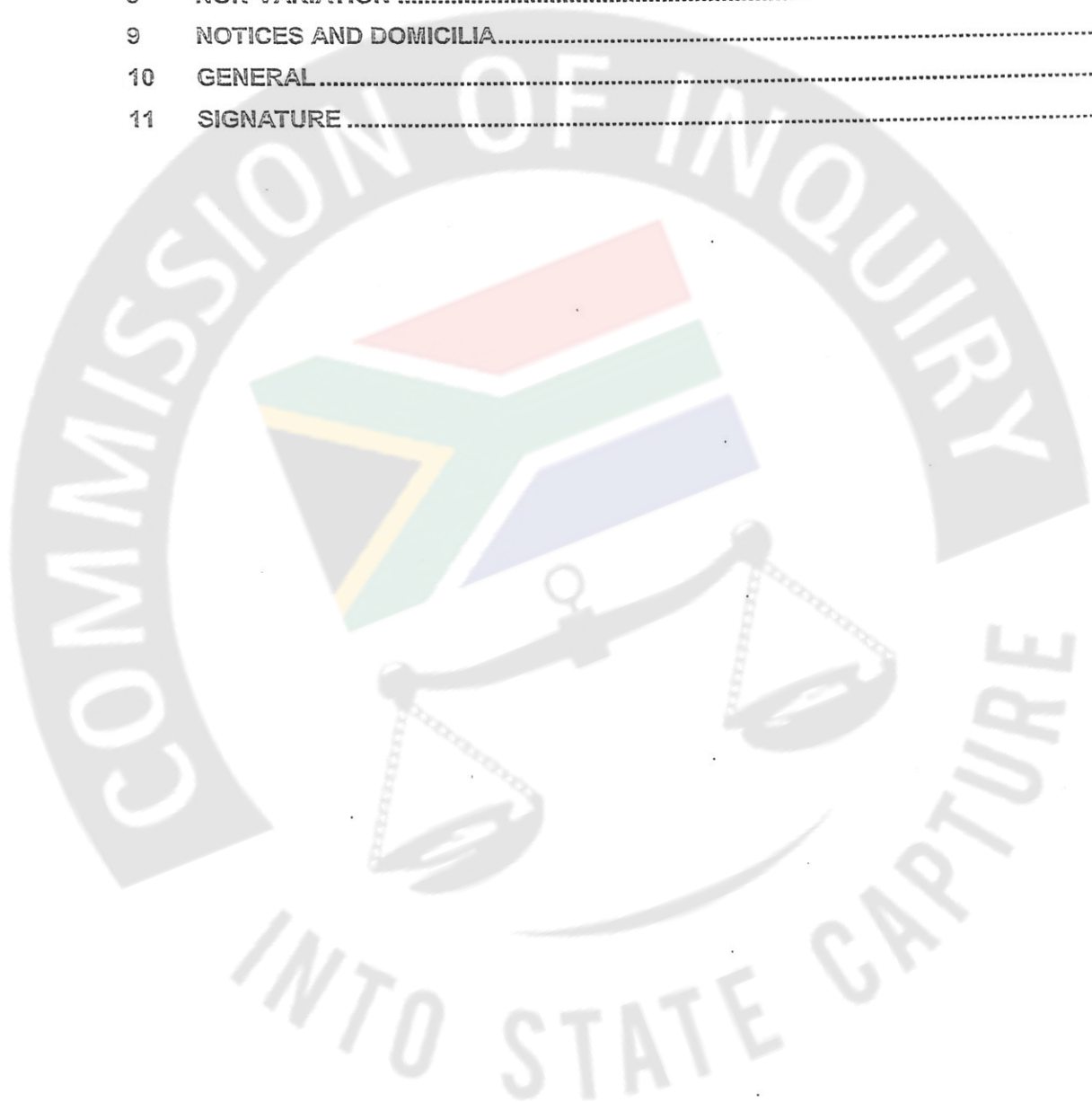
MR DANIEL LESEJA MAROKANE
IDENTITY NO: 7106175369089



Signature

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[Handwritten signature]

WHEREBY THE PARTIES AGREE AS FOLLOWS:**1 INTERPRETATION**

- 1.1 The headings to the clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 1.2 This Agreement having been negotiated between the Parties, the rule of construction that a contract (this Agreement) shall be interpreted against the party responsible for the drafting or preparation of this Agreement shall not apply nor shall this Agreement be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement by, *inter alia*, having structured, drafted or introduced any one or other or all the provisions / terms herein contained.
- 1.3 Unless inconsistent with the contents, the expression set forth below shall bear the following meanings:
- 1.3.1 "Agreement" means this agreement;
- 1.3.2 "Eskom" means Eskom Holdings SOC Limited, a company incorporated in terms of the Company laws of the Republic of South Africa, with registration number 2002/015527/30, with its principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg;
- 1.3.3 "Mr DL Marokane" means Mr Daniel Leseja Marokane, an adult male employee with identity number 7106175369089;
- 1.3.4 "the Parties (Party)" means Eskom and Mr DL Marokane, who are parties to this Agreement;
- 1.3.5 "the Signature Date" means the last day of signature of this Agreement by either of the Parties.



1.3.6 "the Termination Date" means 31 May 2015.

2 RECORDAL

2.1 Mr DL Marokane is employed by Eskom as Group Executive: Group Capital in terms of a written contract of employment ("the Employment Contract").

2.2 The Parties have mutually agreed to terminate the Employment Contract and the Employee's employment with Eskom subject to the terms and conditions recorded in this Agreement.

3 TERMS AND CONDITIONS

3.1 By mutual agreement Mr DL Marokane's employment will terminate on the Termination Date.

3.2 Eskom agrees that Mr DL Marokane will not be required to serve the requisite notice period and both Parties waive the notice period.

3.3 The Parties have agreed on the arrangements herein to give effect to the mutual settlement in full and final discharge and in settlement of all and any claims either party has or may have against the other including any monies owing to the Employee, whether arising in terms of statute, delict, contract or otherwise, except as provided for in this agreement. The terms of these arrangements are set out in further detail in clause 4 below.

3.4 Mr DL Marokane agrees that on or before the termination of his employment, by mutual arrangement, Mr DL Marokane will attend on the Eskom Medical Centre for the exit medical assessment to be conducted and will be subject to Eskom's normal exit management processes in this regard.

3.5 The records of Eskom shall record the termination of employment as resignation with his last working day being the Termination Date. Eskom will at all times provide a favourable reference regarding Mr DL Marokane's



employment with Eskom as per the reference letter attached hereto marked annexure "A".

- 3.6 Eskom shall give Mr DL Marokane a certificate of service by no later than 15 June 2015. The certificate shall be in accordance with section 42 of the Basic Conditions of Employment Act, No. 75 of 1997.

4 PAYMENT AND BENEFITS

- 4.1 Mr DL Marokane will receive his normal monthly cost to company (inclusive of all benefits) salary payments up to the Termination Date.
- 4.2 Mr DL Marokane will receive all and any leave pay that is outstanding as at Termination Date which amount will be paid together with the salary payment to which there is reference in clause 4.1 above.
- 4.3 Subject to clause 4.5 below, Eskom will pay, without admitting any obligation to do so, Mr DL Marokane a total separation payment of R6 237 634.33 (six million, two hundred and thirty-seven thousand, six hundred and thirty-four rand and thirty-three cents) ("the Separation Payment"). The payments referred to in paragraphs 4.1 and 4.2 above as well as the Separation Payment and amount referred to in clause 4.4 below, is paid in full and final settlement of any benefits, bonuses, notice pay, outstanding leave pay or any other amount owed or that may become owing to Mr DL Marokane.
- 4.4 As Mr DL Marokane was in the employment of Eskom in 2014, he qualifies for participation in Grant 10 of the LTI. The formula for calculating Mr DL Marokane's award is his pensionable earnings (which is R2 456 284.68 – two million four hundred and fifty six thousand two hundred and eighty four rand sixty eight cents) times the multiplier (where the multiplier remains to be determined by the People & Governance Committee ("P&G")). Once the multiplier has been determined by the P&G, Mr DL Marokane's award will be calculated and will be paid pro-rata for 12 (twelve) months. The amount will then be paid by Eskom to Mr DL Marokane in addition to the Separation

Payment within 5 (five) days of a tax directive being obtained from the South African Revenue Services ("SARS").

4.5 Eskom will apply for an income tax directive from SARS as regards the income tax to be deducted from the amount stipulated in clause 4.3 and 4.4 above. This tax directive to be obtained within 14 (fourteen) days of the Signature Date and as soon as the multiplier is determined as per clause 4.4 above.

4.6 The amount stated in clause 4.3 and 4.4 above less such amount that Eskom is required to deduct in respect of tax will be paid electronically into Mr DL Marokane's banking account within 5 (five) days of receipt of the tax directive from SARS.

5 FULL AND FINAL SETTLEMENT

5.1 Each and all the payments made and agreed to herein are in full and final settlement of all and any claims of any nature whatsoever that both Parties may have and/or may have had against each other whether arising from contract, delict, statute or otherwise and the Parties accordingly waive any claims or rights they may have in this regard.

5.2 Without derogating from the generality of the foregoing, it is specifically recorded that the payment of these amounts is made without any admission of liability by either Mr DL Marokane or Eskom, whether arising out of contract, delict, the common law, statute, or otherwise and neither Party shall have any other claim against the other for, among others:

5.2.1 breach of the Employment Contract or any employment legislation, including but not limited to the Labour Relations Act, 1995 as amended, the Basic Conditions of Employment Act, 1997 as amended and the Employment Equity Act, 1998 as amended; and

5.2.2 any alleged unfair dismissal, any alleged automatically unfair dismissal, any alleged unfair labour practice, any alleged unfair discrimination or



any other claim; and

5.2.3 any other causa not set out in this Agreement.

5.3 All surviving clauses of Mr DL Marokane's Employment Contract that are not extinguished by this Agreement will continue for the period specified therein.

6 CONFIDENTIALITY

6.1 Other than the fact of Mr DL Marokane's resignation and as provided for in annexure "B" referred to hereunder, the Parties agree that the terms and conditions of this Agreement and the circumstances surrounding it shall be kept strictly confidential and will not be disclosed to any third party, body or association, in the absence of the written permission of the other, save where the disclosure of this information is required by the operation of law and/or in order to enforce the provisions of this Agreement.

6.2 Eskom by agreement will issue the statement attached hereto marked annexure "B" without change or deviation within 5 (five) days of Signature Date.

7 STATEMENTS

7.1 Mr DL Marokane shall not make any written or oral statements injurious to, or of a disparaging nature about Eskom or any of Eskom's employees and Eskom shall likewise not make any written or oral statements injurious to, or of a disparaging nature about, Mr DL Marokane.

7.1.1 In particular, Eskom undertakes to make available to Mr DL Marokane in writing any outcome or finding that is in anyway adverse to him or finds any wrongdoing by Mr DL Marokane, and will not publish same to any third party outside of Eskom and/or its advisors until such findings are referred to Mr DL Marokane to enable him to respond or comment on the findings before same are finalised. Eskom undertakes to give proper



consideration to his comments.

- 7.1.2 In addition, Eskom agrees and undertakes that any response and/or comments furnished by Mr DL Marokane will be published together with the report.

8 BREACH BY THE PARTIES

8.1 Mora notice

Save as may be provided to the contrary in this Agreement, should any Party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then the other Party/ies ("the aggrieved party/ies") shall be obliged to give the defaulting party 10 (Ten) days written notice to remedy the breach where the aggrieved party wishes to make an election or to take any steps consequent upon such breach.

8.2 Consequences of failure to remedy breach

If the defaulting party fails to timeously remedy the breach, the aggrieved party/ies shall be entitled to make such election, take such steps and institute such proceedings (subject, however, to mediation and arbitration where and if applicable) as are permitted at law.

8.3 Remedies not exclusive of other remedies

- 8.3.1 Save as provided for in clause 8.4 below, no remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy available at law, in equity, by statute or otherwise, and each and every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise.

- 8.3.2 The election of any Party to pursue one or more such remedy shall not constitute a waiver by such Party of the right to pursue any other available remedy.



8.4 Overriding provision

Notwithstanding any matter referred to above (and the preceding clause in particular), no party may cancel this Agreement.

9 EMPLOYMENT OPPORTUNITIES GOING FORWARD

Eskom agrees that nothing herein contained will prevent or prohibit Mr DL Marokane from doing business with, being associated and/or employed, whether directly or indirectly by any competitor of Eskom or previously owned business unit and/or component of Eskom.

10 NON-VARIATION

10.1 No variation, novation, modification or waiver of any of the provisions of this Agreement or consent to any departure therefrom shall in any manner be of any force or effect unless confirmed in writing and signed by the Parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

10.2 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred on such Party in terms of this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this Agreement.

11 NOTICES AND DOMICILIA

11.1 Each Party chooses the address set out opposite its name below as its address to which all notices, legal processes and other communications must be delivered for the purposes of this Agreement:



Eskom

Megawatt Park,
Maxwell Drive, Sunninghill
Johannesburg
2001

P.O Box 1091
Johannesburg
2001

Marked for the attention of Mr. A I Minnaar

Mr DL Marokane

care of Brian Kahn Inc.
2 Burnside Island, Umlilo House
410 Jan Smuts Avenue
Craighall park
Email address: brian@briankahn.co.za

11.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and delivered by hand.

11.3 Any Party may by written notice to the other Party change its chosen address to any physical address, provided that the change shall become effective on the 14th day after the receipt of the notice by the addressee.

12 GENERAL

12.1 Apart from any provisions of the Employment Contract which by their nature shall survive its termination, this Agreement constitutes the whole agreement between the Parties and any representation not contained herein shall be of no force and effect between the Parties.

- 12.2 All the terms set out in this Agreement are material.
- 12.3 Each and every provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this agreement. If any of the provisions of this agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this agreement shall be and remain of full force and effect.
- 12.4 This Agreement may be executed in any number of counterparts by the Parties on separate counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

13 LEGAL ADVICE

- 13.1 Each of the Parties agrees and acknowledges that :-
- 13.1.1 this Agreement correctly sets forth the terms of the transactions agreed to by the Parties;
- 13.1.2 such Party agrees to this Agreement under their own volition and desire and not as a result of any undue influence, overreaching, oppression, duress or bad faith on the part of the other party;
- 13.1.3 it has been represented in the negotiation and in the preparation of this Agreement by professional advisors of its own choice or had the opportunity to meet and confer with, and to review this Agreement with, independent legal advisors of its own choice;
- 13.1.4 it has read this Agreement carefully and has either had the agreement explained to it by its legal advisors or has chosen to waive the

opportunity to have this Agreement explained by such legal advisors;

13.1.5 it is fully aware of the contents of this Agreement and of its legal consequences and effects.

14 SIGNATURE

Signed on behalf of the Parties, each signatory hereto warranting that he/she has due authority to do so.

SIGNED at SUNNINGHILL on 28TH MAY 2015.

For and on behalf of
ESKOM HOLDINGS SOC LIMITED


Signature

BALDWIN SIPHO NGUBANE
Name of Signatory

Chairperson of Board (Acting)
Designation of Signatory

SIGNED at GRAIGHALL on 28th MAY 2015.

For and on behalf of
Mr DL Marokane


Signature

DANIEL LESESA MAROKANE
Name of Signatory

Anton Minnaar

From: Neo Tsholanku
Sent: 30 March 2015 02:58 PM
To: Anton Minnaar
Subject: Re: Fact issue

Thanks Anton.

Kind regards

Sent from my iPad

On 30 Mar 2015, at 2:38 PM, Anton Minnaar <MinnaaAi@eskom.co.za> wrote:

Dear Neo

As discussed I have picked up the issue with the CE (on your advice) and he agreed that the external lawyers can provide us with the "Fact" sheet as requested by DPE.
I have spoken to Jerry and he will put "something together".
I hope you find this in order.

With kind regards
Anton

Anton Minnaar

From: Rehna Rutheepaul <r.rutheepaul@bowman.co.za>
Sent: 31 March 2015 08:58 AM
To: Anton Minnaar
Cc: Neo Tsholanku; tsholanku@gmail.com; Jerry Kaapu
Subject: Fact Sheet
Attachments: Fact Sheet 31032015.pdf

Dear Sir,

Please find hereto a fact sheet as requested.

Kind Regards

Rehna Rutheepaul

Secretary to Jerry Kaapu and Henry Ngcobo

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

t +27 11 669 9000 | d +27 11 669 9511

f +27 11 669 9001

e r.rutheepaul@bowman.co.za

www.bowman.co.za

Follow Bowman Gilfillan on Twitter



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Ms M Mokholo
Acting Director-General
Department of Public Enterprises
Infotech Building
1090 Arcadia Street
Hatfield
Pretoria 0001

Date:
31 March 2015

Enquiries:
Mr A I Minnaar
Tel +27 11 800 3088

Dear Matsietsi

SUSPENSION FACT SHEET

As requested, attached is the fact sheet relating to the recent suspension of four Eskom executives.

Yours sincerely

Z W Khoza
INTERIM CHIEF EXECUTIVE
ESKOM

M e m o r a n d u m

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

To: Anton Minnaar / Eskom Holdings (SOC) Limited
From: Jerry Kaapu & Luway Mongie
Our Reference: Jerry Kaapu/ 6146667
Date: 30 March 2015
Re: Timeline of events regarding the suspension of four Eskom executives

"CONFIDENTIAL AND PRIVILEGED"

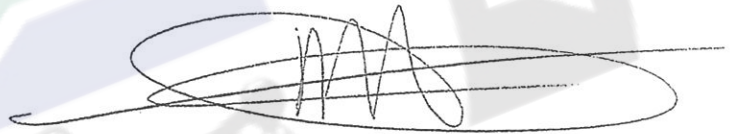
1. In December 2014, Cabinet of the Republic of South Africa ("Cabinet") announced that a War Room had been set up with immediate effect to oversee the implementation of a five point plan addressing the electricity challenges facing the Republic of South Africa. Cabinet was concerned about the disruptive effect the prevailing power outages were having on the daily lives of all South Africans and its impact on households and businesses across the country.
2. At a meeting held on 11 March 2015, the Board of Eskom in-committee ("the Board") resolved that an investigation should be conducted relating to the affairs of Eskom. The Board was seriously concerned that it should determine the true state of affairs of Eskom in order for it to make informed decisions in tackling the problems that are facing it. The Board mandated the Audit and Risk Committee ("ARC") to handle the logistics of the investigation on condition that the investigation is conducted by an independent entity, which entity should not have an existing relationship with Eskom. It is intended that the investigation will be conducted and completed within the next 3 months.
3. During this meeting, the Board formed a *prima facie* view that it may not be in the best interests of Eskom to institute the investigation process while certain Executives are present at work as the continued presence of these Executives might jeopardize and/or interfere with the investigation. The Board therefore decided that these Executives may need to be suspended, pending the outcome of the investigation. The People and Governance Committee ("PGC") was therefore tasked with the responsibility of considering the contemplated suspensions of these Executives and to take the necessary measures therewith.
4. On the same day, the PGC then convened a meeting to discuss the contemplated suspensions of these Executives and invited three of the Executives, i.e. Mr Matona, Ms Molefe and Mr Koko, one at a time, to discuss the Board's intention to suspend them. The fourth Executive identified, Mr Marokane, was on leave at the time and only attended the meeting with the PGC on 12 March 2015. During these meetings with the PGC, each Executive was given the rationale for the contemplated

suspensions and also given an opportunity to make representations to the PGC as to why they should not be suspended pending the investigation. The PGC considered and deliberated on the submissions made by the Executives, on a case-by-case basis, and in each instance decided to suspend them on full pay and benefits, pending the outcome of the investigation. The suspensions were effected on the same day that the representations were made (i.e. 11 and 12 March 2015).

5. On 20 March 2015, one of the Executives, Mr Matona, lodged a dispute to the CCMA alleging an unfair labour practice in that his suspension had been implemented without an unfair reason and without a hearing. On the same day, Mr Matona also filed an urgent application at the Labour Court wherein he alleged that pending the outcome of the unfair labour practice dispute referred to the CCMA, Eskom should be interdicted and restrained from giving effect to his suspension and that his suspension should be set aside and uplifted until such outcome has been delivered.
6. In an urgent application, it is necessary that the applicant (in this case Mr Matona) establish certain grounds in order for the application to succeed. Those grounds are briefly as follows:
 - 6.1 The applicant has to show a *prima facie* right to the relief sought;
 - 6.2 An apprehension of irreparable harm to the applicant if the relief sought is not granted;
 - 6.3 The balance of convenience should favour the applicant and the granting of the relief sought;
 - 6.4 The applicant should have no satisfactory alternative relief available.
7. In its judgment, the Labour Court held that the Board seemingly had good reasons to take the action that it took and to suspend Mr Matona because if the allegations made against Mr Matona are proved to be correct, they are of a serious nature. However, the Court was of the view that Mr Matona had shown a *prima facie* right to the relief sought as, based on the evidence and arguments presented in court, the CCMA could possibly find that the suspension was unfair. The court held that the Board was not frank with Mr Matona in respect of the real reasons for the suspension and seemingly the Board had already made its decision in respect of Mr Matona's suspension before the pre-suspension hearings were conducted. The Court stressed that this was its *prima facie* view on the matter but that the CCMA would have to make a determination on the matter based on all of the evidence that will be presented at arbitration. The court recognised that there was a dispute of fact in respect of what had happened, how and when what had happened and the sequence thereof and that these disputes of fact would have to be resolved at the CCMA.
8. However, with regard to the further requirements of urgency that Mr Matona was required to establish, the Court held that the matter was not urgent as he failed to prove that he would suffer

irreparable harm if the suspension is not lifted. Further, Mr Matona did not present any evidence to show that the CCMA would not deal with the matter expeditiously. Lastly, the Court found that the balance of convenience did not favour Mr Matona. Therefore, the Court decided in favour of Eskom and ordered that the matter be struck off the roll with no order as to costs. The effect of this order is the same as when the application is dismissed. In the circumstances, the suspension remains and Mr Matona can challenge it at the CCMA.

9. Mr Matona's unfair labour practice dispute has subsequently been set down before the CCMA on 13 April 2015. The matter is currently set down for conciliation-arbitration proceedings and he seeks reinstatement and compensation as an outcome. This process requires that the dispute first be conciliated and if the parties cannot conciliate the matter, the matter proceeds immediately to arbitration.
10. Eskom is entitled to object to the process of conciliation-arbitration which would result in only the conciliation process being held on 13 April 2015. If the matter cannot be conciliated, Mr Matona can then refer it to arbitration. Arbitration would then be set down for a later date.
11. To date, none of the other three executives have referred any disputes to the CCMA or the Labour Court regarding their suspensions.



Jerry Kaapu/ Luway Mongie
Bowman Gilfillan Inc.

Anton I Minnaar

General Manager – Executive Support

THE DEPARTMENT EXECUTIVE SUPPORT

I am head of the department, Executive Support, for the past 16 years. This department reports directly to the Chief Executive and I have a dotted reporting line to the Chairman related to board issues.

The Executive Department provides a confidential, ethical and professional support service to the Chairman, Eskom Board, People and Governance Committee of the Board, Chief Executive, EXCO and F-Band executives.

The exclusive function of the Executive Support Department is to provide an administrative support service to:

- The Eskom Board
- The Chief Executive
- The executive committee (EXCO) and other F band executives

1) Who requested it?
2) Who drove the process?

The department's duties comprise the following key activities:

- Board remuneration and benefits
- All F-Band HR related matters
- Executive (F-Band) remuneration and benefits
- Executive (F-Band) calculation of variable remuneration (STI and LTI)
- Management of some Executive and Consulting contracts for Chairman / GCE
- Support to People and Governance Committee (In-Committee)
- Executive movements (F-band only)
- Exit and separation arrangements for all F-Bands
- Executive (F-Band) succession management support
- Executive Health services
- Ad-hoc support

* What were the basis of the calculations?
* Who determined the criteria?
* How were these communicated to you?

My engagement with the suspension of Mr. T Matona, Mr. D Marokane, Mr. M Koko and Ms. T Molefe as follows:

- My only involvement was related to the calculation of the settlement payment as resolved by the Board. — how did you go about doing the calculations?
- I was instructed by Ms V Klein Chairperson of the P&GC of the Board to provide information on remuneration packages. — when did she request this & how did you provide this info back to her?
- To my knowledge Denton's was involved with some type of investigation. — was this the inquiry made by the Board?
- Mr Jerry Kaapu from Bowman's Gilfillan was also involved I think in the drafting of the agreements. — How do you know this fact?
- (Your best starting point would be secretariat and Mr Kaapu)

* Why were you not involved in the whole suspension process?

* Who from HR was involved?

* Who drove the process?

* Include process followed (including emails sent) when collecting it properly (cards, letters, etc.)

After the report what was communicated to you/other?

How long were the inquiries?

2) Who informed you of the suspension?

3) Date?

3) Who actually test the cards & laptops?

4) Date?

5) Detail the ~~test~~ correspondences that occurred during this time.

* The process followed (in this instance) was it normal?

If so, how?

If not, how also?

- Detail the normal course to follow when suspending an executive (F-band)?

- What does the policy state, if any?

* Did HR issue acting letters, for those who will be acting in those 4 positions (interim)?

- Who were the 4 acting individuals?

- Acting letters?

- How long were they acting?

* Process followed here.

- Was this in accordance to Policy (Normal)?

Anton Minnaar

From: Elsie Pule
Sent: 18 March 2015 09:12 AM
To: Anton Minnaar
Cc: Venete Klein; Sean Maritz
Subject: FW: Urgent feedback pls

Importance: High

Anton

As discussed please confirm whether the laptop has been collected from the CE.

From: Venete Klein
Sent: Saturday, March 14, 2015 9:28 AM
To: Elsie Pule
Subject: Urgent feedback pls
Importance: High

Hi Elsie,

I see from the collections of the cards, laptops etc that we did not collect from the CE, what was the reason for that?

Warm regards

Venete Klein
CDSA
Eskom Board Member

Anton Minnaar

From: Nazmeera Rickert <admin@kleininc.co.za>
Sent: 18 March 2015 09:37 AM
To: Anton Minnaar
Subject: Directions to Ms Klein's office

Good morning Anton,

The directions to our offices:

517 Mendelssohn street
Constantia Park
Pretoria East

When you get the gate ring the bell, and we will open for you.
You can park anywhere, there will be parking open.

Warm regards,

Nazmeera Rickert

Executive Assistant
Cell: 073 625 9774
Office: 012 993 5863
Office: 012 993 5856
Fax: 086 636 2072
admin@kleininc.co.za
P.O. Box 92040, Mooikloof, 0081
Address: 517 Mendelssohn Street, Constantia Park, 0181

Kleininc
Management Consultants

Anton Minnaar

From: Elsie Pule
Sent: 18 March 2015 09:44 AM
To: Freddy Ndou
Cc: Edwin Mabelane; Zethembe Khoza; Anton Minnaar
Subject: new mandate for CIO

Freddy

We had a mandate from P&G to settle with the above at a maximum of 12 months.. Last week we followed up and Matshele indicated through sms

" 12 month salary plus LTI 8 in the event that the board decide to pay it out to all F bands. He will resign at the end of the financial year"

We do not have the mandate for the long term incentive as we need to go back to P&G for mandate, however I am made to believe there was a discussion with Tshediso.

Are you aware of any discussions?



- this
CIO group who
got suspended
Sul Laher

Anton Minnaar

From: Venete Klein
Sent: 18 March 2015 03:31 PM
To: Elsie Pule
Cc: Anton Minnaar; Venete Klein; Sean Maritz
Subject: Re: Urgent feedback pls

Anton,
Given the significance of this matter I would like your confirmation ASAP.
regards

Sent from my iPhone

On 18 Mar 2015, at 9:11, "Elsie Pule" <PuleEM@eskom.co.za> wrote:

Anton

As discussed please confirm whether the laptop has been collected from the CE.

From: Venete Klein
Sent: Saturday, March 14, 2015 9:28 AM
To: Elsie Pule
Subject: Urgent feedback pls
Importance: High

Hi Elsie,

I see from the collections of the cards, laptops etc that we did not collect from the CE, what was the reason for that?

Warm regards

Venete Klein
CDSA
Eskom Board Member

Anton Minnaar

From: Elsie Pule
Sent: 18 March 2015 04:44 PM
To: Venete Klein
Cc: Anton Minnaar; Sean Maritz
Subject: RE: Urgent feedback pls

Venete

It is done, it was collected today.

From: Venete Klein
Sent: Wednesday, March 18, 2015 3:31 PM
To: Elsie Pule
Cc: Anton Minnaar; Venete Klein; Sean Maritz
Subject: Re: Urgent feedback pls

Anton,
Given the significance of this matter I would like your confirmation ASAP.
regards

Sent from my iPhone

On 18 Mar 2015, at 9:11, "Elsie Pule" <PuleEM@eskom.co.za> wrote:

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From: Venete Klein
Sent: Saturday, March 14, 2015 9:28 AM
To: Elsie Pule
Subject: Urgent feedback pls
Importance: High

Hi Elsie,

I see from the collections of the cards, laptops etc that we did not collect from the CE, what was the reason for that?

Warm regards

Venete Klein
CDSA
Eskom Board Member

Anton Minnaar

From: Jacob Leeuw
Sent: 19 March 2015 08:20 AM
To: Anton Minnaar
Cc: Sean Maritz
Subject: List of equipment collected
Attachments: Executive Equipment Collected for Suspended Employees.docx

Good day

Kindly find attached

Kind regards

Jacob Leeuw
Systems Analyst
Enterprise Development Division | Group Information Technology
Infrastructure Services | Service Design and Transition
Eskom Holdings SOC Limited

Megawatt Park, Maxwell Drive, Sunninghill Sandton PO Box 1091, Johannesburg, 2000
Tel: +27 11 800 5212 Cell: +27 762035221 Location: D3 Exec Email: leeuwj@eskom.co.za



Executive Equipment Collected for Suspended Employees

Name	Equipment	Serial Number	UID	Status
Tsholofelo Molefe	Samsung Slate	Hyww91cd200095	6004708-188-04016	Returned
	Ext hdd	W881423d9789	none	Returned
	64GB SD Card			Returned
	Vodacom 3G	89870000000003379310		Returned
	Mecer Monitor	716TUYS22R1859	6004708-188-29329	Returned
	Toshiba Docking station			Returned
	Keyboard and Mouse			returned
Koko Matshela	Samsung Slate	Hyww91ed100014	6004708-188-04241	Returned
	Ext hdd	3275081161		Returned
	64GB SD Card			Returned
	Vodacom 3G	89870000000003379369		Returned
Dan Marokane	Samsung Slate	Hyww91ed100136	6004708-188103718	Returned
	Ext hdd	3446920728		Returned
	64GB SD Card			Returned
	Vodacom 3G	89870000000003379203		Returned
Tshediso Matona	Samsung Slate	Hyww91ed100299	6004708-188-03961	returned
	64GB SD Card			returned
	Vodacom 3G	80870000000003378890		returned

Anton Minnaar

From: Jacob Leeuw
Sent: 19 March 2015 08:53 AM
To: Anton Minnaar
Subject: RE: List of equipment collected

I spoke to the CEO's PA, she has his access card.

Regards

From: Anton Minnaar
Sent: Thursday, March 19, 2015 8:27 AM
To: Jacob Leeuw
Subject: RE: List of equipment collected

Thank you Jacob

Can you also please confirm if we received all the excess cards. Know only of Dan's.
Thank you

Kind regards
Anton

From: Jacob Leeuw
Sent: 19 March 2015 08:20 AM
To: Anton Minnaar
Cc: Sean Maritz
Subject: List of equipment collected

Good day

Kindly find attached

Kind regards

Jacob Leeuw
Systems Analyst
Enterprise Development Division | Group Information Technology
Infrastructure Services | Service Design and Transition
Eskom Holdings SOC Limited

Megawatt Park, Maxwell Drive, Sunninghill Sandton PO Box 1091, Johannesburg, 2000
Tel: +27 11 800 5212 Cell: +27 762035221 Location: D3 Exec Email: leeuwj@eskom.co.za

Anton Minnaar

From: Venete Klein
Sent: 19 March 2015 09:19 AM
To: Anton Minnaar
Subject: Re: List of equipment collected

Tx Anton

Regards

Sent from my iPhone

On 19 Mar 2015, at 8:29, "Anton Minnaar" <MinnaaAi@eskom.co.za> wrote:


Dear Ms. Klein

Attached confirmation of all the equipment received. I will confirm on the excess card of Tshediso.

Kind regards
Anton

<Executive Equipment Collected for Suspended Employees.docx>



 Eskom	Procedure	Human Resources Division
---	-----------	--------------------------

Title: **Disciplinary**

Unique Identifier:

32-1113Alternative Reference Number: **NA**

Area of Applicability:

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Documentation Type:

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Revision:

0

Total Pages:

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Next Review Date:

November 2013

Disclosure Classification:

**CONTROLLED
DISCLOSURE**

Compiled by

Functional Responsibility

Authorized by

N Theko

T Ngele

BE Bulunga

Employee Relations Officer
Human Resources DivisionSenior Manager Legal and
Statutory Portfolio
Human Resources DivisionDivisional Executive
Human Resources

Date: 02/03/2011

Date: 02/03/2011

Date: 2011/03/02

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1. INTRODUCTION

The Disciplinary Procedure outlines the process to be followed or utilised in the event of alleged misconduct as provided for in the Disciplinary Code/Standard.

2. SUPPORTING CLAUSES

2.1 SCOPE

2.1.1 Purpose

The purpose of the Disciplinary Procedure is to correct behaviour that is unsatisfactory to Eskom and to encourage expected behaviour.

Discipline will, on the whole, be applied progressively with due regard to the nature and seriousness of infringements, but will not preclude dismissal for first infringement.

2.1.2 Applicability

This Procedure shall apply throughout Eskom Holdings Limited, its Divisions, and Business Units.

Employees who participate in unprotected industrial action need not necessarily be dealt with in terms of this Procedure, but subject to the requirements of the specific circumstances and with due cognisance of the provisions of the Labour Relations Act (66/1995), hereinafter referred to as the Act.

2.2 NORMATIVE/INFORMATIVE REFERENCES

Parties using this procedure shall apply the most recent edition of the documents listed below:

2.2.1 Normative

- [1] ISO 9001 Quality Management Systems.
- [2] Recognition Agreement.
- [3] Grievance Procedure.
- [4] Disciplinary Code.
- [5] Disciplinary Procedure
- [6] Sexual Harassment Standard
- [7] Labour Relations Act.

2.2.2 Informative

- [1] Constitution of the Republic of South Africa.
- [2] Labour Relations Act.
- [3] Basic Conditions of Employment Act.
- [4] Employment Equity Act.

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- [5] Collective agreements.
- [6] Codes of Good Practice.
- [7] Various Conditions of Services.

2.3 DEFINITIONS

2.3.1 Controlled disclosure: controlled disclosure to external parties (either enforced by law or discretionary)

2.3.2 Eskom: is used for Eskom Holdings Limited and its Divisions and owned subsidiaries.

2.3.3 Him/His: is used for describing a "person" and is not gender based, that is, male or female gender.

2.3.4 Representative: is a fellow employee or an official of a recognised trade union appointed by the employee to assist him/her.

2.4 ABBREVIATIONS

Abbreviation	Description
CCMA	Commission for Conciliation Mediation Arbitration
ER	Employment Relations
HR	Human Resources
IR	Industrial Relations

2.5 ROLES AND RESPONSIBILITIES

It is the responsibility of management to institute discipline in a lawful and equitable manner.

An employee shall, during all disciplinary proceedings, be entitled to be assisted or advised by a representative.

2.6 PROCESS FOR MONITORING

Annual review and implementation of new collective agreements and legislation.

2.7 RELATED/SUPPORTING DOCUMENTS

This procedure supersedes the previous version of the document.

3. PRINCIPLES

The following principles will be observed when applying the procedure:

- 3.1 The principle of fairness and equity shall always be adhered to.

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3.2 Any disciplinary action, shall as far as possible, emphasize corrective measures rather than punitive measures.

3.3 Eskom will endeavour to take disciplinary action within three (3) months from the date that it becomes aware of any misconduct.

4. DISCIPLINARY PROCEDURE

No disciplinary action shall be instituted against an employee unless he/she is afforded a proper opportunity to state his/her case and to defend him/herself against any allegations that may be taken into consideration against him/her.

When it is suspected that an employee has committed misconduct, one of the following disciplinary processes will be followed:

4.1 Disciplinary Enquiry

4.1.1 Disciplinary enquiry is an inquisitorial process to be conducted by the manager or supervisor of the employee. The manager has a right to determine the finding and sanction, having considered the facts.

4.1.2 The process will only be utilized for offences that, on the face of it, may not result in severe sanction.

4.1.3 In the event where it becomes apparent during the enquiry that the misconduct may require a disciplinary hearing, the manager must advise the employee and refer it to a disciplinary hearing.

4.2 Disciplinary Hearing

4.2.1 Disciplinary hearing is an adversarial process to be chaired by an internal independent chairperson.

4.2.2 The process will only be utilised for offences that may, or have the potential to, result in/or warrant a penalty of dismissal.

4.2.2 The utilisation of this process does not necessarily mean that a sanction of dismissal will be the only sanction. It means a sanction of dismissal and other sanctions (as prescribed in the Disciplinary Code/Standard) are appropriate sanctions.

4.3 Pre-Dismissal Arbitration

4.3.1 Pre-dismissal arbitration is an adversarial process to be chaired by an independent external chairperson.

4.3.2 The process will only be utilised for offences that may, or have the potential to, result in/or warrant a penalty of dismissal.

4.3.3 The process can only be utilised if the parties (employer and employee) involved in that particular disciplinary case agree to utilise the process.

4.3.4 The process is, *mutatis mutandis*, subject to the provision of Section the 188A of the LRA 66 of 1995, as amended.

4.3.5 If the parties agreed to follow a pre-dismissal arbitration procedure in terms of the LRA 66 of 1995, an agreement shall be made in writing by the parties before the case can be referred to the Commission or a selected accredited agency.

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4.3.6 The parties must exchange all relevant documents to be submitted into evidence at the arbitration, at least 4 days prior to the arbitration.

4.3.7 The process will constitute the following:

- a. A list of all arbitrators from the Commission or Panellists from any Accredited Agency shall be acquired by the parties.
- b. Parties to choose three (3) possible names from the list and, finally, select one name of the Arbitrator who will chair the Pre-dismissal arbitration.
- c. The case presenter to lead employer's case.
- d. Alleged offender and his/her representative.
- e. Legal representation during the pre-dismissal arbitration will subject to the provisions of Rule 25 of the Commission for Conciliation Mediation Arbitration rules.
- f. The arbitrator shall have the same powers as contemplated by Section 188A(7) of the LRA 66 of 1995.
- g. The provisions of Section 143 to 146 of LRA 66 of 1995 shall apply to any award made by an arbitrator in terms of this procedure.
- h. The method of recording will include audio tape recording but exclude visual recordings.
- i. The arbitrator will have 14 days to make an award; the award must be in writing.
- j. An arbitrator's award will be final and binding and have similar status and effect as those issued by the arbitrator at arbitration under auspices of the CCMA.

4.4 Suspension of employee with pay pending Disciplinary Enquiry, Hearing or Pre-dismissal arbitration

4.4.1 When it is suspected that an employee may have committed misconduct and that his/her continued presence in the premises of the company might interfere with the disciplinary investigations, the manager may decide to suspend the employee with pay pending the outcome of the investigation.

4.4.2 Depending on the outcome of the investigation, the manager may extend the suspension or impose the suspension (if the employee was not suspended) pending the outcome of disciplinary process.

4.4.3 The decision to suspend the employee must be considered if and when one or more of the following factors are involved:

- a. element of dishonesty in the alleged misconduct
- b. possibility of tampering with evidence
- c. possibility of interfering with the investigation process
- d. possibility of intimidating witnesses.

4.5 Notification of Disciplinary Enquiry, Disciplinary Hearing or Pre-dismissal arbitration

A written notice advising the employee of the alleged misconduct (charge), process to be followed (enquiry, hearing or Pre-dismissal arbitration), the particulars relating thereto, as well as his/her rights and the time and place of the hearing shall be furnished to the employee at least five (5) days prior to the hearing or three (3) days for enquiry or ten (10) days for pre-dismissal arbitration.

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5 DISCIPLINARY ENQUIRY PROCEDURE

- 5.1 Once the manager has determined that the process to be followed is a disciplinary enquiry procedure in terms of paragraph 4.1 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for an inquisitorial approach.
- 5.2 The parties must exchange all relevant documents to be relied upon at the enquiry at least 24 hours prior to the enquiry.
- 5.3 At the disciplinary enquiry, the following process will be followed:
- 5.3.1 The manager will put the charge(s) and all the relevant facts and documents to the employee.
- 5.3.2 The employee will be afforded an opportunity to give an explanation for the allegations.
- 5.3.3 Witnesses may be called in to give evidence.
- 5.3.4 The manager will consider all the facts and make a finding. The finding must be in writing.
- 5.3.5 If the finding is a guilty verdict, the employee must be advised to furnish mitigating factors.
- 5.3.6 The manager must consider the mitigating factors and aggravating factors and issue a sanction. The sanction must be in writing.
- 5.3.7 The finding and the sanction of the manager do not necessarily have to be given on the same day.
- 5.3.8 The only method of recording will be in terms of the Disciplinary Enquiry Summary of Events form.

6 DISCIPLINARY HEARING PROCEDURE

- 6.1 Once the manager has determined that the process to be followed is a disciplinary hearing procedure in terms of paragraph 4.2 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for an adversarial approach.
- 6.2 The parties must exchange all relevant documents to be submitted into evidence at the hearing, at least two days prior to the hearing.
- 6.3 The process will constitute:
- 6.3.1 an internal independent chairperson; a prosecutor or case presenter;
- 6.3.2 accused employee and his representative; and
- 6.3.3 an employee relations practitioner.
- 6.4 The method of recording will include audio tape recording, but exclude visual recordings.
- 6.5 The parties will be given an opportunity to lead their respective evidence.
- 6.6 The chairperson will have 5 days to make a finding. The finding must be in writing.
- 6.7 If the finding is a guilty verdict, the employee and the case presenter must be advised to furnish mitigating and aggravating factors, respectively.
- 6.8 The chairperson must consider the mitigating and aggravating factors and issue a sanction. The written sanction must be issued within five days.
- 6.9 The sanction notice must advise the employee of his/her right to lodge an appeal against the finding and/or sanction.

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7 PRE-DISMISSAL ARBITRATION PROCEDURE

- 7.1 Once the parties have agreed to follow a pre-dismissal arbitration procedure in terms of paragraph 4.3 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for a pre-dismissal arbitration approach.
- 7.2 The parties must exchange all relevant documents to be submitted into evidence at the arbitration at least four days prior to the arbitration.
- 7.3 The process will constitute the following:
- 7.3.1 An external independent chairperson agreed to by both parties (the employer will submit three (3) names from the Tokiso Panel or any other dispute resolution agency and the employee must choose one from the names submitted) or appointed by the CCMA.
 - 7.3.2 A prosecutor or case presenter to lead employer's case.
 - 7.3.3 Accused employee and his/her representative (Legal representation during the pre-discipline arbitration will be subject to the provisions of Rule 25 of the CCMA rules).
 - 7.3.4 An employee relations practitioner.
 - 7.3.5 The arbitrator shall have the same powers as contemplated by Section 188A(7) of LRA 66 of 1995.
 - 7.3.6 The provisions of Sections 143 to 146 of LRA 66 of 1995 shall apply to any award made by an arbitrator in terms of this procedure.
 - 7.3.7 The method of recording will include audio tape recording, but exclude visual recordings.
 - 7.3.8 The arbitrator will have 14 days to make an award; the award must be in writing.
 - 7.3.9 An arbitration award will be final and binding and have similar status and effect as those issued by an arbitrator at arbitration under auspices of CCMA.

8 APPEAL

- 8.1 The employee must lodge his/her appeal in writing with the employee relations practitioner (in case of hearing) or the manager (in case of enquiry) within five working days of receipt of the sanction.
- 8.2 The employee must clearly specify his/her grounds of appeal.
- 8.3 In case of a hearing, the employee relations practitioner must advise the case presenter of the appeal and furnish him/her with a copy of the grounds of appeal.
- 8.4 The case presenter must furnish the employee relations practitioner with his/her grounds of response within 5 days of receipt of the grounds of appeal. The employee relations practitioner must furnish the employee with a copy of the grounds of response.
- 8.5 The employee relations practitioner (in case of hearing) or manager (in case of enquiry) must forward all the relevant documents (minutes, finding, sanction, grounds of appeal and grounds of responses) to the duly nominated internal independent chairperson or his/her senior manager respectively.
- (Note: appeal will only be considered on the submitted documents).**
- 8.6 New evidence that was not presented at the hearing or enquiry will not be automatically considered. The appeal chairperson must evaluate the reasons for failure to lead the evidence in the disciplinary Hearing and the significance of the evidence and decide whether he/she is going to take it into consideration.

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8.7 The appeal chairperson (in case hearing) or appeal senior manager (in case of an enquiry) has five days to consider all the relevant documents and issue a written finding.

8.8 The appeal chairperson or senior manager has a right to:

8.8.1 uphold the finding and/or sanction of the disciplinary/enquiry chairperson;

8.8.2 vary or rescind the finding, and/or sanction of the disciplinary/enquiry chairperson; and

8.8.3 order a *de novo* hearing where there was a procedural defect that was prejudicial.

9 DISPUTE SETTLEMENT MECHANISM

In the event of the employee not being satisfied with the outcome of the appeal, the employee may, if he/she so wishes, invokes Part 6 of the Recognition Agreement, as amended.

10 AUTHORIZATION

Not applicable.

11 REVISIONS

Date	Rev.	Compiler	Remarks
October 2010	0	T Ngele	Adopted for Back to basics and allocated a new number

12 DEVELOPMENT TEAM

This procedure was developed in consultation with the following stakeholders:

- Eskom Holdings
- National Union of Metalworkers of South Africa (NUMSA)
- Solidarity
- National Union of Mineworkers (NUM)

13 ACKNOWLEDGEMENTS

This procedure has been negotiated with the following stakeholders:

- NUMSA
- NUM
- Solidarity

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Annexure A

(Normative)

Notice to Attend Disciplinary Enquiry

NOTICE TO ATTEND DISCIPLINARY ENQUIRY			
PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	
<u>ALLEGED MISCONDUCT</u>			
(Note: name the misconduct, and give a brief description of the incident.)			
<u>ADMINISTRATIVE DETAILS</u>			
BE ADVISED THAT THE DISCIPLINARY ENQUIRY WILL TAKE PLACE AT:			
DATE:		TIME:	
PLACE:			
<u>RIGHTS</u>			
Kindly take note that you have the following rights to:			
<ul style="list-style-type: none"> • present your case/defence; • call witnesses; and • be represented by a fellow employee or trade union representative. 			
<u>DOCUMENTATION</u>			
The parties must exchange all relevant documentation to be relied upon at the enquiry at least 24 hours prior to the enquiry.			
<u>SERVICE</u>			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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Annexure B

(Normative)

Notice to Attend Disciplinary Hearing

NOTICE TO ATTEND DISCIPLINARY HEARING			
PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	
<u>ALLEGED MISCONDUCT</u>			
(Note: name the misconduct, and give a brief description of the incident.)			
<u>ADMINISTRATIVE DETAILS</u>			
BE ADVISED THAT THE DISCIPLINARY HEARING WILL TAKE PLACE AT:			
DATE:		TIME:	
PLACE:			
<u>RIGHTS</u>			
Kindly take note that you have the following rights to:			
<ul style="list-style-type: none"> • present your case/defence; • call witnesses; and • be represented by a fellow employee or trade union representative. 			
<u>DOCUMENTATION</u>			
The parties must exchange all relevant documentation to be relied upon at the hearing at least two days prior to the hearing.			
<u>SERVICE</u>			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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(Normative)

DISCIPLINARY ENQUIRY SUMMARY OF EVENTS

REPRESENTATIVE:

PLACE:

SUMMARISED RESPONSE

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Annexure C

(Concluded)

FINDINGS:	GUILTY	NOT GUILTY
<u>SUMMARISED REASONS FOR FINDING</u>		
<u>MITIGATING FACTORS</u>		
<u>AGGRAVATING FACTORS</u>		
<u>SANCTION</u>		
<u>ACKNOWLEDGEMENT OF PROCESS</u>		
I hereby confirm that the above-mentioned information was discussed with me during the disciplinary enquiry. (Note: acknowledgement of discussion does not mean that the employee agrees with the content.)		
NAME OF ALLEGED OFFENDER: _____		CHAIRPERSON'S NAME: _____
DATE: _____		DATE: _____
SIGNATURE: _____		SIGNATURE: _____

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Annexure D


(Normative)

Notice to Attend Pre-Dismissal Arbitration

NOTICE TO ATTEND PRE-DISMISSAL ARBITRATION			
PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	
<u>ALLEGED MISCONDUCT</u>			
(Note: name the misconduct, and give a brief description of the incident.)			
<u>ADMINISTRATIVE DETAILS</u>			
BE ADVISED THAT THE PRE-DISMISSAL ARBITRATION WILL TAKE PLACE AT:			
DATE:		TIME:	
PLACE:		CHAIRPERSON:	
<u>RIGHTS</u>			
Kindly take note that you have the following rights to:			
<ul style="list-style-type: none"> • present your case/defence; • call witnesses; and • be represented by a fellow employee or trade union representative. 			
<u>DOCUMENTATION</u>			
The parties must exchange all relevant documentation to be relied upon at the hearing at least four days prior to the arbitration.			
<u>SERVICE</u>			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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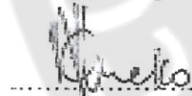
	Standard	Human Resources Division
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Title: **Disciplinary code**

Unique Identifier:

32-1112Alternative Reference Number: **NA**Area of Applicability: **E**Documentation Type: **ST**Revision: **0**Total Pages: **7**Next Review Date: **November 2013**Disclosure Classification: **CONTROLLED DISCLOSURE**

Compiled by



N Theko
Employee Relations Officer
Human Resources Division

Date: **24/01/2011**

Functional Responsibility



T Ngale
Senior Manager Legal and
Statutory Portfolio
Human Resources Division

Date: **24/01/2011**

Authorized by



B E Bulunga
Divisional Executive
Human Resources

Date: **25/01/2011**

Disciplinary code

Unique Identifier: 32-1112

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1. INTRODUCTION

This standard outlines and provides for conduct (actions and/or omissions) that is deemed by Eskom Holdings Limited as unacceptable.

2. ACTS OF MISCONDUCT

An employee shall be guilty of misconduct if he/she does the following.

- 2.1 Contravenes or fails to comply with Eskom's Conditions of Service, agreements with trade unions, operating regulations, security and/or safety measures, procedures, directives and applicable statutory requirements.
- 2.2 Disregards or wilfully fails to carry out a lawful order given to him/her by a person authorised to do so.
- 2.3 Assaults or attempts or threatens to assault other employees, contractors, customers or visitors.
- 2.4 Endangers the safety of fellow employees, contractors, visitors and customers.
- 2.5 Is insubordinate and/or insolent.
- 2.6 Participates in or incites unprotected industrial action or labour unrest.
- 2.7 Intimidates fellow employees, contractors, customers or visitors.
- 2.8 While on duty, conducts himself/herself in an improper or disgraceful manner or at any time behaves in such a manner that he/she harms the image of Eskom.
- 2.9 Prohibits or prevents employees from belonging to any trade union.
- 2.10 Victimises and /or harasses other employees, contractors, customers or visitors.
- 2.11 Causes racial conflict between employees, contractors, customers or visitors.
- 2.12 Operates any scheme aimed at lending money to fellow employees for which interest is charged.
- 2.13 Without authorisation, utilises Eskom's labour, material, transport, equipment, and assets to his/her own advantage or to the advantage of another.

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-
- 2.14 Is absent from duty without leave.
- 2.15 Without a valid reason, reports late for work.
- 2.16 Sleeps on duty.
- 2.17 Is absent from his/her workpost without authorisation.
- 2.18 Is under the influence of intoxicating liquor or drugs while on duty or when reporting for duty.
- 2.19 Is in unauthorised possession of, or removes or attempts to remove, property belonging to Eskom.
- 2.20 Is in unauthorised possession of, removes, or attempts to remove from Eskom premises, property belonging to fellow employees, contractors, customers or visitors.
- 2.21 Is found guilty by a competent court of a criminal offence that directly relates to, or arises from, his/her duties.
- 2.22 Has paid an admission of guilt in respect of a criminal offence that directly relates to, or arises from, his/her duties.
- 2.23 Is found guilty by a competent court or has paid an admission of guilt in respect of any criminal offence that can breach the trust relationship between Eskom and the employee.
- 2.24 Discloses information obtained in the course of his/her duties with Eskom that is personal and confidential to Eskom.
- 2.25 Without the written consent of Eskom, directly or indirectly accepts any benefit or compensation in cash or otherwise resulting from his/her association, engagement, or duties with Eskom.
- 2.26 Without the written consent of Eskom, performs any work in a private capacity for another person or organisation for compensation.
- 2.27 Wilfully or negligently damages Eskom's property.
- 2.28 Is negligent in the performance of his/her duties.
- 2.29 Commits an act or omission that is detrimental to Eskom.
- 2.30 Makes any false statement or representation that relates to, or ensues from, his/her duties.
- 2.31 Falsifies any documents, claim forms, or records that relate to his/her duties.
- 2.32 Knowingly gives false evidence during proceedings in terms of the provisions of the procedure.

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2.33 Possesses a dangerous weapon in the workplace without prior authorisation.

2.34 Commits an act of sexual harassment.

2.35 Conduct himself/herself in a way that is reasonably regarded as unacceptable in terms of Eskom's values and ethics.

3. PENALTIES

The following penalties will be applicable:

3.1 Written warning valid for six months.

3.2 Final written warning valid for twelve months.

3.3 Suspension without pay (minimum seven days and maximum fourteen days) and will be considered as a disciplinary record for future discipline for a period of twelve months).

3.4 Dismissal with notice or summary dismissal (without notice)

Note: the above penalties do not necessarily follow a particular order; it will depend on the severity of the misconduct / offence.

4. SUPPORTING CLAUSES

4.1 SCOPE

4.1.1 Purpose

The purpose of the Disciplinary Code is to correct behaviour that is unsatisfactory to Eskom and to encourage expected behaviour.

4.1.2 Applicability

This Disciplinary Code shall apply throughout Eskom Holdings Limited, its divisions, its subsidiaries, and entities wherein Eskom has a controlling interest.

4.2 NORMATIVE/INFORMATIVE REFERENCES

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

4.2.1 Normative

- [1] ISO 9001 Quality Management Systems.
- [2] Recognition Agreement
- [3] Agency Shop Agreement
- [4] Full time Shop Steward Agreement
- [5] Minimum Services Agreement in an Essential Service

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- [6] Grievance Procedure
- [7] Disciplinary Procedure
- [8] Social Plan
- [9] Sexual Harassment

4.2.2 Informative

- [1] Labour Relations Act
- [2] Basic Conditions of Employment Act
- [3] Employment Equity Act
- [4] Collective Agreements
- [5] Various Conditions of Service
- [6] Eskom's Operating Regulations

4.3 DEFINITIONS

4.3.1 Controlled disclosure: controlled disclosure to external parties (either enforced by law, or discretionary).

4.3.2 Eskom: is used for Eskom Holdings Limited and its divisions and owned subsidiaries.

4.3.3 Him/her: is used for describing a "person" and is not gender based (that is, male or female gender).

4.4 ABBREVIATIONS

Abbreviation	Description
HR	Human Resources
ER	Employment relations
IR	Industrial Relations

4.5 ROLES AND RESPONSIBILITIES

This standard falls under the responsibility of Corporate Industrial Relations and Stakeholder Relations (collectively known as Employment Relations).

The role of these parties is to manage and review the standard.

4.6 PROCESS FOR MONITORING

Annual review and implementation of new Collective Agreement and legislative requirements.

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4.7 RELATED/SUPPORTING DOCUMENTS

This standard supersedes the previous version of the document.

5. AUTHORIZATION

Not applicable.

6. REVISIONS

Date	Rev.	Compiler	Remarks
November 2010	0	T Ngele	Adopted for Back to basics and allocated a new number.

7. DEVELOPMENT TEAM

Not applicable.

8. ACKNOWLEDGEMENTS

Not applicable.

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Anton Minnaar

From: Neo Tsholanku
Sent: 17 March 2015 08:52 AM
To: Freddy Ndou
Cc: Anton Minnaar
Subject: Acting Letters for the Executives.

Sir, could you kindly assist with forwarding myself and Anton Minnaar the signed delegation letters for the acting executives.

Kind regards





Date:

13 March 2015

Enquiries:

Dear Abram,

CONFIRMATION OF YOUR APPOINTMENT TO THE POSITION OF ACTING GROUP EXECUTIVE: GROUP CAPITAL AND THE DELEGATION OF POWERS AND AUTHORITY

I, **Zethembe Khoza**, in my capacity as Interim Chief Executive of Eskom Holdings (SOC) Limited acting in terms of a resolution of the Eskom Holdings (SOC) Limited's People and Governance Committee taken at the Committee meeting held on the **11 March 2015** do hereby confirm your appointment to Act as **Group Executive: Group Capital** with effect from **11 March 2015** you are advised otherwise.

1. As **Acting Group Executive: Group Capital**, you are delegated full authority and powers that are to be exercised by the **Group Executive: Group Capital** as set out in the document titled **Eskom Holdings (SOC) Limited - Delegation of Authority**. You will exercise this authority and powers so as to implement or give effect to the Eskom Board mandate in the manner you deem most effective and efficient for Eskom.
2. The above is subject to the following conditions:
 - 2.1 You are hereby authorised, in writing
 - 2.1.1 to delegate further any powers and authority delegated to you, to an officer, employee, any person or committee and to allow **Sub-Delegation** of such powers in exceptional cases only once and where necessary, in terms of the needs of the business; and

Head Office

Eskom Holdings SOC Ltd, 100, Main Road, Sandton, 2000

Eskom Holdings SOC Ltd, 100, Main Road, Sandton, 2000

Eskom Holdings SOC Ltd, Reg No 2002/015527/JO

2.1.2 to impose any limits or conditions in such **Sub-Delegation** and **Further Delegation** to ensure good governance and controls with regard to the exercise of such powers; and to

2.2 act:

2.2.1 lawfully;

2.2.2 within the scope of your powers and authorisation and

2.2.3 In terms of the applicable Eskom Holdings (SOC) Limited rules, policies, directives and procedures.

3. **NOTWITHSTANDING** the above, where powers and authorities have been delegated to a **Group Executive: Group Capital** by the Eskom Holdings (SOC) Limited Board of Directors, such powers shall be exercised subject to limitations and conditions that may also be imposed by the **Interim Chief Executive** of Eskom.

Yours faithfully


.....
Zethembe Khoza
Interim Chief Executive

12/03/2015
.....
Date

Accepted:


.....
Abram Masango

12/03/2015
.....
Date

COMMISSION OF INQUIRY
INTO STATE CAPTURE

Loraine Visser

From: Merinda Botha
Sent: Wednesday, 29 July 2015 13:58
To: Loraine Visser
Subject: FW: [all employees] - MEDIA STATEMENT - Independent Enquiry Eskom 12 March 2015
Importance: High

From: Hettie Du Plooy
Sent: 29 July 2015 01:55 PM
To: Merinda Botha
Subject: FW: [all employees] - MEDIA STATEMENT - Independent Enquiry Eskom 12 March 2015
Importance: High

From: Corporate Affairs Division
Sent: 12 March 2015 11:03 AM
Subject: [all employees] - MEDIA STATEMENT - Independent Enquiry Eskom 12 March 2015
Importance: High



WRITTEN SUBMISSION OF MR MATSHELA MOSES KOKO

I, the undersigned,

MATSHELA MOSES KOKO

hereby state that:

INTRODUCTION

1. I was an employee of Eskom Holdings SOC Limited ("Eskom") of 23 years standing. I was employed by Eskom since the beginning of 1996, and even before that, while I was an engineering student, I worked for Eskom during university vacations. I had with the assistance of Eskom obtained a place at the University of Cape Town to study engineering, for which Eskom provided financial assistance.
2. I qualified with a B.Sc. degree in chemical engineering at the University of Cape Town at the end of 1995. I additionally have a Master of Business Leadership (MBL) degree from the University of South Africa, conferred in 2016.
3. I held the position of Group Executive: Generation, i.e. head of Eskom's Generation Division. The Generation Division comprises Eskom's electricity generation assets. I also held the position of Group Executive: Generation and Technology, i.e. the head of Eskom's Generation and Technology Divisions which was restructured, and I was Generation Division only. I first became responsible for Generation Division in October 2015, when it was added to my responsibilities as head of Technology.

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4. To provide context to what I refer to below I provide a brief synopsis of material events relating to the positions that I held in recent times, and to whom I reported from time to time.
5. I was appointed to the position of Group Executive: Generation and Technology in October 2015. The Technology Division provides engineering designs and support for the Generation, Transmission and Distribution Divisions. My previous position was that of Group Executive: Technology and Commercial to which I was first appointed in an acting capacity when the Technology and Commercial Divisions merged in April 2014. I was permanently appointed to the post in November 2014. Before that, from 2010, I held appointment as a Divisional Executive: Technology. During the period from 20 July 2015 to the end of September 2015 I was responsible for Technology only, Commercial having been assigned to the Chief Financial Officer. Generation was added to my portfolio with effect from 1 October 2015.
6. I was appointed as Eskom's interim Group Chief Executive ("Group Chief Executive" or "GCE") during early December 2016 arising from the resignation of Mr Brian Molefe. Mr Molefe left Eskom in November 2016. Eskom's board of directors ("Eskom's Board" or "the Board") then appointed me in December as interim GCE pending a recruitment process for the eventual appointment of a new GCE.
7. I was during 2017, on 16 May 2017, placed on special leave pending the outcome of an investigation that had been undertaken at the behest of Eskom's Board by attorneys Cliffe Dekker Hofmeyr ("CDH"), acting in conjunction with the forensic investigation arm of auditors' firm Nkonki Inc. ("Nkonki"), to investigate the veracity of newspaper reports that alleged that I had, arising from interests that my wife's daughter from a previous marriage had in March 2016 unbeknown to me obtained in an Eskom contractor, Impulse International (Pty) Limited, acted in breach of the

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fiduciary duties that I owed Eskom and Eskom's policies and procedures. I was subsequently, on 1 August 2017, placed on suspension pending finalisation of disciplinary proceedings that Eskom's Board then decided had to be instituted against me. This occurred despite the findings of the investigators in terms of their report dated 13 June 2017 that:

"There is no evidence that supported and/or indicated that Mr Koko committed an act which undermined the internal control system of Eskom and no action in terms of Section 15(1) of the Public Finance Management Act was therefore required from the accounting authority relevant to the conflict of interest matter", which was supported by a memorandum to similar effect, dated 14 June 2017, from the attorneys, CDH.

8. Eskom's pursuing the disciplinary enquiry despite CDH/Nkonki's findings apparently arose from a report made to Eskom's Board by Mr Khulani Qoma, the erstwhile General Manager in the office of the Chairman of Eskom's Board, on 14 June 2017 to the effect, among other things, that *"(t)he findings of the investigation on the alleged conflict of interest relating to the Impulse International should be viewed within the prisms of the public sentiments as opposed to solely focusing on the legal rationale"* and that I should be dismissed regardless, in conjunction with a memorandum subsequently obtained from a senior advocate of the Johannesburg Bar that was to the effect that, despite the findings of CDH/Nkonki that had exonerated me, I should answer certain questions in the forum of a disciplinary enquiry¹.

9. The disciplinary proceedings commenced on 18 October 2017 before Adv. M. Mthombeni, a member of the Johannesburg Bar, and ran their course on and off until

¹ As opposed to simply being given the opportunity to provide explanations in respect of the questions that the advocate had posed, whether to Eskom's Board, CDH/Nkonki, or whomever.

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the beginning of December 2017. It became apparent during the proceedings that my issuing instructions early in 2017, after I had been appointed interim GCE, that corrupt senior officials charged with overall responsibility for the Medupi and Kusile projects be moved, pending investigation, from their posts to posts where they would no longer be able to continue with their harmful conduct, was the precipitating turn of events that eventually culminated in my being subjected to disciplinary proceedings. It led to information about my having declared the interests of my stepdaughter in Impulse International (Pty) Ltd in terms of Eskom's policies and procedures being fed to the Tiso Blackstar group of newspapers by the very corrupt officials against whom I had acted. They had realised that I was coming for them and connived with the journalists who then launched a campaign of vilification of me based on falsehoods and distortions of the truth, which is continuing even today. Ironically, charges for misconduct were even added during the disciplinary process relating to the action that I had taken to stop the corruption at Medupi and Kusile. These arose from alleged "whistleblower reports" ² that had been made by the corrupt officials themselves, who then, eventually, refused to testify before Mr Mthombeni.

10. I was on 29 December 2017 supplied with Mr Mthombeni's findings (that had already been issued on 14 December 2017). I was in terms of these found not guilty on all the charges that Eskom had chosen to prefer against me. ³ My suspension was at

² Mr Abram Masango testified at the Portfolio Committee on Public Enterprise Oversight Enquiry into the allegations of governance failures and state capture at Eskom that he was the originator of the "whistleblower reports". I had moved Mr Masango from his position of Group Executive of Group Capital because I had evidence in my possession that he was implicated in corruption activities at Kusile Power Station. Mr Masango was ultimately arrested with four others on or about 18 December 2019. They are facing charges of fraud and corruption relating to Kusile Power Station contracts and are currently out on R300 000 bail each.

³ Which was not surprising as there was, despite the relentless continuation of the vicious trial by media campaign against me in, principally, publications of the Tiso Blackstar media group on the basis of false and misleading reporting, never a prima facie case against me for misconduct, as put across to Eskom's Board already in June 2017, as referred to above.

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the same time lifted and I returned to work on 8 January 2017 (albeit in the interim restructured) position of Group Executive: Generation.

11. The erstwhile Chairman of Eskom, Mr Jabu Mabuza testified in this Commission that the disciplinary hearing that vindicated me was a “sham”. He did to provide the evidence to support this allegation. Eskom made the same allegation at the Labour Court ⁴ before Justice GN Moshwana. In his judgment Justice GN Moshwana wrote:

“For reasons better known to the media and later the respondent (Eskom), the disciplinary hearing (that vindicated Mr Koko) was labelled a sham”.

Once again, Eskom did not provide the evidence in Court that is necessary to support the allegation of a “sham” disciplinary hearing.

12. On 20 January 2018, the Presidency released a Government Statement announcing the new Board of Eskom. In the same statement Government directed the new Board, which was not yet in office to:

“immediately remove all Eskom executives who are facing allegations of serious corruption and other acts of impropriety, including Mr Matshela Koko...”

13. On or around 24 January 2018 Mr Malusi Gigaba who was then Minister of Finance was interviewed on SABC in Davos at the World Economic Forum. He said following.

“The Cabinet decision was that Mr Koko must be dismissed by the new Board. The Board has not met. We will allow it in terms of its corporate governance to have its

⁴ Koko vs Eskom Labour Court 2018-J200-18 Par [5]

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(first) meeting and to look at the process and deal with the issues as they need to deal with them. It is quite urgent..."

14. Government was directing the Board of Eskom as newly constituted to go find reasons to dismiss me. Government was overreaching and I considered its directive to the new Board of Eskom as unlawful and unconstitutional.
15. I was not facing "allegations of serious corruption and other acts of impropriety". There were allegations of conflict of interest relating to my stepdaughter's shareholding in an entity called Impulse International (Pty) Ltd. For that I was charged, and I was vindicated.
16. On 24 January 2018, I was summoned to a meeting with Mr Phakamani Hadebe, then the newly appointed Acting Group Chief Executive of Eskom. I had not met Mr Hadebe before. The meeting took place on 25 January 2018 at Megawatt Park. In this meeting, and in no uncertain terms, I was told that my presence at Eskom had become undesirable and if I were to return it would be detrimental to Eskom. I was informed that the lenders had expressed concern about my presence at Eskom. It was mentioned to me that the lenders viewed me as a stumbling block to the efforts of Eskom to clean up acts of maladministration and corruption.
17. Mr Hadebe instructed me to resign by 10h00 the following day failing which I would be terminated. I refused to resign and in anticipation of being dismissed by 10h00 on 26 January 2018, I approached the Labour Court for an interdict.
18. Eskom was interdicted and restrained on an interim basis from unlawfully terminating my contract of employment based on a directive issued by the Government in terms

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of a statement that the government put out on Sunday, 21 January 2018, to the effect that:

"The board is directed to immediately remove all Eskom executives who are facing allegations of serious corruption and other acts of impropriety, including Mr Matshela Koko..."

19. The matter was postponed for a hearing on 6 February 2018 at 10h00. Upon the interim interdict, Eskom decided to embark upon a disciplinary process on the grounds of misconduct. I was instructed by Mr Hadebe not to report for duty until further notice. On 31 January 2018 while still at home, I was served with a letter of suspension. I was also served with new charges. The disciplinary hearing was scheduled for February 16, 2018.
20. I resigned at the hearing after entering my plea into records. I did so without any admission of wrongdoing in relation to the charges that Eskom has preferred against me in the disciplinary hearing before Adv Nazeer Cassim. I had good defences to the charges against me, and they had been conveyed to Eskom's legal representatives.
21. In his judgment of 26 February 2018, Justice GN Moshwana concluded that⁵:
 1. *"On the evidence before me, it is clear that the respondent is intent and actually is pressured to dismiss the applicant. Should the outcome of the current process not yield the desired results, there is a great possibility of the respondent pulling the ace up the sleeve. Legal advice has already been sought and dispensed with that the steps taken are justified in law. That being so, there is nothing that would*

⁵ Koko vs Eskom Labour Court 2018-J200-18 Par [32]

prevent the respondent to flag the steps already interdicted to justify the termination once the interdict is gone. Therefore, the fear of the applicant is reasonable and ought to be entertained by this Court”.

2. *“It seems to me that the respondent (Eskom) labours under a misapprehension that even if the reasons that justify summary dismissal are absent, it can terminate by simply giving a six months’ notice”*

22. The Board of Eskom as newly constituted had been given the directive by Government to dismiss me and it was determined to do just that. Should they have failed in the disciplinary hearing before Adv Nazeer Cassim they would have looked for another opportunity to dismiss me. That is the reason why I resigned.

23. Previously, during the period from 11 March 2015 until 15 July 2015⁶, while I was serving as Group Executive: Technology and Commercial, I together with 3 others of my then colleagues⁷, was also placed on suspension. That was supposedly to allow an “unfettered enquiry” while a so-called “Forensic Fact Finding Enquiry ... into the status of the business and challenges experienced by Eskom” by the Cape Town law firm, Dentons South Africa, was taking place.

24. Dentons had been appointed by Eskom’s Board to investigate, among other things, “(t)he poor performance of Eskom’s generation plant” and the “(i)ntegrity of the procurement processes and compliance with legislation as well as Eskom’s procurement policies”. I shall refer in greater detail to the events that gave rise to my suspension below. However, our supposedly being suspended to allow an

⁶ I returned to the office on 20 July 2015.

⁷ The then Group Chief Executive, Mr Tshediso Matona, the Group Executive: Group Capital, Mr Dan Marokane and the then CFO and Director of Finance serving on Eskom’s Board, Ms Tsholofelo Molefe (the latter’s suspension by the Board occurred a few days after that of Messrs Matona, Marokane and myself).

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“unfettered enquiry” was simply a ruse and attempt by the Eskom Board, as constituted at the time, to pressurise us to accept separation packages and leave Eskom⁸. This had been engineered by the then Chairman of the Board, Mr Zola Tsotsi. The Chairman of the Board, Mr Tsotsi, resigned shortly afterwards and in the ensuing period the other members of the Board, with three exceptions⁹, resigned or were replaced by the shareholder.

25. Notwithstanding the fact I was on suspension during the period from 11 March 2015 until 15 July 2015 and I only returned to the office on 20 July 2015, Justices Tsoka J, Baqwa J & Fourie J accepted Eskom’s version at the Gauteng North High Court that¹⁰:

“On 6 July 2015 Koko was tasked to conduct negotiations as Group Executive: Technology and Commercial to conduct negotiations of the MSA (Master Service Agreement with McKinsey)”.

I was not the respondent in this matter, but the Court was wrong on facts and it erred in accepting that on 6 July 2015 I was tasked to conduct negotiations with McKinsey when I was in fact sitting at home on suspension.

26. As interim Group Chief Executive I reported and was responsible directly to Eskom’s Board. Dr Baldwin (Ben) Ngubane was the Chairman of the Board during the period

⁸ Which was, for the most part, effective in the end. I was the only one who refused to accept the separation packages offered to us while we were on suspension. Concomitantly, I was the only one of the four who returned to work when Dentons reported on 15 July 2015 that they had found no wrongdoing on our part.

⁹ Mr Zithembe Khoza, Ms Venete Klein and Prof Pat Naidoo.

¹⁰ Eskom Holdings SOC Limited v McKinsey and Company Africa (Pty) Ltd and Others (22877/2018) [2019] ZAGPPHC 185 (18 June 2019)

that I actively rendered service as interim Group Chief Executive from December 2016 to 16 May 2017.

27. In my position as Group Executive: Generation and Technology I reported to the Group Chief Executive. From April 2015 until December 2016, the Group Chief Executive was Mr Brian Molefe. He was previously the Group Chief Executive of Transnet SOC Ltd. He was first appointed on an interim basis, on secondment from Transnet (as far as I am aware), but permanently in October/November 2015. Before that, from 2010, the GCE was Mr Brian Dames, who, however, retired during 2014. He was succeeded as GCE by Mr Colin Matjila in an acting capacity. Mr Tshidiso Matona was then permanently appointed as GCE during or about November 2014. He resigned shortly after he was suspended (with me and 2 others, as referred to above) on 11 March 2015. He then returned to Government where he is now the secretary of the National Planning Commission. Mr Zithembe Khoza acted as GCE for a short period before Mr Brian Molefe was appointed in an acting capacity.

**CHAIRPERSON'S DIRECTIVE INTERMS OF REGULATION 10(6) OF THERE
GULATIONS OF THE COMMISSION**

28. I received emailed letter from the Secretariat of Commission of Inquiry into State Capture ("this Commission"), on 18 August 2020.
29. The emailed letter directed me in terms of Regulation 10.6 of the Commission to deliver on or before Tuesday, 1 September 2020 to the Secretary or Acting Secretary of the Commission an affidavit or affirmed declaration in which I state whether I admit or deny the allegations made about or against me in the following matters:

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1. In the affidavit of Ms Suzanne Daniels dated 17 August 2020.
2. In Paragraph 27 of the affidavit of Ms Tsholofelo Molefe dated 22 July 2020
3. I state, the grounds on which I base my denial and give my full version in regard to the allegations or statements or issues or matters or incidents covered therein insofar as they refer or relate to me.

The suspension of the Executives

30. The context was that Mr Zola Tsotsi, then the Chairman of Eskom's Board, came to see me during or about June 2014 to request that I should approve payment of a sum of some R69 million on the basis of invoices that a Japanese company, Sumitomo Corporation, had rendered to Eskom in respect of transformers that it had allegedly manufactured for Eskom that Eskom had not taken delivery of. The issue was that Eskom had never contracted with Sumitomo for the manufacture of the transformers or issued a purchase order for the supply of these. My staff in the Commercial Division was, as a result, not willing to process any payment to Sumitomo.
31. I told Mr Tsotsi quite unequivocally that I could not recommend or approve any payment to Sumitomo for equipment that Eskom did not contract and issue a purchase order for. I conveyed to him that I was not going to intervene and that Sumitomo's request for payment had to be dealt with appropriately in terms of the prescribed procedures. That included, potentially, that the matter be submitted to the relevant tender committee for consideration, which would be the only means through which any informal arrangements that might have been made with Sumitomo could be regularised and any payment could be approved. Mr Tsotsi was not happy with my response.

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32. It subsequently came to my attention that, despite the fact that no purchase order had been issued to Sumitomo to manufacture and supply the transformers, Mr Sekhasimbe, the General Manager in Commodity Sourcing played an active part to procure that a letter be sent by Mr Tsotsi, in his capacity as Chairman of Eskom's board, to Sumitomo Corporation stating that Eskom would pay for the transformers. Such a letter being issued by the Chairman was irregular for a host of reasons, primarily that no contract existed, no purchase order had been issued and that the letter went out without the matter having been placed before the relevant tender committee to consider in terms of the prescribed procedures and then to approve or reject.
33. In these circumstances I did insist that disciplinary action be taken against Mr Sekhasimbe. He was, as a result, suspended on 2 March 2015. A disciplinary hearing was convened towards the end of 2015 under the chairmanship of an independent chairman, Advocate Afsal Mosal, of the Johannesburg Bar. He found Mr Sekhasimbe guilty of misconduct. He later recommended Mr Sekhasimbe's dismissal, which recommendation I accepted and effected.
34. The matter, however, had adverse consequences for me because of my resisting Mr Tsotsi's attempts to persuade me to act in a manner that was not compatible with Eskom's policies and procedures. While Mr Sekhasimbe was on suspension, on Sunday 8 March 2015, Mr Tshediso Matona, then Group Chief Executive, spoke to me. He told me that he had been instructed by the Chairman, Mr Tsotsi, that Mr Sekhasimbe had to be "unsuspended". I told Mr Matona that there were good reasons for Mr Sekhasimbe's facing disciplinary proceedings and informed him of what it was all about. I conveyed that I was not going to act to "unsuspend" Mr Sekhasimbe. Mr Matona then informed me that we would then be suspended. My

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response was that there was no reason whatsoever for my being suspended and I was, in any event, not going to succumb to any threats in this regard emanating from the (non-executive) Chairman.

35. It was this event that led to my and, probably, Mr Matona's, suspension on 11 March 2015, engineered by Mr Tsotsi, supposedly to allow Dentons to conduct an "unfettered" investigation.
36. On the morning of 10 March 2015 Mr Matona called me to his office and said to me that he is expecting that me and him will be suspended over Mr Sekhasimbe's matter. He asked me again if there is anything that can still be done about Mr Sekhasimbe's suspension. I said nothing. He told me in no uncertain terms that we will be likely suspended by the end of the day.
37. I went back to my office and packed my computer and immediately left the office. Mr Tsotsi had a full-time office in Megawatt Park and I did not want him to find me in the office. I went to JB's Corner in Melrose Arch where I worked for the day.
38. I wanted legal advice. I was convinced that I was not deserving of the pending suspension. Ms Suzanne Daniels is an officer of the Court and she was employed at that time in my office as a legal advisor. She was also handling Mr Sekhasimbe's matter. I called her couple of times and we met at JB's Corner. We did not move to any other place in Melrose Arch. Salim Essa was not part of the meeting. Only Ms Suzanne Daniels and I met at JB's Corner.
39. She was not convinced that there were grounds for the suspensions of Mr Matona and I over the Sekhasimbe matter. Mr Tsotsi and or the Board of Directors would have to find other reasons to suspend us and she did not think that they can do that.

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We never discussed Mr Marokane or Ms Molefe. At that stage I did not know that they would also be suspended. The meeting ended and Ms Suzanne Daniels left me at JB's Corner.

40. The following day on 11 March 2015, Mr Matona again called me to his office and told me that there is an urgent Board of Directors meeting and former Minister Brown will be in attendance. He confirmed to me that we will be suspended on that day. He did not mention other executives. It was at that point that the Company Secretary, Mr Malesela Phukubje came to tell me that I must remain in my office. The Board wanted to see me.
41. I stayed in my office and while I was in my office, I called Ms Suzanne Daniels. I called her because I expected to receive the letter of my suspension that morning and I wanted to discuss it with her for legal advice.
42. I do not have capabilities of bugging telephones nor do I have contacts with people who bug telephones. I deny confronting Ms Suzanne Daniels about her private telephone records. I am not aware that Ms Suzanne Daniels reported this "bugging incident" to Eskom Forensic Department and or the police for investigation. This is a criminal matter and Ms Suzanne Daniels is the Officer of the Court. I expected her to have reported this for investigation. In her affidavit she does not say if she reported it. I can only suggest that the reason she does not mention this in her affidavit is because she knows that it is not factual.
43. I received the letter of my suspension around 20:00 and Mr Nick Linell was sitting on the chair outside the Board Room next to the exit door. I do not know why he was there.

mmic S

44. It is possibly relevant that Mrs Klein's testimony before the Public Enterprise Oversight Enquiry into the allegations of governance failures and state capture was to the effect that Mr Tsotsi, after our suspension, proposed to the Board that Mr Sekhasimbe be "unsuspended" and be appointed as acting Group Chief Executive. It is Mrs Klein's testimony that the Board, refused.
45. Two months later, during the first week of May 2015 and while I was still on suspension, I was called into a meeting with Ms Suzanne Daniels¹¹, as well as Mr Zithembe Khoza and Mrs Klein, both directors. I was then, out of the blue, presented with a letter headed "Proposed Terms for Settlement" in terms of which I was to agree to my services with Eskom being terminated by my resigning and my then being paid R4 951 410,94 (before tax) in settlement. The letter is document MMK 1 and is attached¹². I refused this outright and was then told by Mrs Klein that I would then face investigation by Dentons. My response was that I had done absolutely nothing wrong and I was quite willing to face investigation or misconduct charges or whatever. I also told them that the real reason I was suspended was because I refused to take an unlawful instruction from Mr Tsotsi. Ms Klein stated that I should, in any event, go and think about it. Ms Suzanne Daniels about a week later arranged a meeting with me at the Protea Hotel in Midrand. It was with the same people as before. I again informed them that I had no intention whatsoever to resign and take the package.
46. I was subsequently on several occasions interviewed by representatives of Dentons. No criticism of me was made in any report that they made to Eskom's board and my suspension was lifted and I returned to work on 20 July 2015.

¹¹ I did not know on what basis was Ms Suzanne Daniels in the meeting. When I was suspended, she was employed in my office. I was surprised that out of the blue she now sits in a meeting that would decide whether I should be terminated or not.

¹² MMK1

mmkcs

Paragraph 27 Tsholofelo Molefe Affidavit

47. Ms Nonkululeko Dlamini was not only a colleague but a family friend. I called her on the day, and we met for dinner in the evening at Midrand. I deny that I called her to come to Melrose Arch. Ms Nonkululeko Dlamini and I were very surprised when she was appointed the acting CFO after Ms Molefe was suspended.

I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents thereof. This statement was given before me and the deponent's signature/mark/thumb-print was placed thereon in my presence.

At: D. Dale 2020/09/01

Smiso Tuli
FULL FIRST NAME
TOPAAS & DOUGLAS
BUSINESS NAME
DOUGLAS DALE SABS
RANK CST

Matshela Moses Koko
Matshela Moses Koko

1 September 2020

Johannesburg

SOUTH AFRICAN POLICE SERVICE
DOUGLASDALE
2020-09-01
CLIENT SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE

MMKI

PERSONAL

Mr M Koko

Date:

11 May 2015

Enquiries:

Mr A I Minnaar

Tel +27 11 800 3088

Dear Matshela


PROPOSED TERMS FOR SETTLEMENT

We hereby agree on the following proposed terms in finalising the settlement agreement between Eskom and Mr M Koko:

1. Separation package.
2. Payment of Grant 8 based on an on-target vesting percentage of 50%.
3. Payment of Grant 9 based on an on-target vesting percentage of 50% pro-rated for 24 months.
4. Any annual leave accrued upon termination of employment will be paid.
5. The records of Eskom shall record the termination of employment as a resignation.
6. Eskom will at all times provide a favorable reference, regarding your employment with Eskom

The payments are reflected below:

Separation (1 month for every year - 19 years service)	R 3 553 665.84
LTI Grant 8 Due to vest 31 March 2015 based on 50% on target performance.	R 838 647.00
LTI Grant 9 Due to vest 31 March 2016 based on 50% on target performance for 24 months	R 559 098.00
Total (before tax)	R 4 951 410.84


Ms V J Klein**ACTING CHAIRPERSON****PEOPLE AND GOVERNANCE COMMITTEE OF THE ESKOM BOARD**

Mr M Koko**GROUP EXECUTIVE
ESKOM****Head Office**

Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za

Eskom Holdings SOC Ltd Reg No 2002/015527/30

TO : Acting Chairman: Portfolio Committee of Public Enterprise
Parliament of the Republic of South Africa, Cape Town
Attention: **Hon DZ Rantho, MP**
Email: dmocumi@parliament.gov.za

FROM : **Ms. Dudu Myeni**

DATE : 05 March 2018

BY EMAIL

STATEMENT TO THE PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES

1. PURPOSE

- 1.1. This document is a response to the “Invitation” letter directed to me from the Portfolio Committee on Public Enterprises (hereinafter to be referred to as the “Portfolio Committee” or “Committee”) dated 21 February 2018.
- 1.2. This document is also a formal submission of my Statement (hereinafter to be referred to as the “Statement”) to Portfolio Committee on Public Enterprises in response to the allegations made against me by a former Chairperson of Eskom Board.

2. BRIEF INTRODUCTION AND BACKGROUND

- 2.1. My inability to appear before the Committee as originally envisaged for 28 February 2018 was communicated to your Committee Secretary through a formal letter, which apparently did not get received by the Committee Secretary. Sending an SMS was because I realized that the email was stuck on the outbox, and it was late, to find any internet outlet opened. I do apologize for sending an SMS to the Committee Secretary.
- 2.2. The Statement addresses the allegations as per the transcripts and Statement made by former Eskom Chairman, Mr Zola Tsotsi (hereinafter to be referred to as “Mr Tsotsi” or “Tsotsi”).
- 2.3. The Statement will demonstrate that I had, at all material times, conducted myself with an unquestionable integrity and not in a manner that Mr Tsotsi had sought to impugn my dignity through his unfounded allegations.

STATEMENT TO THE PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISE

1. I would like, at the outset, to express my profound gratitude to the Portfolio Committee of Public Enterprises for affording me the opportunity to respond to the allegations made against me. I appreciate this opportunity as it affords me sufficient space to put matters into context in order to clear my name on the allegations by Mr Zola Tsotsi, which allegations, contained in Mr Tsotsi Statement. I will demonstrate in this Statement that Mr Tsotsi's allegations have not been substantiated and that he was reckless and his Statement is a fabrication. I will rely on my memory as I have not received minutes of meetings, or written directives from the Former President, or the list referred to, of Names of Executives handed to Mr Tsotsi by me at the Durban meeting as alleged.
2. My immediate reaction, when I received from your esteemed Office, the Statement filed by Mr Tsotsi as well as the transcripts of his testimony, was that he undertook the task of appearing before your Committee as extemporaneous, without serious reflection on the issues he would ventilate and he did not consider the ramifications of doing so. His Statement is, in my deduction, a fabrication, contempt to the Committee. He was, in his entire appearance reckless, in my view.
3. I wish to firstly place on record, that I take umbrage about the manner in which Mr Tsotsi had chosen to use his appearance in Parliament to make allegations which are untrue and wholly unfounded. I hence wish to express my utmost dismay and disappointment at his utterances.

I submit that the Statement he filed before your Committee is unsubstantiated with a conspicuous omission of objective facts, and without evidence to adduce, holding that his Statement should be declared as injurious, untrue, and vexatious. Nowhere in his Statement is he making reference of any objective evidence to prove his allegations.

His utterances are misleading to the public and indeed one tends to question his motive. The decisions he alleges were taken, per my instruction are too serious, as such, am shocked that he would simply forget his role and responsibilities, as a matured, experienced and seasoned Chairperson of the Board of the largest SOE.

4. Secondly I also want to state categorically to the esteemed Committee that I had at no stage called Mr Tsotsi requesting a meeting, contrary to his futile assertions. His Statement is fatally flawed and is not assisting to provide evidential proof of my request to the meeting in question. I want to put it on record that Mr Tsotsi is the one who was desperate to meet me and not the other way round. The truth is that it was he (Mr Tsotsi) who tried desperately to get a meeting with me using a third party. It is also factually true that it was a result of Mr Tsotsi's insistence that I eventually acceded to his meeting request, which eventually took place in Durban. This meeting was not the first meeting, and this is not mentioned anywhere in his statement. Again the date of the said meeting in Durban per his submission is not accurate. What is really the motive?

5. I further wish to place it on record that former President JG Zuma had at no stage ever instructed me to fire any person whether at SAA or anywhere else, contrary to Mr Tsotsi's nugatory claim that Mr Zuma issued such instructions. That omitted instruction by the former President does not exclude Eskom. At the level of the Former President, one would expect a written directive to the Minister of Chairman of the Board. Also important to state is that I never ever expressed a wish (let alone a demand) to Mr Tsotsi or anyone to dismiss any person from their employment, either at SAA where I was a chairperson of the Board or anywhere else outside of the SAA, including employees – past and present – at Eskom. When Mr Tsotsi made this allegation, he should have provided you with hard evidence to prove that former President issued such an instruction regarding dismissals or suspension of executives at Eskom. Let Mr Tsotsi objectively prove this allegation.
6. The allegation expressed by Mr Tsotsi that I was engaged in a plan or process aimed at causing some executives fired at Eskom is not only untrue, ludicrous but such an allegation is bordered on nothing other than his hubris. I have had no role of any kind at Eskom, as it is a factual position that I neither worked at this SOE nor was I ever a member of its Board. It is thus my submission to the Committee that sense should prevail in the mind of any reasonably thinking person to understand that in my capacity as the then Chairperson of another Board, being the South African Airways, I would not possess any authority to get involved into and/or exert any influence into the affairs of any State Owned Entity, including Eskom.

I believe it should impress on any reasonable person to deduce that my previous role at SAA and the presumption of my role in Eskom in terms of causing some executives to leave, are legally immiscible and incongruous. Why would Mr Tsotsi agree to such instructions? What was being hidden here? Does this mean that Mr Tsotsi became a Chairman of the Board of Eskom without understanding the roles and responsibilities of a Chairman, or at least a Director? Can we simply believe that anyone at his position could simply be instructed, while having no role in an entity such as Eskom? Why did Mr Tsotsi be naïve and get misled? The allegation that I had attempted to interfere in internal processes of Eskom is therefore fatally preposterous and is perhaps made with malicious motive by Mr Tsotsi.

7. The allegation that I gave Mr Tsotsi a *list of names* of Eskom executives which he should dismiss is utterly false. It should thus be inconceivable to believe that a person of the calibre of Mr Zola Tsotsi who is an experienced professional could allow someone to instruct him to fire executives in a company over which he presides as Chairperson. This claim is absurd and thus begs a question as to what in fact Mr Tsotsi is concealing to the Committee. The names mentioned are people I had never met before, except for the then former DG of Public Enterprises who was at Eskom.
8. I maintain that I have no knowledge of the Executives mentioned in the Mr Tsotsi Statement nor would I be privy to any acts of wrongdoings these individuals might have allegedly committed within Eskom.

It would have been easier for me if I had been given minutes and the said list in question which is alleged to have been compiled by me. I should also mention that the two matters which was worrying Mr. Tsotsi was his ousting by the Board, and the “Load Shedding”. In his statement he is conspicuously silent on these two matters.

9. The substantive basis of my meeting with Mr Zola Tsotsi, former Chairperson of Eskom are summarized as follows:-

- (a) As I mentioned above, Mr Tsotsi requested to meet me, seeking an advice and guidance around the legal and governance issues at Eskom.
- (b) He insisted that he wanted to act fast to remove some executives at Eskom, failing which he said he feared that the board would remove him. However it did not come out clearly why the Board would want to get rid of him. He subsequently resigned, but he did not state the reasons why he resigned.
- (c) The position I articulated to Mr Tsotsi was that no Board Chairman could be removed without reasons, if he had not done anything wrong. Secondly, no Chairman of the Board can act alone on such serious matters, which would affect executives or any matter affecting the company. I still maintain that position.

I pointed out to him that Boards and Board Chairpersons should operate within the regulatory framework in terms of company policies that ought to be followed at all times. The board needed to be taken into confidence, and ultimately, has to take a resolution on all matters, within the confines and limitation of the company policy framework. I mentioned to him that decisions of such nature would require sound and solid legal advice.

(d) Mr Tsotsi asked me whether I had a legal adviser in my previous capacity as the SAA Board Chairperson, I told him that my legal advisor would tell him the same thing. At this meeting, there was no legal advisor, and this Statement of Mr Tsotsi does not mention this, by mistake or deliberately. He insisted that I introduce him to my legal advisor which I subsequently did. My advice was further confirmed by the Legal Advisor, and that he had no powers to hire and fire people willy-nilly, and he could not appoint even the legal advisor without the Board approval. At this meeting I did mention to Mr Tsotsi that he has to advise the Minister of what he was planning to do. All this was done genuinely, without knowing that it was perhaps a “set up”. Who knows?

(e) I was shocked when i read a Statement before the inquiry where Mr Tsotsi stated that he was summoned by the former Chairperson of SAA and given instructions and that the former President JG Zuma was in the meeting. It's a misleading statement and totally untrue, as I mentioned already. Mr Tsotsi should provide at least the *minutes* of such a meeting where the President was

participating, issuing verbal instructions, and by-passing the Shareholder Minister and the Board, something unheard of.

10. I hereby submit to the Committee by putting it on record that Mr Tsotsi had been apparently facing numerous problems, as alleged, in his previous role as the Chairperson of Eskom. He has deliberately deflected from his problems by using both my name and that of former President to *conceal* his deep seated problems. This raises this pertinent question: Why did Mr Tsotsi resign from Eskom? I submit that the statement given to the Portfolio committee by Mr Tsotsi is inaccurate and misleading to the public.
11. On the internal Eskom matters, I respectfully deny any knowledge on my part, as alleged about Eskom's managerial, financial or operational issues. With the benefit of hindsight, Mr Zola Tsotsi must declare in public why he was worried about load shedding, and why he did not explain to the Committee why he decided to resign his position at Eskom. Why did the board want to remove him?
12. It might help that Mr Tsotsi declares his personal involvement in Eskom's business so that he does not join the chorus of those wishing to implicate some people to cover up their own corruption by hiding behind certain names, like former President Zuma has become obloquy (a badly spoken person) in the modern day South Africa.

13. THE FACTUAL INACCURACIES OF STATEMENT BY MR ZOLA TSOTSI ABOUT MEETING WITH ME

- i. First it is factually true that Mr Tsotsi met me, at his request as stated above, in Durban, but not in the presence of my son as he alleges. I met him in the presence of the person who was advising us legally. I introduced Mr Tsotsi to Mr Linell.
- ii. Secondly it is factually untrue that I was leading the meeting. I did not outline any purpose of the meeting as alleged by Mr Tsotsi. He had wanted me to introduce him to a legal advisor who happens to be Mr Linell. I had already briefed Mr Linell why we had to meet the Chairperson of Eskom. It turned out that most of the things, points I raised to Mr Tsotsi was correct according to Mr Linell. There were certainly no short cuts especially if you were worried about being removed and also if you had things to hide.
- iii. Thirdly the Former President was not part of my meeting with Mr Tsotsi at any point. The President greeted us in the room where we were. The burden of proving that the former President was part of the meeting rests on Mr Tsotsi who should provide the *minutes* or evidence of the Former President's involvement in that meeting. He can also empower me on pleasantries he refers to on the side of the Former President.
- iv. Fourthly I need to stress that my being at the Former President's Official Residence in Durban was as per a prior commitment for a meeting on a different matter, which had nothing to do with Eskom or SAA.

- v. Furthermore it is not true that I have had a prior knowledge of financial performance and operational matters of ESKOM other than the information Mr Tsotsi voluntarily shared with me, including but not limited to “Load Shedding.” The claim by Mr Tsotsi that I spoke about a War Room of ESKOM is totally untrue.
- vi. I should further state that the most pressing issue was not about ESKOM but was about Mr Tsotsi himself. Prior to that meeting, he had shared with me his concern that the Board wanted to get rid of him, and that some executives at Eskom should be dismissed. He therefore needed help (of legal nature) urgently.
- vii. I need to reiterate that I do not know ESKOM executives, nor did I know any of their acts of alleged wrong doing. I was there to advise him as a colleague at his behest, and hence I introduced him to a legal adviser at that meeting in Durban.

14. CONCLUSION

In concluding I wish to apologize for being unable to appear before the Committee on 28 February.

I would like to assure the Hon Acting Chairperson that I respect the Members of the Portfolio Committee and Parliament. I had, at all material times, conducted myself with an unquestionable integrity and not in a manner that Mr Tsotsi had sought to impugn my dignity through his unfounded allegations.

I hope that this Statement will be welcomed by the esteemed Committee

Ms D Myeni

05 March 2018





Ms Tsholofelo Molefe
Finance Director
Eskom Holdings SOC LTD
P.O. Box 1091
Johannesburg
2000

Date:
11 March 2015

Enquiries:

Dear Ms Molefe

NOTICE OF SUSPENSION AS ESKOM FINANCE DIRECTOR

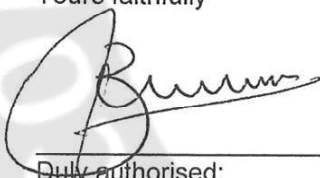
1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence-free requirement of the enquiry.
4. These concerns have been discussed with you.
5. I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly.
6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.

Head Office
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za

Eskom Holdings SOC Ltd Reg. No 2002/015527/30

7. In order for the investigation to proceed as expeditiously as possible, it would not be appropriate for you to remain at work whilst such investigation is in place. You will be advised of the outcome of the enquiry as soon as possible.
8. At that time the subcommittee will consider the enquiry report before considering the matter further.
9. You are instructed to remain in telephonic contact with me during the period of your suspension. We expect you to be contactable in the event that it is necessary for you to attend at the company premises during normal working hours for the purposes of assisting with such investigation. You are further directed not in any manner to approach any member of the company staff, its clients or any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining my prior written permission. You are also directed not to attend at the company's premises during the period of your suspension.
10. The company will regard any contravention of the above instructions in a serious light and further disciplinary steps may be instituted against you in respect of such contravention. You are in addition requested to hand over all work tools issued to you including but not limited to access cards, cell phone, laptop and the like. You are not to make use of the company's information technology hardware and software such as intranet and internet facilities during your suspension.
11. You are requested to surrender your company access card, office keys, laptop and any other company property, documents, computer disks and the like in your possession, with immediate effect.
12. Should you feel uncertain about any aspect of the contents of this letter, you are requested to contact me telephonically.


Yours faithfully



Duly authorised:
For and on behalf of the Board
ZOLA TSOTSI

I acknowledge receipt of this notification:

Signature:  Date: 11/3/24 Time: 19h 55
Ms T Molefe

Signature:  Date: 11/03/15 Time: 19h 55
Mr Zola Tsotsi

In the event that the employee refuses to sign:

Declaration of witness: I confirm that I have witnessed that this letter has been handed and explained to the above named employee.

Signed _____ Position _____ Date _____





Mr Tshediso TJ Matona
Chief Executive
Eskom Holdings SOC LTD
P.O. Box 1091
Johannesburg
2000

Date:
11 March 2015

Enquiries:

Dear Mr Matona

NOTICE OF SUSPENSION AS ESKOM CHIEF EXECUTIVE

1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence-free requirement of the enquiry.
4. These concerns have been discussed with you.
5. I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly.
6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.

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Eskom Holdings SOC Ltd Reg. No 2002/015527/30

In the event that the employee refuses to sign:

Declaration of witness: I confirm that I have witnessed that this letter has been handed and explained to the above named employee.

Signed _____ Position _____ Date _____





Mr Matshela Koko
Group Executive: Commercial & Technology
Eskom Holdings SOC LTD
P.O. Box 1091
Johannesburg
2000

Date:
11 March 2015

Enquiries:

Dear Mr Koko

NOTICE OF SUSPENSION AS GROUP EXECUTIVE: COMMERCIAL & TECHNOLOGY

1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence-free requirement of the enquiry.
4. These concerns have been discussed with you.
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6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.

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mnk

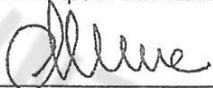
7. In order for the investigation to proceed as expeditiously as possible, it would not be appropriate for you to remain at work whilst such investigation is in place. You will be advised of the outcome of the enquiry as soon as possible.
8. At that time the subcommittee will consider the enquiry report before considering the matter further.
9. You are instructed to remain in telephonic contact with me during the period of your suspension. We expect you to be contactable in the event that it is necessary for you to attend at the company premises during normal working hours for the purposes of assisting with such investigation. You are further directed not in any manner to approach any member of the company staff, its clients or any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining my prior written permission. You are also directed not to attend at the company's premises during the period of your suspension.
10. The company will regard any contravention of the above instructions in a serious light and further disciplinary steps may be instituted against you in respect of such contravention. You are in addition requested to hand over all work tools issued to you including but not limited to access cards, cell phone, laptop and the like. You are not to make use of the company's information technology hardware and software such as intranet and internet facilities during your suspension.
11. You are requested to surrender your company access card, office keys, laptop and any other company property, documents, computer disks and the like in your possession, with immediate effect.
12. Should you feel uncertain about any aspect of the contents of this letter, you are requested to contact me telephonically.


Yours faithfully



Duty authorised:
For and on behalf of the Board
ZOLA TSOTSI

I acknowledge receipt of this notification:

Signature:  Date: 11/3/15 Time: 19h45
Mr Koko

Signature:  Date: 11/03/15 Time: 20h40
Mr Zola Tsotsi

In the event that the employee refuses to sign:

Declaration of witness: I confirm that I have witnessed that this letter has been handed and explained to the above named employee.

Signed _____ Position _____ Date _____





Mr Daniel L Marokane
Group Executive: Group Capital
Eskom Holdings SOC LTD
P.O. Box 1091
Johannesburg
2000

Date:

12 11 March 2015

Enquiries:

Dear Mr Marokane

NOTICE OF SUSPENSION AS GROUP EXECUTIVE: GROUP CAPITAL

1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence-free requirement of the enquiry.
4. These concerns have been discussed with you.
5. I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly.
6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.

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7. In order for the investigation to proceed as expeditiously as possible, it would not be appropriate for you to remain at work whilst such investigation is in place. You will be advised of the outcome of the enquiry as soon as possible.
8. At that time the subcommittee will consider the enquiry report before considering the matter further.
9. You are instructed to remain in telephonic contact with me during the period of your suspension. We expect you to be contactable in the event that it is necessary for you to attend at the company premises during normal working hours for the purposes of assisting with such investigation. You are further directed not in any manner to approach any member of the company staff, its clients or any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining my prior written permission. You are also directed not to attend at the company's premises during the period of your suspension.
10. The company will regard any contravention of the above instructions in a serious light and further disciplinary steps may be instituted against you in respect of such contravention. You are in addition requested to hand over all work tools issued to you including but not limited to access cards, cell phone, laptop and the like. You are not to make use of the company's information technology hardware and software such as intranet and internet facilities during your suspension.
11. You are requested to surrender your company access card, office keys, laptop and any other company property, documents, computer disks and the like in your possession, with immediate effect.
12. Should you feel uncertain about any aspect of the contents of this letter, you are requested to contact me telephonically.


Yours faithfully




Duly authorised:
For and on behalf of the Board
ZOLA TSOTSI

I acknowledge receipt of this notification:

Signature:  Date: 12/3/15 Time: 08h45
Mr Daniel L Marokane

Signature:  Date: 12/03/15 Time: 08h45
Mr Zola Tsotsi

	Procedure	Human Resources Division
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Title: **Disciplinary**

Unique Identifier:

32-1113Alternative Reference Number: **NA**Area of Applicability: **E**Documentation Type: **PC**Revision: **0**Total Pages: **14**Next Review Date: **November 2013**Disclosure Classification: **CONTROLLED DISCLOSURE**

Compiled by

**N Theko****Employee Relations Officer
Human Resources Division**Date: 02/03/2011

Functional Responsibility

**T Ngele****Senior Manager Legal and
Statutory Portfolio
Human Resources Division**Date: 02/03/2011

Authorized by

**BE Bulunga****Divisional Executive
Human Resources**Date: 2011/03/02

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1. INTRODUCTION

The Disciplinary Procedure outlines the process to be followed or utilised in the event of alleged misconduct as provided for in the Disciplinary Code/Standard.

2. SUPPORTING CLAUSES

2.1 SCOPE

2.1.1 Purpose

The purpose of the Disciplinary Procedure is to correct behaviour that is unsatisfactory to Eskom and to encourage expected behaviour.

Discipline will, on the whole, be applied progressively with due regard to the nature and seriousness of infringements, but will not preclude dismissal for first infringement.

2.1.2 Applicability

This Procedure shall apply throughout Eskom Holdings Limited, its Divisions, and Business Units.

Employees who participate in unprotected industrial action need not necessarily be dealt with in terms of this Procedure, but subject to the requirements of the specific circumstances and with due cognisance of the provisions of the Labour Relations Act (66/1995), hereinafter referred to as the Act.

2.2 NORMATIVE/INFORMATIVE REFERENCES

Parties using this procedure shall apply the most recent edition of the documents listed below:

2.2.1 Normative

- [1] ISO 9001 Quality Management Systems.
- [2] Recognition Agreement.
- [3] Grievance Procedure.
- [4] Disciplinary Code.
- [5] Disciplinary Procedure
- [6] Sexual Harassment Standard
- [7] Labour Relations Act.

2.2.2 Informative

- [1] Constitution of the Republic of South Africa.
- [2] Labour Relations Act.
- [3] Basic Conditions of Employment Act.
- [4] Employment Equity Act.

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- [5] Collective agreements.
- [6] Codes of Good Practice.
- [7] Various Conditions of Services.

2.3 DEFINITIONS

2.3.1 Controlled disclosure: controlled disclosure to external parties (either enforced by law or discretionary)

2.3.2 Eskom: is used for Eskom Holdings Limited and its Divisions and owned subsidiaries.

2.3.3 Him/His: is used for describing a "person" and is not gender based, that is, male or female gender.

2.3.4 Representative: is a fellow employee or an official of a recognised trade union appointed by the employee to assist him/her.

2.4 ABBREVIATIONS

Abbreviation	Description
CCMA	Commission for Conciliation Mediation Arbitration
ER	Employment Relations
HR	Human Resources
IR	Industrial Relations

2.5 ROLES AND RESPONSIBILITIES

It is the responsibility of management to institute discipline in a lawful and equitable manner.

An employee shall, during all disciplinary proceedings, be entitled to be assisted or advised by a representative.

2.6 PROCESS FOR MONITORING

Annual review and implementation of new collective agreements and legislation.

2.7 RELATED/SUPPORTING DOCUMENTS

This procedure supersedes the previous version of the document.

3. PRINCIPLES

The following principles will be observed when applying the procedure:

- 3.1 The principle of fairness and equity shall always be adhered to.

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3.2 Any disciplinary action, shall as far as possible, emphasize corrective measures rather than punitive measures.

3.3 Eskom will endeavour to take disciplinary action within three (3) months from the date that it becomes aware of any misconduct.

4. DISCIPLINARY PROCEDURE

No disciplinary action shall be instituted against an employee unless he/she is afforded a proper opportunity to state his/her case and to defend him/herself against any allegations that may be taken into consideration against him/her.

When it is suspected that an employee has committed misconduct, one of the following disciplinary processes will be followed:

4.1 Disciplinary Enquiry

4.1.1 Disciplinary enquiry is an inquisitorial process to be conducted by the manager or supervisor of the employee. The manager has a right to determine the finding and sanction, having considered the facts.

4.1.2 The process will only be utilized for offences that, on the face of it, may not result in severe sanction.

4.1.3 In the event where it becomes apparent during the enquiry that the misconduct may require a disciplinary hearing, the manager must advise the employee and refer it to a disciplinary hearing.

4.2 Disciplinary Hearing

4.2.1 Disciplinary hearing is an adversarial process to be chaired by an internal independent chairperson.

4.2.2 The process will only be utilised for offences that may, or have the potential to, result in/or warrant a penalty of dismissal.

4.2.2 The utilisation of this process does not necessarily mean that a sanction of dismissal will be the only sanction. It means a sanction of dismissal and other sanctions (as prescribed in the Disciplinary Code/Standard) are appropriate sanctions.

4.3 Pre-Dismissal Arbitration

4.3.1 Pre-dismissal arbitration is an adversarial process to be chaired by an independent external chairperson.

4.3.2 The process will only be utilised for offences that may, or have the potential to, result in/or warrant a penalty of dismissal.

4.3.3 The process can only be utilised if the parties (employer and employee) involved in that particular disciplinary case agree to utilise the process.

4.3.4 The process is, *mutatis mutandis*, subject to the provision of Section the 188A of the LRA 66 of 1995, as amended.

4.3.5 If the parties agreed to follow a pre-dismissal arbitration procedure in terms of the LRA 66 of 1995, an agreement shall be made in writing by the parties before the case can be referred to the Commission or a selected accredited agency.

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4.3.6 The parties must exchange all relevant documents to be submitted into evidence at the arbitration, at least 4 days prior to the arbitration.

4.3.7 The process will constitute the following:

- a. A list of all arbitrators from the Commission or Panellists from any Accredited Agency shall be acquired by the parties.
- b. Parties to choose three (3) possible names from the list and, finally, select one name of the Arbitrator who will chair the Pre-dismissal arbitration.
- c. The case presenter to lead employer's case.
- d. Alleged offender and his/her representative.
- e. Legal representation during the pre-dismissal arbitration will subject to the provisions of Rule 25 of the Commission for Conciliation Mediation Arbitration rules.
- f. The arbitrator shall have the same powers as contemplated by Section 188A(7) of the LRA 66 of 1995.
- g. The provisions of Section 143 to 146 of LRA 66 of 1995 shall apply to any award made by an arbitrator in terms of this procedure.
- h. The method of recording will include audio tape recording but exclude visual recordings.
- i. The arbitrator will have 14 days to make an award; the award must be in writing.
- j. An arbitrator's award will be final and binding and have similar status and effect as those issued by the arbitrator at arbitration under auspices of the CCMA.

4.4 Suspension of employee with pay pending Disciplinary Enquiry, Hearing or Pre-dismissal arbitration

4.4.1 When it is suspected that an employee may have committed misconduct and that his/her continued presence in the premises of the company might interfere with the disciplinary investigations, the manager may decide to suspend the employee with pay pending the outcome of the investigation.

4.4.2 Depending on the outcome of the investigation, the manager may extend the suspension or impose the suspension (if the employee was not suspended) pending the outcome of disciplinary process.

4.4.3 The decision to suspend the employee must be considered if and when one or more of the following factors are involved:

- a. element of dishonesty in the alleged misconduct
- b. possibility of tampering with evidence
- c. possibility of interfering with the investigation process
- d. possibility of intimidating witnesses.

4.5 Notification of Disciplinary Enquiry, Disciplinary Hearing or Pre-dismissal arbitration

A written notice advising the employee of the alleged misconduct (charge), process to be followed (enquiry, hearing or Pre-dismissal arbitration), the particulars relating thereto, as well as his/her rights and the time and place of the hearing shall be furnished to the employee at least five (5) days prior to the hearing or three (3) days for enquiry or ten (10) days for pre-dismissal arbitration.

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5 DISCIPLINARY ENQUIRY PROCEDURE

- 5.1 Once the manager has determined that the process to be followed is a disciplinary enquiry procedure in terms of paragraph 4.1 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for an inquisitorial approach.
- 5.2 The parties must exchange all relevant documents to be relied upon at the enquiry at least 24 hours prior to the enquiry.
- 5.3 At the disciplinary enquiry, the following process will be followed:
- 5.3.1 The manager will put the charge(s) and all the relevant facts and documents to the employee.
- 5.3.2 The employee will be afforded an opportunity to give an explanation for the allegations.
- 5.3.3 Witnesses may be called in to give evidence.
- 5.3.4 The manager will consider all the facts and make a finding. The finding must be in writing.
- 5.3.5 If the finding is a guilty verdict, the employee must be advised to furnish mitigating factors.
- 5.3.6 The manager must consider the mitigating factors and aggravating factors and issue a sanction. The sanction must be in writing.
- 5.3.7 The finding and the sanction of the manager do not necessarily have to be given on the same day.
- 5.3.8 The only method of recording will be in terms of the Disciplinary Enquiry Summary of Events form.

6 DISCIPLINARY HEARING PROCEDURE

- 6.1 Once the manager has determined that the process to be followed is a disciplinary hearing procedure in terms of paragraph 4.2 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for an adversarial approach.
- 6.2 The parties must exchange all relevant documents to be submitted into evidence at the hearing, at least two days prior to the hearing.
- 6.3 The process will constitute:
- 6.3.1 an internal independent chairperson; a prosecutor or case presenter;
- 6.3.2 accused employee and his representative; and
- 6.3.3 an employee relations practitioner.
- 6.4 The method of recording will include audio tape recording, but exclude visual recordings.
- 6.5 The parties will be given an opportunity to lead their respective evidence.
- 6.6 The chairperson will have 5 days to make a finding. The finding must be in writing.
- 6.7 If the finding is a guilty verdict, the employee and the case presenter must be advised to furnish mitigating and aggravating factors, respectively.
- 6.8 The chairperson must consider the mitigating and aggravating factors and issue a sanction. The written sanction must be issued within five days.
- 6.9 The sanction notice must advise the employee of his/her right to lodge an appeal against the finding and/or sanction.

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7 PRE-DISMISSAL ARBITRATION PROCEDURE

- 7.1 Once the parties have agreed to follow a pre-dismissal arbitration procedure in terms of paragraph 4.3 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for a pre-dismissal arbitration approach.
- 7.2 The parties must exchange all relevant documents to be submitted into evidence at the arbitration at least four days prior to the arbitration.
- 7.3 The process will constitute the following:
- 7.3.1 An external independent chairperson agreed to by both parties (the employer will submit three (3) names from the Tokiso Panel or any other dispute resolution agency and the employee must choose one from the names submitted) or appointed by the CCMA.
 - 7.3.2 A prosecutor or case presenter to lead employer's case.
 - 7.3.3 Accused employee and his/her representative (Legal representation during the pre-discipline arbitration will be subject to the provisions of Rule 25 of the CCMA rules).
 - 7.3.4 An employee relations practitioner.
 - 7.3.5 The arbitrator shall have the same powers as contemplated by Section 188A(7) of LRA 66 of 1995.
 - 7.3.6 The provisions of Sections 143 to 146 of LRA 66 of 1995 shall apply to any award made by an arbitrator in terms of this procedure.
 - 7.3.7 The method of recording will include audio tape recording, but exclude visual recordings.
 - 7.3.8 The arbitrator will have 14 days to make an award; the award must be in writing.
 - 7.3.9 An arbitration award will be final and binding and have similar status and effect as those issued by an arbitrator at arbitration under auspices of CCMA.

8 APPEAL

- 8.1 The employee must lodge his/her appeal in writing with the employee relations practitioner (in case of hearing) or the manager (in case of enquiry) within five working days of receipt of the sanction.
- 8.2 The employee must clearly specify his/her grounds of appeal.
- 8.3 In case of a hearing, the employee relations practitioner must advise the case presenter of the appeal and furnish him/her with a copy of the grounds of appeal.
- 8.4 The case presenter must furnish the employee relations practitioner with his/her grounds of response within 5 days of receipt of the grounds of appeal. The employee relations practitioner must furnish the employee with a copy of the grounds of response.
- 8.5 The employee relations practitioner (in case of hearing) or manager (in case of enquiry) must forward all the relevant documents (minutes, finding, sanction, grounds of appeal and grounds of responses) to the duly nominated internal independent chairperson or his/her senior manager respectively.
- (Note: appeal will only be considered on the submitted documents).
- 8.6 New evidence that was not presented at the hearing or enquiry will not be automatically considered. The appeal chairperson must evaluate the reasons for failure to lead the evidence in the disciplinary Hearing and the significance of the evidence and decide whether he/she is going to take it into consideration.

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8.7 The appeal chairperson (in case hearing) or appeal senior manager (in case of an enquiry) has five days to consider all the relevant documents and issue a written finding.

8.8 The appeal chairperson or senior manager has a right to:

8.8.1 uphold the finding and/or sanction of the disciplinary/enquiry chairperson;

8.8.2 vary or rescind the finding, and/or sanction of the disciplinary/enquiry chairperson; and

8.8.3 order a *de novo* hearing where there was a procedural defect that was prejudicial.

9 DISPUTE SETTLEMENT MECHANISM

In the event of the employee not being satisfied with the outcome of the appeal, the employee may, if he/she so wishes, invokes Part 6 of the Recognition Agreement, as amended.

10 AUTHORIZATION

Not applicable.

11 REVISIONS

Date	Rev.	Compiler	Remarks
October 2010	0	T Ngele	Adopted for Back to basics and allocated a new number

12 DEVELOPMENT TEAM

This procedure was developed in consultation with the following stakeholders:

- Eskom Holdings
- National Union of Metalworkers of South Africa (NUMSA)
- Solidarity
- National Union of Mineworkers (NUM)

13 ACKNOWLEDGEMENTS

This procedure has been negotiated with the following stakeholders:

- NUMSA
- NUM
- Solidarity

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Annexure A

(Normative)

Notice to Attend Disciplinary Enquiry

NOTICE TO ATTEND DISCIPLINARY ENQUIRY			
PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	
<u>ALLEGED MISCONDUCT</u>			
(Note: name the misconduct, and give a brief description of the incident.)			
<u>ADMINISTRATIVE DETAILS</u>			
BE ADVISED THAT THE DISCIPLINARY ENQUIRY WILL TAKE PLACE AT:			
DATE:		TIME:	
PLACE:			
<u>RIGHTS</u>			
Kindly take note that you have the following rights to:			
<ul style="list-style-type: none"> • present your case/defence; • call witnesses; and • be represented by a fellow employee or trade union representative. 			
<u>DOCUMENTATION</u>			
The parties must exchange all relevant documentation to be relied upon at the enquiry at least 24 hours prior to the enquiry.			
<u>SERVICE</u>			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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Annexure B

(Normative)

Notice to Attend Disciplinary Hearing

NOTICE TO ATTEND DISCIPLINARY HEARING			
PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	
<u>ALLEGED MISCONDUCT</u>			
(Note: name the misconduct, and give a brief description of the incident.)			
<u>ADMINISTRATIVE DETAILS</u>			
BE ADVISED THAT THE DISCIPLINARY HEARING WILL TAKE PLACE AT:			
DATE:		TIME:	
PLACE:			
<u>RIGHTS</u>			
Kindly take note that you have the following rights to:			
<ul style="list-style-type: none"> • present your case/defence; • call witnesses; and • be represented by a fellow employee or trade union representative. 			
<u>DOCUMENTATION</u>			
The parties must exchange all relevant documentation to be relied upon at the hearing at least two days prior to the hearing.			
<u>SERVICE</u>			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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Annexure C

(Normative)

Disciplinary Enquiry Summary

DISCIPLINARY ENQUIRY SUMMARY OF EVENTS			
<u>PARTIES</u>			
MANAGER:		ALLEGED OFFENDER'S NAME:	
DESIGNATION:		REPRESENTATIVE:	
<u>ADMINISTRATIVE DETAILS</u>			
DATE OF ENQUIRY:		TIME:	
PLACE:			
<u>SUMMARISED ALLEGATION</u>			
<u>SUMMARISED RESPONSE</u>			

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(Concluded)

FINDINGS:	GUILTY	NOT GUILTY	
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SUMMARISED REASONS FOR FINDING

MITIGATING FACTORS

AGGRAVATING FACTORS

SANCTION

ACKNOWLEDGEMENT OF PROCESS

I hereby confirm that the above-mentioned information was discussed with me during the disciplinary enquiry. (Note: acknowledgement of discussion does not mean that the employee agrees with the content.)

NAME OF ALLEGED OFFENDER: _____	CHAIRPERSON'S NAME: _____
DATE: _____	DATE: _____
SIGNATURE: _____	SIGNATURE: _____

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Annexure D


(Normative)

Notice to Attend Pre-Dismissal Arbitration

NOTICE TO ATTEND PRE-DISMISSAL ARBITRATION			
PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	
<u>ALLEGED MISCONDUCT</u>			
(Note: name the misconduct, and give a brief description of the incident.)			
<u>ADMINISTRATIVE DETAILS</u>			
BE ADVISED THAT THE PRE-DISMISSAL ARBITRATION WILL TAKE PLACE AT:			
DATE:		TIME:	
PLACE:		CHAIRPERSON:	
<u>RIGHTS</u>			
Kindly take note that you have the following rights to:			
<ul style="list-style-type: none"> • present your case/defence; • call witnesses; and • be represented by a fellow employee or trade union representative. 			
<u>DOCUMENTATION</u>			
The parties must exchange all relevant documentation to be relied upon at the hearing at least four days prior to the arbitration.			
<u>SERVICE</u>			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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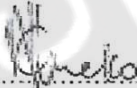
 Eskom	Standard	Human Resources Division
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Title: **Disciplinary code**

Unique Identifier:

32-1112Alternative Reference Number: **NA**Area of Applicability: **E**Documentation Type: **ST**Revision: **0**Total Pages: **7**Next Review Date: **November 2013**Disclosure Classification: **CONTROLLED DISCLOSURE**

Compiled by



N Theko
 Employee Relations Officer
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Date: **24/01/2011**

Functional Responsibility



T Ngele
 Senior Manager Legal and
 Statutory Portfolio
 Human Resources Division

Date: **24/01/2011**

Authorized by



B E Bulunga
 Divisional Executive
 Human Resources

Date: **25/01/2011**

Disciplinary code

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Disciplinary code

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1. INTRODUCTION

This standard outlines and provides for conduct (actions and/or omissions) that is deemed by Eskom Holdings Limited as unacceptable.

2. ACTS OF MISCONDUCT

An employee shall be guilty of misconduct if he/she does the following.

- 2.1 Contravenes or fails to comply with Eskom's Conditions of Service, agreements with trade unions, operating regulations, security and/or safety measures, procedures, directives and applicable statutory requirements.
- 2.2 Disregards or wilfully fails to carry out a lawful order given to him/her by a person authorised to do so.
- 2.3 Assaults or attempts or threatens to assault other employees, contractors, customers or visitors.
- 2.4 Endangers the safety of fellow employees, contractors, visitors and customers.
- 2.5 Is insubordinate and/or insolent.
- 2.6 Participates in or incites unprotected industrial action or labour unrest.
- 2.7 Intimidates fellow employees, contractors, customers or visitors.
- 2.8 While on duty, conducts himself/herself in an improper or disgraceful manner or at any time behaves in such a manner that he/she harms the image of Eskom.
- 2.9 Prohibits or prevents employees from belonging to any trade union.
- 2.10 Victimises and /or harasses other employees, contractors, customers or visitors.
- 2.11 Causes racial conflict between employees, contractors, customers or visitors.
- 2.12 Operates any scheme aimed at lending money to fellow employees for which interest is charged.
- 2.13 Without authorisation, utilises Eskom's labour, material, transport, equipment, and assets to his/her own advantage or to the advantage of another.

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-
- 2.14 Is absent from duty without leave.
- 2.15 Without a valid reason, reports late for work.
- 2.16 Sleeps on duty.
- 2.17 Is absent from his/her workpost without authorisation.
- 2.18 Is under the influence of intoxicating liquor or drugs while on duty or when reporting for duty.
- 2.19 Is in unauthorised possession of, or removes or attempts to remove, property belonging to Eskom.
- 2.20 Is in unauthorised possession of, removes, or attempts to remove from Eskom premises, property belonging to fellow employees, contractors, customers or visitors.
- 2.21 Is found guilty by a competent court of a criminal offence that directly relates to, or arises from, his/her duties.
- 2.22 Has paid an admission of guilt in respect of a criminal offence that directly relates to, or arises from, his/her duties.
- 2.23 Is found guilty by a competent court or has paid an admission of guilt in respect of any criminal offence that can breach the trust relationship between Eskom and the employee.
- 2.24 Discloses information obtained in the course of his/her duties with Eskom that is personal and confidential to Eskom.
- 2.25 Without the written consent of Eskom, directly or indirectly accepts any benefit or compensation in cash or otherwise resulting from his/her association, engagement, or duties with Eskom.
- 2.26 Without the written consent of Eskom, performs any work in a private capacity for another person or organisation for compensation.
- 2.27 Wilfully or negligently damages Eskom's property.
- 2.28 Is negligent in the performance of his/her duties.
- 2.29 Commits an act or omission that is detrimental to Eskom.
- 2.30 Makes any false statement or representation that relates to, or ensues from, his/her duties.
- 2.31 Falsifies any documents, claim forms, or records that relate to his/her duties.
- 2.32 Knowingly gives false evidence during proceedings in terms of the provisions of the procedure.

CONTROLLED DISCLOSURE

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Disciplinary code

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2.33 Possesses a dangerous weapon in the workplace without prior authorisation.

2.34 Commits an act of sexual harassment.

2.35 Conduct himself/herself in a way that is reasonably regarded as unacceptable in terms of Eskom's values and ethics.

3. PENALTIES

The following penalties will be applicable:

3.1 Written warning valid for six months.

3.2 Final written warning valid for twelve months.

3.3 Suspension without pay (minimum seven days and maximum fourteen days) and will be considered as a disciplinary record for future discipline for a period of twelve months).

3.4 Dismissal with notice or summary dismissal (without notice)

Note: the above penalties do not necessarily follow a particular order; it will depend on the severity of the misconduct / offence.

4. SUPPORTING CLAUSES

4.1 SCOPE

4.1.1 Purpose

The purpose of the Disciplinary Code is to correct behaviour that is unsatisfactory to Eskom and to encourage expected behaviour.

4.1.2 Applicability

This Disciplinary Code shall apply throughout Eskom Holdings Limited, its divisions, its subsidiaries, and entities wherein Eskom has a controlling interest.

4.2 NORMATIVE/INFORMATIVE REFERENCES

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

4.2.1 Normative

- [1] ISO 9001 Quality Management Systems.
- [2] Recognition Agreement
- [3] Agency Shop Agreement
- [4] Full time Shop Steward Agreement
- [5] Minimum Services Agreement in an Essential Service

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- [6] Grievance Procedure
- [7] Disciplinary Procedure
- [8] Social Plan
- [9] Sexual Harassment

4.2.2 Informative

- [1] Labour Relations Act
- [2] Basic Conditions of Employment Act
- [3] Employment Equity Act
- [4] Collective Agreements
- [5] Various Conditions of Service
- [6] Eskom's Operating Regulations

4.3 DEFINITIONS

4.3.1 Controlled disclosure: controlled disclosure to external parties (either enforced by law, or discretionary).

4.3.2 Eskom: is used for Eskom Holdings Limited and its divisions and owned subsidiaries.

4.3.3 Him/her: is used for describing a "person" and is not gender based (that is, male or female gender).

4.4 ABBREVIATIONS

Abbreviation	Description
HR	Human Resources
ER	Employment relations
IR	Industrial Relations

4.5 ROLES AND RESPONSIBILITIES

This standard falls under the responsibility of Corporate Industrial Relations and Stakeholder Relations (collectively known as Employment Relations).

The role of these parties is to manage and review the standard.

4.6 PROCESS FOR MONITORING

Annual review and implementation of new Collective Agreement and legislative requirements.

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4.7 RELATED/SUPPORTING DOCUMENTS

This standard supersedes the previous version of the document.

5. AUTHORIZATION

Not applicable.

6. REVISIONS

Date	Rev.	Compiler	Remarks
November 2010	0	T Ngele	Adopted for Back to basics and allocated a new number.

7. DEVELOPMENT TEAM

Not applicable.

8. ACKNOWLEDGEMENTS

Not applicable.

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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Suite 301, Infotech Building 1090 Acadia Street Hatfield, 0083 Private Bag X15 Hatfield 0028
Tel: (012) 431 1000 Fax: 086 501 2624 / 086 501 0629

To: All Media

Date: 12 March 2015

For Immediate release

Statement by the Minister of Public Enterprises, Minister Lynne Brown, regarding the decision by Eskom Board

I addressed the Eskom Board yesterday, sharing my concerns, fears and frustration about the state of affairs at the State-Owned Company.

As shareholder Representative, I am concerned about the instability at power plants; the financial liquidity of the utility; the lack of credible information; the unreliable supply of electricity and its dire impact on our economy; progress with the build programme; overruns at Medupi and Kusile; delays of the investigation into incidents at Majuba and Duvha; and the issue of coal and diesel pricing.

I welcome the Board's decision to launch a comprehensive and holistic audit into the matters as highlighted.

In my view it should be deeper than a mere fact finding exercise and it should be deep-dive into the company to tell us what is wrong and how it should be fixed.

Since the start of load shedding, I have been inundated with complaints from the public and business about the reliability of the grid and its impact on the economy and the lives of ordinary men and women..

I have been assured that the audit investigation would not take longer than three months and that it is not directed at any particular individual or group but that it merely seeks to ensure that the current challenges faced by the utility are addressed.

For all media enquiries contact Colin Cruywagen on 082 377 9916 or
colin.cruywagen@dpe.gov.za

Issued by Ministry of Public Enterprises

12 March 2015



Anton Minnaar

From: Chairman
Sent: 13 March 2015 03:56 PM
Subject: [All employees] - Introduction of new interim Chief Executive and three acting Group Executives

Importance: High



Chairman's message



Dear Guardians

Introduction of new interim Chief Executive and three acting Group Executives

In the past 48 hours, the Board made a resolution to conduct an independent enquiry into the current status of the business. The Board felt that areas that need particular attention are the poor performance of generation plant, the delays in bringing the new generation plant on-stream, the escalating and high costs of primary energy and the cash flow challenges.

To ensure a process that has the integrity of independence, it was necessary to ask certain executives to step aside for the duration of the enquiry. It is important that Guardians appreciate that this process is not an investigation, but an independent enquiry. As you are aware, the executives that have been asked to step aside include the Chief Executive, Mr Tshediso Matona, Finance Director (Ms Tsholofelo Molefe), Group Executive for Group Capital (Mr Dan Marokane) and Group Executive for Group Commercial and Technology (Mr Matshela Koko).

To ensure business stability and continuity, the Board resolved to appoint Mr Zethembe Khoza as the interim Chief Executive. Mr Khoza was appointed onto the Eskom Board as a non-executive director in December 2014 and later appointed as the Chairman of the People and Governance Committee of the Board. He has strong experience in telecommunications, specialist knowledge in the financial sector with a specific focus on capital investments and experience in other areas of the private sector. Mr Khoza will be supported by the Exco members Ms Ayanda Noah, Ms Elsie Pule, Mr Mongezi Ntsokolo, Mr Thava Govender and Dr Steve Lennon. The Exco will be joined by Mr Abram Masango, Mr Edwin Mabelane and Ms Nonkululeko Velezi as acting Group Executives for Group Capital, Group Commercial and Technology and Finance respectively. All three executives have served the business in various roles and bring many years of experience to the respective portfolios.



Zethembe Khoza
Interim Chief Executive



Nonkululeko Velezi
Finance Director - Acting



Abram Masango
GE (Acting) Group Capital



Edwin Mabelane
*GE (Acting) Group
Commercial & Technology*

Statement on the Cabinet meeting of 10 December 2014

11 December 2014

From the outset, Cabinet would like to clarify the misperception that President Jacob Zuma has refused to answer questions in Parliament. Cabinet also noted efforts by Deputy President Cyril Ramaphosa to interact with political parties in the National Assembly following chaotic scenes recently.

The Constitution of the Republic of South African stipulates that the President is accountable to Parliament. The President has continuously fulfilled his role of accounting to Parliament. He has been answering written and oral questions posed to him by the members in both the National Assembly and the National Council of Provinces (NCOP).

The President went to orally answer questions in the National Assembly on 21 August 2014. Unfortunately Honourable Members disrupted him whilst answering the 3rd of 6 questions posed to him. It is the Honourable Members who, through their own disrespectful behaviour, who disrupted the President as he was answering questions. Those who prevented the President from orally answering questions in the National Assembly have no moral grounds to twist the facts and suddenly claim that it is the President who does not want to orally reply to Honourable Members' questions. The National Assembly has since censured those Honourable members who disrupted The President.

Further, Cabinet is not aware of any Order Paper in the National Assembly which had scheduled the President to answer oral questions after the disruption of his oral replies. Therefore it cannot be true that the President has refused to answer questions in the National Assembly.

Cabinet remains concerned over the disruptive effect the recent power outages are having on the daily lives of South Africans and its impact on households and businesses across the country. Cabinet adopted a five-point plan to address the electricity challenges facing the country. The lack of sufficient capacity to meet the country's energy needs remains a challenge and all attempts are being made to ensure that we overcome the tight energy situation. To meet the country's future energy requirements government is implementing an energy mix which comprises of coal, solar, wind, hydro, gas and nuclear energy. In future biomass, wind power, solar power and hydro-power will contribute 11.4 Gigawatts of renewable energy to the grid. Since 1994, five million more households were connected to the grid. In 2004 this increased to 12 million households. This happened without additional power stations being built. This increase of households was set off the existing grid. Cabinet has adopted a five point plan.

Today Eskom will sign an MoU with the Strategic Fuel Fund and Transnet Ports Authority so that the country can be assured of a regular supply of diesel. The focus will be given to improve the strategic maintenance and operational efficiency to ensure that the level of efficiency is increased from the 72% currently to the target of 80%. Eskom will present a detailed finance plan to manage its cash flow beyond 2015. This plan will be presented to the IMC by December 2014. Simultaneously government will finance the funding model.

Cogeneration options will be pursued with the sugar paper and pulp industries to harness waste energy to the extent of 1000 megawatts. There are significant opportunities for the importation of gas. A coal independent power producer programme will be launched by the end of January 2015 with generation capacity of 2 500 megawatts. We are therefore appealing to the public to help our country to reduce the demand of energy which means switching off electricity when not in use. We will have some relief from the 15th December 2014 when manufacturing and industrial processes close for the year. A technical team war room for the implementation of the five point plan is constituted with immediate effect. The five point plan addresses the strain our electricity system faces. The plan covers:

- (I) the interventions that Eskom will undertake in the period over the next 30 days,
 - (II) harnessing the cogeneration opportunity through the extension of existing contracts with the private sector;
 - (III) accelerating the programme for substitution of diesel with gas to fire up the diesel power plants;
 - (IV) launching a coal independent power producer programme; and
 - (V) managing demand through specific interventions within residential dwellings, public and commercial buildings and municipalities through retrofitting energy efficient technologies.
- Cabinet is concerned about the performance of some of the State-owned companies, in particular South African Airways (SAA), the South African Post Office and Eskom. These State-owned entities play a critical developmental role within the South African economy. The President has assigned the Deputy President Cyril Ramaphosa to oversee the turnaround of three state-owned companies, namely South African Airways (SAA), Eskom and the South African Post Office. Working with the relevant Ministries, the SAA will be transferred from the Department of Public Enterprises to the National Treasury. The Presidency will closely monitor the implementation of the turnaround plans of these three critical state-owned companies that are drivers of the economy.

1. Implementation of Key Government Programmes

1.1. Cabinet welcomes the positive outcomes of the President's State Visit to the People's Republic of China from 4 to 5 December 2014, which is a true reflection of the deepening bilateral, trade and investment relations between South Africa and China.

South African businesses are urged to take advantage of the new economic opportunities that our relationship with China offers. Last week's adoption of the China-South Africa 5-10 Year Framework on Cooperation entrenches implementation of the agreements entered into since the conclusion of the Beijing Declaration in 2010 and expands on the Comprehensive Strategic Partnership.

1.2. Cabinet lauds the Department of Basic Education, Provincial Education Departments, principals, teachers and learners for their perseverance as we conclude another busy academic year.

The Minister of Basic Education Angie Motshekga will announce the outcome of the 2014 National Senior Certificate (NSC) examinations on 5 January 2015 with results being released to candidates on 6 January 2015.

Cabinet encourages learners who qualify for higher education studies to explore all available opportunities. Those learners who have not yet been accepted at an institution of higher learning at the time of the release of the NSC results should make use of the Central Applications Clearing House (CACH) service in January and February 2015. This service makes a register of potential candidates that meet institutions' minimum admission requirements to all Post-School Education and Training (PSET) institutions in South Africa.

The service also offers career advice and assists prospective applicants with possible alternatives. The service can be accessed through the call centre on: 0800 356 635 or through an SMS with name and identity number to 49200.

1.3. Cabinet welcomes the release of the 2014 Annual National Assessments (ANA) last week which shows an upward trend in performance of all grades except Grade 9. The ANA remain a powerful tool to assess the health of our education system and where immediate interventions are required as identified for the Grade nine learners in mathematics.

1.4. Cabinet thanks all South Africans, civil society and the media for their participation in this year's 16 Days of Activism campaign under the theme: 'Count me in: Together moving a non-violent South Africa forward'.

The call to all South Africans to 'Count me in' seeks to ensure the longevity of established partnerships by translating our activism during this period into everyday actions throughout the year so that we can eliminate the scourge of violence against women and children.

1.5. South Africa will mark National Reconciliation Day on 16 December 2014 under the theme: 'Social Cohesion, Reconciliation and National Unity in the 20 Years of Democracy' at the Ncome Museum in the uMzinyathi District Municipality, KwaZulu-Natal.

1.6. Cabinet conveys its gratitude to all South Africans and the international community that commemorated the anniversary of the passing of the country's first democratically elected President Nelson Mandela on 5 December 2014.

We must stay true to Madiba's legacy by continuing his unwavering dedication to democracy, selflessness, reconciliation, service to humanity and striving for a better life for all. It is through these values and dedication to the service of humanity that we remain inspired to become a united and prosperous nation.

2 Key Cabinet decisions.

2.1. Cabinet approved that the 2013/14 performance report of the Research and Development (R&D) Tax Incentive programme be tabled in Parliament.

Government offers R&D tax incentive in terms of Section 11D of the Income Tax Act, 1962 in order to encourage private sector R&D activities. South Africa offers 150% deduction on approved operational expenditure incurred on R&D activities and is recognized to be amongst the countries that offer the more generous tax incentive for R&D.

The incentive which has been in place since November 2006 saw 810 companies participating, as at February 2014. From 2005/06 to 2012/13 companies reported an estimated R44.1 billion R&D expenditure, and National Treasury estimated that just over R3,2 billion was claimed in R&D tax deduction from SARS. 2013/14 saw 44.2% Small and Medium Enterprises (SMEs companies with an annual turnover of less than R40 million) participating in the R&D tax incentive.

2.2. Cabinet was updated on progress made with the MeerKAT project, the collateral benefits that have accrued to the local communities and South Africa, and the international negotiations underway relating to the hosting of the SKA project.

The construction of the MeerKAT telescope – the pathfinder to the eventual SKA – is progressing well, with significant opportunities for the local South African industry. A number of cutting-edge technology developments are being driven by South Africa, especially in the area of high performance computing. Local communities in the Northern

Cape have also benefitted through the many social investment partnerships.

On the international front, the hosting agreement, the funding model for the SKA and the procurement policy are being discussed and finalised. Negotiations are also continuing on the establishment of an inter-governmental treaty organisation.

Cabinet approved a joint task team between the Ministers of Science and Technology and Higher Education and Training to identify the required human resources as well as to ensure that academic and other research institutions are aligned to the development and needs of the MeerKAT, SKA and similar projects.

Cabinet also approved collaboration between the Ministers of Science and Technology and Small Business Development should opportunities arise for empowering and capacitating Small and Medium Enterprises in light of the potential economic impact.

2.3. Cabinet approved for Statistics South Africa to conduct stakeholder consultations in preparation for the amendment of the Statistics Act, Act 6 of 1999.

Consultations between the organs of state and other relevant organs are necessary to facilitate the development of the series of data collections needed for the National Development Plan.

2.4. Cabinet was briefed on the compliance of Members of the Senior Management Service (SMS) with the Financial Disclosure Framework, which is monitored by Parliament.

Of the 5 425 SMS members in national departments who were required to submit their financial disclosures forms for the 2012/13 financial year, the Public Service Commission (PSC) received 4 413 (81%) by the due date of 31 May 2013.

Cabinet highlights that a culture of zero tolerance for non-compliance should be entrenched in the day to day functioning of the State.

2.5. Cabinet was briefed on the 2013/2014 audit outcomes of the Public Finance Management Act (PFMA) compliant institutions and on the tabling status of their annual reports and financial statements.

There has been an improvement in compliance by institutions on the timeous tabling of their 2013/2014 annual reports and financial statements. For the year under review 417 PFMA compliant institutions were required to table their annual reports and financial statements by 30 September 2014, 379 institutions (91%) met the deadline which is a 7% improvement from the 353 in the previous year.

Cabinet approved that Accounting Officers and Accounting Authorities submit to their relevant Executive Authorities corrective steps that would be taken to address concerns raised in their audit reports.

Cabinet supports the need for Executive Authorities to monitor the progress made to address concerns raised in Audit Reports and to receive regular updates thereon.

2.6. Cabinet approved a range of steps to reform the Supply Chain management (SCM) system. These include: (a) supply chain management performance criteria to be included in the performance agreements of Accounting Officers as from 1 April 2015; (b) Accounting Officers to conduct a capacity review of SCM staff and to take remedial action where required; (c) Accounting Officers to brief Executive Authorities quarterly on the SCM performance in their department, municipalities or entities.

Cabinet also approved for the Office of the Chief Procurement Officer to accelerate the SCM reform by modernising the function in the public service. The Office of the Chief Procurement Officer has embarked on a strategy to simplify, standardise and automate procurement.

The National Treasury will conduct consultations with the National School of Government

with a view to develop a curriculum on training and standardisation of professional qualifications.

2.7. Cabinet approved the submission of South Africa's Periodic Report (2002-2013) on the United Nations (UN) International Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment to the UN Human Rights Council.

Compilation and submission of this report demonstrates governments' commitment to the global effort to protect and promote human rights. South Africa fully complies with the Convention in that it has criminalised torture, and Courts may now prosecute torture in terms of statute and not common law.

The Report provides South Africa with an opportunity to assess its compliance or lack thereof with international obligations. The fight against torture is in line with South Africa's key priority of ensuring safer communities which is in line with the National Development Plan.

2.8. Cabinet noted the draft White Paper on the Police. The 2014 White Paper on Police emanates from a review of the 1998 White paper on Safety and Security. The review reassessed how the practice and understanding of crime prevention has developed in South Africa post 1994.

The White Paper responds to the National Development Plan Vision 2030 by articulating the need and framework for a professional police service that is skilled, accountable and community-centered. In addition the police service is required to operate in an integrated manner within the Criminal Justice System in executing its constitutional mandate.

2.9. Cabinet approved that the draft Youth Policy 2014-2019 be made available for public comment. The draft policy is a progression from the first 2009-2014 Youth Policy. Youth development is at the core of South Africa's development agenda; the National Development Plan has a youth lens aimed at nurturing a demographic dividend.

The 2014-2019 policy ensures that the youth dividend is realised. Implementation of the policy will intentionally enhance the capabilities of young people to transform the economy and society by addressing their needs for holistic development, particularly those outside the social, political and economic mainstream.

2.10. Cabinet also approved publication of the draft National Disability Rights Policy in the Government Gazette for public comment. This serves to: update the White Paper on an Integrated National Disability Strategy, integrates both the obligations in the United Nations Convention on the Rights of Persons with Disabilities and the provisions of the Continental Plan of Action for the African Decade of Persons with Disabilities with South African legislation, policy frameworks and the National Development Plan 2030.

2.11. Cabinet approved the proposed vision for the Border Management Agency of South Africa as a basis for the business case and enabling legislation as work in progress.

Cabinet also approved that a pilot site be established and a proper legal framework be put in place.

A two-phased approach will be used to establish the Agency:

- Transition Phase (January 2015-December 2016) –used to start legislative drafting and its enactment and to make government initiatives in the borderline environment more visible. There will also be a continuation with current collaborative efforts at Ports of Entry under formalised multiparty agreements to strengthen the Border Control Operational Coordinating Committee's management authority.

- Agency Phase (January 2017 and beyond) – entails implementation of legislation to operationalize the Agency as a Public Entity in the Ports of Entry environment and to provide for the expansion of its mandate and functions to include the air, land (Border Guard) and maritime (Coast Guard) border environment.

The experiences of the transitional phase (including the pilot) will better inform the final proposals.

2.15 Cabinet approved the relocation of the lead agency role for the Border Control Operational Coordinating Committee from the South African Revenue Service to the Department of Home Affairs.

2.16 Cabinet was briefed on the results of a pilot audit on transformation in a sample of National Sport Federations. This provided the extent to which sport bodies in South Africa have transformed over the last two decades since the targets for transformation in sport were set. The results will be used by the Department of Sport and Recreation to provide focused support to those federations that need administrative support.

The purpose of the study was to establish a draft framework for evaluating the transformation in the different dimensions of the transformation charter; performance levels, demographics, access, skills and capabilities, governance, employment equity, and preferential procurement. Based on the lessons learnt from the first pilot study, the second phase of the audit began in March 2014. The scope of this audit covers all 16 priority sport codes.

2.17 Cabinet declared an annual National Recreation Day on the first Friday of October each year. This will provide an opportunity to all South Africans to actively be involved by participating in recreation activities that will improve their health and well-being. A healthy and active citizenry is a key factor in realising the National Development Plan. To fully exploit the potential of recreation, the National Recreation Day needs solidarity, joint activities and cross-sectoral initiatives. To this end Cabinet also approved the establishment of a National Steering Committee.

3. Bills

3.1. Cabinet approved publication of the second draft of the Financial Sector Regulation Bill and its submission to Parliament as well as the release of the Draft Market Conduct Policy Framework for public comment. The draft framework will enable the public to be better informed when commenting on the Bill.

3.1.1. The Second draft Financial Sector Regulation Bill, 2014 follows comments received on the first draft which was approved by Cabinet in December 2013. The aim of the Bill is to make the financial sector safer by implementing the ‘twin peaks’ regulatory system, which is a comprehensive and complete system for regulating the financial sector, prioritising the customer and protecting their funds.

The ‘twin peaks’ approach to financial regulation underpins a comprehensive regulatory system, with two aims: (a) to strengthen the financial stability and soundness of financial institutions by creating a dedicated ‘Prudential Authority’ (within the South African Reserve Bank) and (b) to protect financial customers and ensure that they are treated fairly by financial institutions by creating a dedicated Financial Sector Conduct Authority, which also supervises how financial services conduct their business.

The Bill will provide the Financial Sector Conduct Authority and the Prudential Authority’ jurisdiction over all financial institutions and provide them with a range of supervisory tools to fulfil their mandates.

This goes beyond two regulators as it sets up an underlying and harmonised system of licensing, supervision, enforcement, customer complaints (including ombuds), appeal mechanism (tribunal) and consumer advice and education.

3.1.2. The Draft Market Conduct Policy Framework drives fair treatment of customers in the financial sector, which is a key lesson for South Africa from the 2008 Global Financial Crisis. While South Africa's financial sector has proven to be resilient, government has recognised that the sector could be delivering better outcomes for financial customers and the economy.

There have been a number of well-known market conduct failings in South Africa's financial sector, and government has intervened to address these. However, the persistence of systematic market conduct challenges has highlighted the need for a more comprehensive and holistic approach to addressing the problem of poor conduct across the financial sector in its entirety.

3.2. Cabinet approved submission of the Plant Breeders Rights Amendment Bill to Parliament. The Bill amends the Plant Breeders' Rights Act, 15 of 1976. The Bill aims to strengthen the protection of intellectual property rights relevant to new varieties of plants. Such protection contributes to economic growth as it has a positive impact on the competitiveness of South Africa's agricultural sector.

Some of the key amendment proposals include: extending protection to all plant genera and species; addressing matters of infringement of plant breeders' rights through the appropriate fines and penalties and defining the limits and the beneficiaries in the application of farmer's privilege; and empowering the Minister to establish a Plant Breeders' Rights Advisory Committee to advise the Registrar on matters related to plant variety protection.

3.3. Cabinet approved the submission of the Plant Improvement Amendment Bill to Parliament.

Plant improvement in South Africa is regulated by the Plant Improvement Act, 1976 (Act No. 53 of 1976) which has been amended a few times, the last being in 1996. The amendments align the scope and provisions of the Act to the Constitution and other related legislation in the agricultural sector.

The Bill enhances sustainable crop production in South Africa by regulating the quality of plants and seed.

The significance and role of plant improvement legislation lies in recognising the importance of quality plant propagating material to support sustainable production as well as participation in the global market by setting quality standards for plants and seeds and the types of business dealing with plants and seed.

3.4. Cabinet approved submission of the Performing Animals Protection Amendment Bill to Parliament.

The Bill amends section 2 and 3 of the Performing Animals Protection Act 1935 (Act No. 24 of 1935) which were declared unconstitutional insofar as they relate to Magistrates deciding on and issuing licenses to persons intending to train and exhibit animals and to persons who use dogs for safeguarding.

The Bill proposes to remedy the defect identified by the Constitutional Court by transferring the functions of issuing of licenses for performing animals from the Judiciary to the Executive.

This is within the context of the Animal Protection Act, 1962 (Act No. 71 of 1962) which consolidates the laws relating to the prevention of cruelty to animals.

4. Cabinet's Position on Current Issues

4.1. Cabinet calls on all South Africans to join the fight against Ebola by participating in the African Union SMS resource mobilisation campaign. The African Union Commission has so far raised more than 20 million dollars in donations through its hashtag "#AfricaAgainstEbola" campaign, but more is still needed. By sending a 'Stop Ebola' SMS to 40797 South Africans will not only be donating R10.00 but will also fuel the hope and determination that Ebola can and will be stopped.

4.2. Cabinet wishes all a restful, peaceful year-end holiday and urges South Africans to put Ubuntu/Botho in practice by assisting those in our communities that are unable to support themselves and to show compassion as a nation that cares for, and respects each other. All parents to take care of their children during this period. Victims of abuse must speak out, report abuse and contact the 24 hour command centre 0800 428 428.

Cabinet calls on all South Africans to take every precaution during the upcoming festive season, stay away from the abuse of alcohol and drugs, and to enjoy the holiday period in a safe and responsible manner. All South Africans have a part to play in curbing incidents of crime, accidents and abuse, which tend to increase during this period.

Cabinet reiterates that traffic officials will have a zero tolerance approach to lawlessness on our roads during this festive season. We urge all road users to adhere to the speed limit; ensure vehicles are roadworthy; not to drive intoxicated and to wear safety belts. Pedestrians are urged to ensure that when using the roads they do not endanger their well-being or that of motorists.

Government will play its part by leading a range of campaigns such as Healthy Lifestyles and Arrive Alive in a bid to partner with communities to promote responsible and safe behaviour.

4.3. Cabinet is saddened by the tragic killing of South African teacher Pierre Korkie who was in Yemen as well as that of Werner Groenewald, and his two children, Rode and Jean-Pierre who died in an attack in Afghanistan. Cabinet conveys its condolences to their families and friends.

4.5 The work to identify the remaining 11 South Africans who died tragically in the Nigerian building collapse continues and government is intensifying efforts to ensure their remains are brought home without undue delay.

4.6 Cabinet conveys its condolences to the Gigaba family on the loss of their father, Reverend Jabulani Gigaba. He was the father to the Minister of Home Affairs, Mr Malusi Gigaba. Cabinet also conveys its condolences to the family and friends of Sisi Mabe, who was the Speaker of the Free State Legislature.

4.7 Cabinet congratulates the national soccer team Bafana Bafana and coach Ephraim "Shakes" Mashaba on qualifying for the Africa Cup of Nation 2015 in Equatorial Guinea which begins on 17 January 2015, and calls on all South Africans to support the national team as they fly our flag high.

4.8 Cabinet noted the launch of the Human Settlements Youth Brigade on 1-2 December 2014 by the Departments of Human Settlements, Small Business Development, and the National Youth Development Agency (NYDA) at the National Human Settlements Youth Summit. The Summit deliberated on the empowerment programmes of the departments targeting young people and how they can participate in the delivery of houses. At the end of the Summit all stakeholders signed the National Human Settlements Youth Accord which

serves as a statement of intent towards creating a holistic and integrated approach to human settlements delivery through youth mobilisation, development and participation in a form of National Human Settlements Youth Brigades. The intention is to mobilise young people behind the target of 1.5 million housing opportunities and aims to recruit and train about 10 000 Youth Brigades in the next five years.

5. Upcoming events

5.1 On 12 December 2014, the President of South Sudan, His Excellency Salva Kiir Mayardit will pay an official visit to South Africa where he will be hosted by President Jacob Zuma in Cape Town.

6. Appointments

Cabinet approved the following appointments subject to the verification of qualifications and the relevant clearance:

6.1. To the Council for Scientific and Industrial Research Board:

- a) Dr Ramatsemela Masango (Chairperson);
- b) Prof Thokozani Majozi;
- c) Prof Mamokgethi Phakeng;
- d) Dr Philip Hugh Goyns;
- e) Dr Ayanda Noah;
- f) Dr Antonio Llobell;
- g) Ms Phindile Baleni;
- h) Adv Ghandi Badela;
- i) Mrs Mokgadi Maseko; and
- j) Mr Joel Netshitenzhe.

6.2. To the Air Services Licensing Council:

- a) Dr. Malindi Neluheni (Chairperson);
- b) Ms. Kenosi Selane (Vice Chairperson);
- c) Adv. Frans Johannes van der Westhuizen;
- d) Mr. Bheki Innocent Dladla; and
- e) Ms. Sibongile Rejoyce Sambo.

6.3. To the International Air Services Council:

- a) Adv. Phetole Patrick Sekhule (Chairperson);
- b) Dr. Xolani David Gwala (Vice-Chairperson);
- c) Ms. Deshnee Govender;
- d) Adv. Lufuno Tokyo Nevondwe; and
- e) Ms Fulufhelo Velda Mphuti

6.4. To the Board of the Land Bank and Agricultural Development Bank.

- a) Prof Abdus Salam Mohammad Karaan (re-appointment);
- b) Ms Susan Ann Lund (re-appointment);
- c) Mr Mabothe Arthur Moloto (Chairperson);
- d) Ms Njabulo Zwane; and
- e) Ms Dudu Hlatshwayo.

6.5. To the Transnet SOC Ltd Board (Non-Executive Directors):

- a) Ms Linda Carol Mabaso (Chairperson);
- b) Mr Stanley David Shane;
- c) Mr Mogokare Richard Seleke;
- d) Dr Gideon Mahlalela;
- e) Ms Potso Elizabeth Bridgette Mathekga;

- f) Ms Zainul Abedeen Nagdee;
- g) Mr Vusi Matthew Nkonyane;
- h) Mr Peter George Williams;
- i) Mr Brett Gerard Stagman;
- j) Ms Yasmin Forbes (reappointment); and
- k) Ms Nazmeera Moola (reappointment).

6.6. To the Eskom SOC Ltd Board (Non-Executive Directors):

- a) Mr Zola Andile Tsotsi (reappointment and Chairperson);
- b) Ms Chwayita Mabude (reappointment);
- c) Mr Norman Tinyiko Baloyi;
- d) Dr Pathmanathan Naidoo;
- e) Ms Venete Jarlene Klein;
- f) Ms Nazia Carrim;
- g) Mr Romeo Kumalo;
- h) Mr Mark Vivian Pamensky;
- i) Mr Zethembe Wilfred Khoza;
- j) Dr Baldwin Sipho Ngubane; and
- k) Ms Devapushpum Viroshini Naidoo.

6.7. Geoff Qhena has been re-appointed as the Chief Executive Officer for the Industrial Development Corporation. The rest of the IDC Board Members will be announced by the Minister Patal in the next few days.

6.8 Public Service / Other appointments:

- b) Appointment of the Chief Executive Officer of the Land Bank, Mr TP Nchocho with effect from 1 January 2015 on a five year contract to 31 December 2019.
- c) Appointment of the Chief Executive Officer of the Public Investment Corporation (PIC), Dr Daniel Mmushi Matjila with immediate effect, for a period of five years until 30 November 2019.
- d) Reappointment of Mr Murray Michell, the Director of the Financial Intelligence Centre (FIC) for a further period of two years, from 1 January 2015 to 31 December 2016.
- e) Extension of the contract of the Director-General of the Department of Home Affairs, Mr Mkuseli Apleni for a further period of five years, from 1 April 2015 to 31 March 2020.
- f) Appointment of the Chief Operations Officer of the Department of Rural Development and Land Reform, Mr Marks Charles Thibela.
- g) Appointment of the Chief Financial Officer of the Department of Rural Development and Land Reform, Ms Rendani Sadiki.

Conclusion

Cabinet would like to wish everyone happy holidays and let's come back energized in 2015 collectively ensure we deliver on the mandate of the government. Together, we move South Africa forward.

Enquiries:

Mr Donald Liphoko

Contact: 082 901 0766

Issued by: Department of Communications (DoC)





Media Room

Eskom Board commissions independent enquiry

Eskom Board commissions independent enquiry

2015/03/12

Thursday, 12 March 2015: The Eskom Board has today resolved to commission an independent enquiry on the current status of the business and its challenges. The Board, in its quest to address the current challenges faced by Eskom, has deemed it prudent to seek an independent view on the status of, among other things:

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Cash flow challenges

"To ensure that this process is as transparent and uninhibited as possible, the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this enquiry," said Eskom Chairman, Mr Zola Tsotsi,

The other executives who have been asked to step down while the enquiry is underway are Ms Tsholofelo Molefe (Finance Director), Mr Dan Marokane (Group Capital) and Mr Matshela Koko (Commercial and Technology). One of the current non-executive Board members, Mr Zethembe Khoza, has been asked to assume the position of interim Chief Executive. Mr Khoza will be supported by Ms Nonkululeko Veleti (Finance), Mr Abram Masango (Group Capital) and Mr Edwin Mabelane (Commercial and Technology).

"All these senior executives have been with the organisation a long time and we are confident that they will maintain business continuity during this period," Mr Tsotsi said.

The Board also resolved that the independent enquiry be conducted by external parties, who will be selected within the next week. They will be given unfettered rights of access to all information deemed necessary for this probe to be successful.

The Board has emphasized that this process is a critical step towards ensuring that the situation facing Eskom improves as expeditiously as possible. "To that end, we would like to assure our customers and employees that this was done in the best interest of all our stakeholders, and we hope to come out of this with a better grasp of all the challenges facing the business, and most importantly, with solutions", added Mr Tsotsi.

END

More on the interim appointees

Ms Nonkululeko Veleti

Ms Nonkululeko Veleti is a registered Chartered Accountant and has been with the organisation for almost 14 years working in the Finance Department.

Abram Masango

Mr Abram Masango, a qualified engineer, has been with Eskom for over 18 years and is currently Project Director at Kusile. He brings to the role many years of valuable experience, having occupied various senior positions within the organisation.

Edwin Mabelane

Mr Edwin Mabelane has been with the organisation for 21 years. He is a qualified engineer has been a very senior executive before this appointment. He brings into the role many years of valuable experience.

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Parliament on suspension of Eskom CEO Mr Tshediso Matona and senior executives

13 Mar 2015

The Chairperson of the Portfolio Committee of Public Enterprises, Ms Dipuo Letsatsi-Duba, has expressed concern and shock over the suspensions of Eskom CEO Mr Tshediso Matona and three other senior executives by the power utility's Board.

Ms Letsatsi-Duba said: "We register our concern regarding the stability and governance of the power utility, considering the current energy challenges facing the country." She added: "The Committee needs to engage the Minister and Board to get a comprehensive briefing about the immediate suspension and the investigation that will be conducted on the executives that have been suspended."

She concluded: "As Eskom's oversight body, it's important to be briefed on the latest developments on what is happening with the power utility and not to be informed through media reports."

For media enquiries or interviews with the Chairperson, please contact:

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E-mail: ylandu@parliament.gov.za**Issued by:** [Parliament of South Africa](#)**More on:** [Energy](#)**More from:** [Parliament of South Africa](#)[EXPLORE GOV.ZA](#)[Statements](#)[Documents](#)[Events](#)[Key issues](#)

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**MINUTES OF THE ESKOM BOARD MEETING AND WORKSHOP B14-2014/15 HELD ON 9
MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 10H00**

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Board Chairman
Mr NT Baloyi	Member
Ms N Carrim	Member (Tele-conference)
Mr Z W Khoza	Member
Mr R Kumalo	Member
Ms C Mabude	Member
Mr T Matona	Chief Executive
Ms T Molefe	Finance Director
Dr P Naidoo	Member
Ms V Naidoo	Member
Dr BS Ngubane	Member (Tele-conference)
Mr MV Pamensky	Member (Tele-conference)

APOLOGIES

Ms V J Klein	Member
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BY INVITATION

Mr F Ndou	Acting Divisional Executive: Office of the Chairman
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IN ATTENDANCE

Mr L Dlamini	Senior General Manager: Office of the Chairman
Mr M Phukubje	Company Secretary
Mr N Tsholanku	Senior General Manager: Regulation and Legal
Mr W Venner	Committee Secretary

1. OPENING AND WELCOME

The Chairman welcomed members to the meeting. He apologised for the late notice of the meeting

2. APOLOGIES

There were no apologies noted.

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3. QUORUM

A quorum being present, the Chairman declared the meeting duly constituted.

4. DECLARATIONS OF INTEREST

There were no declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

The agenda was approved.

7. STRATEGIC ISSUES

7.1 External and Independent Enquiry

A Memorandum detailing the current status of events around Eskom was tabled for information, details of which had been circulated to members. The memorandum included resolutions around the establishment of an External and Independent Board of Enquiry for Eskom, at the request of the Presidency.

The Chairman reported that the Presidency had expressed a concern that the impact of Eskom and power on the country was being understated. In this regard it was felt that the Board had to be certain that it received accurate information from management for all issues and initiatives. Once the Board had the information it would have to make decisive resolutions.

He had been requested to request the Board to authorise and mandate an independent, external enquiry to establish the facts of the current difficulties. This enquiry would have to be unfettered by management and the Board and other policy stakeholders. It must be seen to be credible and objective and have a mandate to be penetrating and unhindered.

The Chairman took members through each of the resolutions proposed as follows:

1. "That this Board resolves that there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors. Ordinarily notice of at least 7 days is required. Due to these exceptional circumstances (recorded in the memorandum) this Board resolves to accept short notice and to receive and consider the notice and resolutions of this meeting.
2. That this Board resolves that an external and independent enquiry be set up to investigate and determine the facts relating to the current technical, commercial and

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structural status and any acts and/or omissions that have contributed to the current deficiency of generating and distribution capacity of Eskom.

3. That the Board resolves to appoint a Board subcommittee comprising Zola Tsotsi, Chairperson of the Board, Ms Chwayita Mabude, Chairperson of Audit and Risk Committee and Zethembe Khoza, Chairperson of People and Governance Committee, mandated with delegated authority of the Board to determine the terms of reference of the enquiry; the selection, mandating and contracting of the independent investigators; and the oversight of the enquiry. The subcommittee shall have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the unfettered fulfilment of this mandate, as the board itself would have such power and authority, and further, without limitation, to ensure that the environment within the Company does not hinder or create a perception of hindering the enquiry and to take all such necessary steps to ensure such.
4. That the Board authorises the Chairperson in consultation with the Minister and the Minister of Finance to approve expenditure sufficient and necessary to fund this enquiry.
5. That this enquiry shall be required to present its final report to the Board, the Minister and the Presidency no later than the 30th June 2015.
6. That the subcommittee shall have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary given the target to complete the investigation within 3 months (urgency) and to appoint such persons or entities to conduct the enquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have any effect on the enquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations."

It was recommended that Resolution 4 should refer to the Finance Director and not the Minister of Finance. The Chairman reported that an independent resource had been identified already by the Presidency for Resolution 6. He reported further that the Presidency had done all the legal and governance work to facilitate this resolution and he had a document in that regard.

A member stated that he was not comfortable with making major decisions based only on a two page document and there had been no opportunity to discuss the issue in an In-committee session. He was also against approving resolution 6. Furthermore the Board had not had an opportunity to discuss the entire issue in an in-committee session or discuss the policies around procurement and tenders. The Board was being asked to approve the implementation of a sub-committee with wide ranging powers and he felt that he could not agree with this request.

Another member stated that he was concerned that this enquiry would take 3 months and would also take up time from both Board and management which would deviate the focus from their normal duties. This may also result in causing initiatives that were on track no

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longer being so because of the deviation in focus. He stated further that the Board had received a significant amount of information from management. One positive point to note was that the CE and FD had not been long in their positions and therefore their participation had been very positive.

A member stated that the Board required facts but to date had not had a proper Board meeting. In this regard the Board should make a call but if the shareholder made the decision around this committee, he was comfortable. However then it would not be necessary for the Board to make a decision thereafter. He also stated that Board would have to understand how this would affect the critical issues between the Board and the War Room, while at the same time the Board would be dealing with load shedding. He was therefore of the same opinion as Dr Ngubane that he could not approve the resolutions.

The FD stated that it would be necessary to unpack the scope of work before implementing the sub-committee. It would also mean having to look for cash to pay for the sub-committee as well as justify the funding. The instruction around funding would have to be given in writing in order to protect the Board.

A member was of the opinion that this should have been a directive to the Board from the Presidency or the DPE. In this regard the resolution should state that the enquiry was a request from the Presidency.

Another member stated that the Board should meet with the Minister of Public Enterprises ("Minister of PE") to understand what her expectations were from this enquiry. It was agreed further that clarity was required as to whether the Board would continue with its normal duties while the enquiry was underway, as to date no reason had been given as to why the Board meeting of 26 February 2015 had been cancelled by the Minister of PE. Clarity was also required in respect of the Board's obligations to the War Room.

It was reported that the Audit and Risk Committee had emphasised that the Board needed to review the sitting process of the War Room as there was no alliance or alignment between the Board and the War Room. Members wanted to ascertain the Shareholder's view around this issue because at present the Board had still not held a Board meeting and would need to understand the scope of work and how the committee would function. A concern was raised that the committee could usurp the Board's powers.

It was noted further that the War Room had been established as a result of a Cabinet decision and answered to Cabinet and had the authority to implement solutions to the electricity crisis. Therefore there was some confusion as to what was expected out of this committee as it would also report to Cabinet. Furthermore the War Room also had a plan to implement a Board of enquiry to look at the maintenance of generation plant. It was noted further that deviations from procurement processes were allowable when warranted and justifiable. But it would be necessary to understand why the Presidency required this deviation for this committee.

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The Chairman stated that in regard to the nature of what the Board was being requested to approve, it would be prudent to expect a direct communication from the Shareholder around this issue in writing. Therefore the Chairman undertook to discuss the feelings of members that the request for the establishment of an External and Independent Board of Enquiry for Eskom should be formalised by the Shareholder either in writing or at a formal meeting. Once this had been formalised the Board would decide how it would be implemented. It was agreed further that the Board was supportive in principal of the request but that there had to be alignment between Board, the War Room and clarity was required around the Terms of Reference, the scope, objective and expected achievement of the Board of Enquiry. This would inform how the Board would respond.

The Chairman reminded members that at the Board induction it had been recommended that the Board should meet with the Minister of PE more often. He noted further that he was also concerned that the Board meeting of 26 February 2015 had been cancelled and still needed to take place. A member stated that Board committee meetings were proceeding but without a formal Board meeting the committees were effectively operating without a mandate.

The Company Secretary advised members of the statutory requirement around the Corporate Plan. An extension for submission had been requested for submission of the Corporate Plan from the Shareholder but there was uncertainty as to whether this would be approved by government. The FD noted further that the risk around the borrowing programme had to be noted by the Board before it could be submitted to the Shareholder for further submission to National Treasury for approval and this was required before 1 April 2015.

The Chairman reported that a previous letter to the Minister of PE had stated that following a request by members that more frequent meetings should be held between the Board and the Minister of PE. It was recommended that another letter be sent advising of the deadlines around regulatory submissions to the Shareholder and National Treasury.

After some discussion it was agreed that the Board would advise the Minister of PE that they wanted to proceed with the formal Board meeting and would request that it not be cancelled by the Shareholder.

Resolved that:

1. the request for the establishment of an External and Independent Board of Enquiry for Eskom is noted;
2. the Board should engage with the Minister of Public Enterprises around the following issues before the establishment of the Board of Enquiry;
 - 2.1. obtain clarity around the Terms of Reference, the scope, objective and expected achievement of the Board of Enquiry;

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- 2.2. the Resolution should refer to the Finance Director and not the Minister of Finance around approval of expenditure sufficient and necessary to fund this enquiry;
- 2.3. obtain clarity as to whether the Board would continue with its normal duties while the enquiry was underway;
- 2.4. obtain clarity in respect of the Board's obligations to the War Room;
- 2.5. ascertain the Shareholder's view around the sitting process of the War Room

9. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 11h15.


Signed by Dr. Ngubane for purposes of noting the meeting's proceedings

CHAIRMAN:



DATE:

18/11/16

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**MINUTES OF THE ESKOM BOARD IN-COMMITTEE MEETING HELD ON 11 MARCH 2015 AT
THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 12H00**

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Chairman of the Board
Dr B Ngubane	Member
Ms V Naidoo	Member
Ms N Carrim	Member (Left early)
Ms V Klein	Member
Ms C Mabude	Member
Mr Z Khoza	Member
Mr N Baloyi	Member

APOLOGIES

None

IN ATTENDANCE

Mr M Phukubje	Company Secretary
Mr N Tsholanku	GM: Legal & Regulatory
Mr N Linnell	External Consultant

1. OPENING AND WELCOME

The Chairman opened the meeting and welcomed all those present.

2. APOLOGIES

Apologies as indicated above were noted.

3. QUORUM

A quorum being present, the Chairman declared the meeting duly constituted.

4. DECLARATIONS OF INTEREST

There were no other declarations of interest pertaining to items on the Agenda.

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5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

There was only one item on the agenda, which was to discuss the issues which arose at the meeting with the Minister of Public Enterprises.

7.1 BOARD IN-COMMITTEE SESSION

A number of issues were raised in the In Committee session, being as follows:

- It was proposed that the P& G Committee initiate a process and that the ARC be responsible for the ultimate forensic element of the inquiry;
- It was agreed, confirmed and resolved that the ARC be the custodian of the process and to engage with other committees where it was necessary to do so.
- The Chairman highlighted the view that it may be necessary for employees whose areas are implicated to be requested to step aside whilst the inquiry was proceeding. A question was asked about what effect this would have on the operations of the business. Members also discussed the possible impact on continuity this approach would have on the company's business activities.
- It was noted that there had been a trust deficit and that people who may be to blame would not want the truth to be found and findings to be made. The Chairman outlined a number of misdemeanours allegedly committed by some executives. It was pointed out that these issues needed to be investigated forensically but that the executives who are responsible for those areas not be around during the inquiry.
- A member pointed out that a fact finding exercise should be undertaken before actual suspensions are implemented and this was to avoid acting against possibly innocent executives. If Eskom acts hastily then it will find itself in the spot and having to fight cases in the Labour Court, so the Board needed to exercise great caution.
- The executives identified initially as being likely to be requested to step aside are the GE: Commercial and Technology, GE: Group Capital, FD and the CE. It was pointed out that it would be advisable to have sub-committees discussing the matters first and then ensuring that proper processes were followed. The Chairman reported that a lot of groundwork has been done and a report can be given to Board members at a later stage. The most important thing is that the inquiry is done and that it should be done soon. A Member pointed out that it would be worrisome, especially in the market, for Eskom to suspend the FD and the CE at the same time. That would not be ideal. It was stated that the FD had an issue around her as she had allegedly met with tenderers during a tender process.

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- It was noted that the inquiry is not about individuals but rather was intended to focus on areas of responsibility. That was the rationale for letting those responsible for the said areas go on leave for the duration of the inquiry.
- It was proposed that the relevant Board Committees deliberate on the matters and issues and then revert with recommendations to the Board.
- It was then resolved that the inquiry should proceed, that the executives concerned should be put on leave and that the ARC and the P&G should work on the ToRs.
- The P&G Committee was then mandated to look into who should act in the absence of the executives who would be on leave and make the necessary decisions.
- It was agreed that the Corporate Plan and the Borrowing Programme be deferred.
- It was also resolved that management must investigate the issue of the bugging of the Boardroom as well as information leaks and come up with a report to be presented to the Board.

RESOLVED that:

- An inquiry be instituted into the affairs of Eskom and that the duration of the inquiry shall be three months;
- The ARC take custodianship of the inquiry and P&G Committee and other committees assist where necessary and report to the Board. The ARC is mandated to draft the Terms of Reference, with the assistance of the P&G Committee;
- The executives whose areas will be investigated be put on suspension for the duration of the inquiry;
- The Corporate Plan and the Borrowing Programme be deferred until further notice; and
- Management must institute an investigation into the bugging of the Boardroom and report to the Board on their findings and recommendations;

10. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed.

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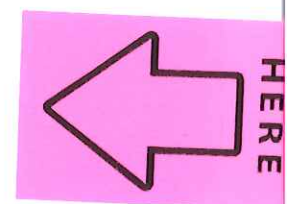
Signed by Dr Ngubane for purposes of noting the meeting's proceedings

CHAIRMAN:



DATE:

15/11/16



"VK8"

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**MINUTES OF THE ESKOM BOARD MEETING WITH MINISTER OF PUBLIC ENTERPRISES
HELD ON 11 MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM
10H00**

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Chairman of the Board
Mr T Matona	Chief Executive
Ms C Mabude	Member
Ms V Naidoo	Member
Ms V Klein	Member
Ms N Carrim	Member
Mr P Naidoo	Member
Mr M Pamensky	Member
Ms T Molefe	Finance Director
Mr N Baloyi	Member
Dr B Ngubane	Member
Mr Z Khoza	Member
Mr R Kumalo	Member

APOLOGIES

None

IN ATTENDANCE

Ms L Brown	Minister of Public Enterprises
Ms M Mokholo	Director-General DPE (Acting)
Mr M Phukubje	Company Secretary

BOARD IN-COMMITTEE SESSION

After introductions and formalities, the Minister raised the issue of the location of a bugging device which was found in the Huvo Nkulu Boardroom at Eskom Megawatt Park. She also noted the fact that no investigation into the matter had been initiated and pointed out that it is a very serious matter over which action should have been taken.

The CE responded by explaining that the matter was being dealt with and that a number of new procedures had been introduced in order to stem the possible repetition of a similar matter. It was standard procedure that the boardroom is "swept" for the existence of recording and transmitting devices a day before a meeting



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as well as a day after the meeting. He further reported that he is still awaiting a report from the service providers about the origins and the exact nature of the device.

The Minister stated that the matter needs to be investigated urgently and that it should be accorded the necessary urgency, which she is not detecting from the actions taken thus far.

(At this point the CE and the FD were excused from the meeting: 10h34)

The Minister continued and stated that she has no right to instruct the Board on any matter regarding the conduct of Eskom's business. She stated further that the meeting is an informal one and then proceeded to note a number of negative developments in the South African economy such as the fall of the Rand, Standard & Poor's two-year review leeway period granted to the country, the growth of the economy at pedestrian rates and the possible effect of a downgrade of the sovereign credit rating.

She also noted that she was aware of the fact that the Board may feel that it has fallen by the wayside given the activities of the War Room. The last War Room engagement had indicated that even information which was provided by Eskom was unreliable, for example, the War Room had been provided with two financial report within the space of a month indicating vastly different financial scenarios for Eskom. One of the reports painted a dire picture and the other indicated that Eskom was profitable and financially healthy.

It was also noted that around February 2015 during the period when the State of the Nation was due to take place, there was a lot of load shedding but that at the moment things appear to be going well in that regard. With regard to the Voluntary Severance Packages, the War Room made it clear that Eskom cannot be allowed to proceed, as this would amount to a serious loss of skills for the company. There was a contradictory article in the newspapers about Eskom intending to retrench over 1000 white engineers. This is not the role of Eskom but it leads to contradictory messages being sent out to the public.

The Board of Eskom knows what would happen in Eskom if it were a private company. It is the wish of the DPE that there should be a forensic enquiry so that there is proper information around the main issues which affect the business of Eskom. It will not be an easy one because both Eskom and the DPE will be attacked about it. It was noted that this is an unusual appeal from a shareholder.

The Minister also expressed her concern about the interest rates which Eskom negotiated and agreed to in the market. There is also the issue of inequality of the coal price purchases, with some companies being paid more than others. There is also the issue of mismanagement of the load shedding process. The issue of the purchase of diesel "on the hoof" is also another concerning matter which requires attention.

It was noted that the country has an obligation to ensure that the economy is shared in a sustainable manner, with the majority of the population also benefitting. Fortunately, it was noted further, the appointment of the Board did not bring about any problems and the process went smoothly.

The Audit and Risk Committee may go out and procure the services of an independent, credible forensic investigator to undertake the inquiry and not someone who has done work before for Eskom or whose independence may be in doubt.

During the discussion phase of the meeting, the following questions were asked by Board members:

- What are the reasons for cancellation of the Board meeting of 26 February 2015?
- The CE has confirmed that there will be an investigation to be conducted in the War Room, Is that still proceeding, in light of the possibility of having another one in Eskom?



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- What can be done about the alignment between Nersa, DPE and DOE in enhancing the efficiencies for Eskom?;
- Can there be an exploration of a possible executive role for non-executive directors as the current model is inadequate in addressing the problems which beset Eskom;
- Is it possible for committee chairpersons to become members of the War Room to allow for a flow of information between the War Room and the Board?
- Is Minister comfortable with the composition of the Board Committees as they currently stand?; and
- The Board would like clarity on the issue of the municipal debt, particularly as it has a statutory responsibility to collect outstanding debts owing to the company.

During the discussion following the questions, it was clarified as follows:

- The Board confirmed that a letter had been sent to the Minister for her consideration regarding the municipal debt and how to address it. The Minister stated that she will look into the contents of the letter and respond. It was explained that in terminating supply to municipalities, various factors would need to be taken into account.
- Executive who are responsible for areas which will be the focus of the investigation must step aside for the duration of the inquiry in order not to impede it;
- The issue of directors' liability may need to be reviewed in light of some of the risks which are coming up e.g. environmental risk;
- With regard to the War Room and the Board subcommittees, the Minister undertook to respond to the queries in a few days' time;
- The Minister raised a concern that the reports on Duvha and Majuba have not been provided and that the DPE is therefore in the dark as to what is happening there.
- With regard to the investigation, it was submitted that it should not be a long drawn-out exercise and a report (even if it is a preliminary one) must be given within 3 months;
- Board representation in the War Room can be done by means of only one member- not all the chairpersons of committees;




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- It was noted that there is a need for a political response to the statement that Eskom is retrenching 1000 white engineers and the Minister undertook to address it;
- On the War Room investigation, it was explained that that is a technical investigation and that there will still need to be a broader one;
- Eskom was urged to engage with its fellow state-owned entities in order to maximize its benefits and efficiencies as very often there will be ways of working together for mutual benefit;
- Cost overruns at Medupi, philosophy maintenance and the reserve margin need to be looked into; and
- It was noted that there is a high likelihood that the Corporate Plan does not address the critical issues confronting Eskom.

10. CLOSURE

There being no further issues to discuss, the meeting closed at 11h44.



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MINUTES OF THE PEOPLE AND GOVERNANCE COMMITTEE MEETING NO 07/2014/15 HELD
IN THE HUVO NKULU BOARDROOM, MEGAWATT PARK ON 11 MARCH 2015 AT 14:58

STRICTLY CONFIDENTIAL

PRESENT

MEMBERS

Mr Z Khoza	Chairman
Ms N Carrim	Board Member (left meeting early)
Ms C Mabude	Member
Dr P Naidoo	Board Member
Ms D Naidoo	Board Member
Mr N Baloyi	Board Member
Mr Z Tsotsi	Member
Ms V Klein	Member

IN ATTENDANCE

Mr N Tsholanku	GM: Legal and Regulatory
Mr M Phukubje	Company Secretary
Mr N Linnell	External Consultant

APOLOGIES

No apologies were noted

1. OPENING AND WELCOME

The Chairman welcomed all members and officials present and declared the meeting open.

2. APOLOGIES

There were no apologies.

3. QUORUM

A quorum being present, the Chairman declared the meeting duly constituted.

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4. DISCUSSION OF ITEMS ARISING FROM BOARD'S DECISION TO INSTITUTE INDEPENDENT INQUIRY

P&G applied their minds to the current impact that the executives would have on the inquiry. The executives identified were:

1. Mr T Matona
2. Ms T Molefe
3. Mr M Koko
4. Mr D Marokane

It was agreed that the Chairman of the Board would lead the discussion and chair the meeting as he was familiar with most of the issue to be discussed. The Chairman started the meeting by confirming that the Board had made the decision for the enquiry to continue.

Mr Linnell introduced himself and gave a brief background of his skills by stating that he was a non-practising attorney who now runs a consulting firm. He is from Cape Town and he understands the environment of SOC's, having performed similar work in other SOC's previously. He proceeded to outline the important elements of carrying out such an inquiry, stating that impartiality was an extremely important aspect of any inquiry. He also stated that it would be important to ensure that service providers with the requisite levels of skill and competency are appointed to undertake the exercise.

The committee agreed that it would appoint a specialist communications advisor in terms of Eskom's procurement process, to ensure that the Board's communications strategy around the inquiry and matters related thereto were managed properly.

Each of the executives were then called into the meeting and notified of the Board's decision. They were also handed suspension letters which were signed by the Chairman of the Board and each of the executives. The purpose of the inquiry was explained, as well as why the Board felt the need for the executive to vacate their position. Each executive was given an opportunity to give reasons why they did not believe the decision to be the best course of business.

Mr T Matona

(No record was kept of this discussion.)

Ms T Molefe

She was advised that the Board had arrived at a decision to institute an inquiry into the affairs of Eskom. The Board had mandated the P&G Committee to implement the Board's mandate. A number of areas would be looked into by the inquiry.

In order for the inquiry to proceed unhindered, it had been decided that executives in whose areas the inquiry will be focusing would be requested to step aside for the duration of the inquiry. It was stated that there is no apportionment of guilt on anyone's part. It was explained further that the committee had decided to put her on precautionary suspension while the inquiry was proceeding. She was requested to make input and she stated that the Board needs to do what it

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believes is in the interests of Eskom but she cannot comment on whether it was right or wrong. She stated that she did not know what transpired during the engagement with the Minister. The letter was then handed to her and she signed it.

Mr M Koko

Mr Koko stepped into the meeting and the Chairman gave him the background of what had happened that morning, including the fact that a decision had been made by the Board to institute an independent fact-finding inquiry into the affairs of Eskom.

The focus of the inquiry was explained and the specific areas of focus outlined to him, these being maintenance, commercial processes, technology inputs and the new build programme as well as finance. The inquiry will focus on these areas and come up with recommendations on how best to improve these. It was explained that the executives leading these areas would be put on precautionary suspension for the duration of the inquiry, which will run for a period of approximately three months.

It had therefore become necessary to give him a notice of suspension and he was advised that he was entitled to give a view on whether the suspension was justified or not. He was then requested to make his input. He confirmed whether he understood the Chairman to be saying that the executives for the areas pointed out must make way for the inquiry to proceed in an unfettered manner and this was confirmed. He then stated that the executive in Eskom responsible for maintenance was Mr Thava Govender and he should be the one sitting before the committee. He asked why then was it him sitting in front of the committee. He also would like to understand for the areas are not being brought to face the committee.

It was explained to him that there were problems in his area and it had been decided to request him to step aside so that there would be an unhindered inquiry into that area. He stated that while he understands and agrees, he still wants to understand why the other executives were not being given the same notices of suspension.

He was told that he should not concern himself with what was happening in the other areas of the business. He then entered into a dialogue with the Chairman and asked whether it meant that those other areas are not areas of concern for the organization. The Chairman explained to him that the committee was addressing him and that it was not for him to concern himself with matters which were not for him to be concerned about. He then stated that he is not different from other executives who were not being requested to step aside and further that he should therefore not be made to step aside.

It was proposed that his concerns and inputs have been noted and he then stated that for reasons of equity, he would like to be treated on an equitable basis like the other executives (such as Dr. Lennon, Mr. Govender and Mr Ntsokolo). Apart from the submissions he had made, he had nothing further to add. It was made clear to him this was not judgment against him personally. He would like to reserve his rights because he does not know where this process will end.

(Mr. Koko was requested to step outside to allow the committee to deliberate)

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Upon his return he was advised that the Board had deliberated and made its decision and that its position had not changed. He was informed that his presence during the inquiry would not be ideal and the committee had decided to give him a notice of suspension. He stated that the nature of the inquiry had nothing to do with maintenance or technology and this was noted. The letter of suspension was then handed to him to read and he wanted to clarify that the period of the inquiry would be three months and this was confirmed. He then signed and accepted the letter.

11. CLOSURE

There being no further matters for discussion the Chairman declared the meeting closed at 16h25.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS


CHAIRMAN

01/12/2017
DATE

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**MINUTES OF THE SPECIAL BOARD IN-COMMITTEE MEETING HELD ON 19 MARCH 2015 IN
THE HUVO-NKULU BOARD ROOM, THIRD FLOOR, MWP**

STRICTLY CONFIDENTIAL

PRESENT:

MEMBERS

Mr Z Tsotsi	Chairman
Dr B Ngubane	Member
Ms C Mabude	Member
Ms V Klein	Member
Ms V Naidoo	Member
Ms N Carrim	Member
Mr R Kumalo	Member
Mr N Baloyi	Member

OFFICIALS

Mr M Phukubje	Company Secretary
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1. OPENING AND WELCOME

The Chairman welcomed all present and declared the meeting open.

2. APOLOGIES

None.

3. QUORUM

A quorum being present, the Chairperson declared the meeting duly constituted.

4. DECLARATION OF INTERESTS

5. SAFETY/EVACUATION

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. CONFIRMATION OF THE AGENDA

The agenda was confirmed as tabled.

- 7.** Chairman reported that he has spoken to the Minister and she indicated that it is unlikely for Eskom to receive any further financial assistance. She said that she will speak to the Acting DG

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and she will sit down with our CFO. She also wanted to know what Eskom will be saying about the downgrade tomorrow and he had responded that he didn't know. It was therefore imperative that the CFO & the Acting DG sit and discuss a joint response.

8. ITEMS FOR INFORMATION

8.1 New Age Contract

Chairman would speak to Ms. Klein who had explained that she would not sign because she was not comfortable with the resolution.

Mr. Baloyi also expressed his concerns to the effect that the Board should choose its items carefully, especially as the organization was in need. The second issue was that of the way in which it was done – processes where not followed properly.

Ms. Mabude said that the principles around how the New Age breakfasts were to be done could be discussed and clarified. It must be recorded that this contract did not follow due process on the basis of the fact that it was a commercial process and that the contract cannot be rescinded by Eskom. There was also a letter of demand and it was not going to be possible for Eskom to get engaged in a litigation.

It was agreed that an early termination clause should form part of all contracts in future.

8.2 Power Purchase Agreements (PPAs) for Short Term Energy procured by Eskom from Independent Power Producers (IPPs) and Municipalities.

It was noted that the round robin resolution for the PPAs for Short Term Energy procured by Eskom from IPPs and Municipalities had been approved by the majority, and Mr. Naidoo recused himself.

8.3 Suspended Executives

With regard to the Letters from suspended executives, including the CE, it was agreed that the position was clear that no charges would be preferred against the suspended executives at this stage. The Legal department was authorized to send the letter that had been prepared in this regard.

The Chairman explained the background as to who Nick Linnell was and that he (the Chairman) had been introduced to him in a meeting with President. Mr Linnell had offered to co-ordinate the work that was supposed to be done. The Chairman stated that he did not offer the Board an opportunity to agree to appoint Mr Linnell and that this had been a mistake on his part and Mr Linnell had probably believed that the proper processes had been complied with and he then proceeded to undertake the work. He had asked whether there were charges which could be brought against the individuals concerned. He was told that he could meet with the complainants and other trade union representatives who then told him a number of things. Then came the Wednesday meeting and he did not inform the Board again as to the issue around the appointment of Mr Linnell. There was no contract for Mr Linnell, and there was no clarity as to who he was acting for. This was not broached with the Board again.

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The Chairman accepted blame for that failure to take the Board, as well as the fact that work that was already being done (e.g. Interviews etc.). The people who were acting in place of the suspended executives were allegedly called into a meeting and knew beforehand that they would be acting. The Board needed to find out how this happened. They were apparently called into a meeting and the acting CE met with them. The problem was that the Chairman's action had now compromised the process of the inquiry. It was agreed that the statement issued should be retracted & Mr Dlamini should advise on how this will be done.

Resolved that:

- The ARC deals with the matter;
- it should be ascertained whether the Board was exposed in bringing the consultant in without the correct governance procedure being followed;
- The ARC should report back to the Board on what steps they are proposing to take with regard to this matter;
- Minister should be advised of the error of the nature/ contents of the statement;
- It is noted that the Minister had stated that the statement should not be sent out until briefing has been held with either the Minister or the acting DG.

Mr. R Kumalo joined the meeting

Resolution by the Board:

Break and resumed at 23:40, the Chairman was excused from the meeting. Dr. Ngubane was elected to chair the meeting.

The view was that the Board needed to make a call about the actions of the Board and the Chairman. The Chairman was an ordinary member of the Board and given the severity of the matter and what happened to the Company due to the downgrade. The downgrade occurred purely on governance and this was a reflection on the Board. Members felt that the decision of 11 March 2015 to institute an inquiry was correct, given what the company was going through. That member should now stay fully non-executive and that is how it must be done.

The Board cannot go back on decisions which have been made but the one thing the Board had control over was the independence of inquiry. It was therefore very important how the process going forward was managed by the Board. At the end of the process the Board either goes down with the process or survives the process. The question before the Board was what it needs to do about the Chairman's actions. Two options were tabled of which one was to say that the Chairman should step aside as well for three months of the inquiry or based on the apologies, the Board could work together with him on the provision that he obeys the rules of governance.

The Board unanimously resolves that it had lost confidence in the Chairman as a Director of the Board and recommended his removal as a Director. It was agreed that supporting documents should be put together to indicate:

- Failure to get Board approval

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- Matters considered as aggravating actions of the Chairman.
- Preparing and distributing a media statement in the name of the Board without Board approval.

The Board resolved that

1. Mr. R Kumalo is the delegated media person in the ARC; and
2. Dr B Ngubane is appointed as Acting Chairman of the Board.

The Board was prepared to take the risk of whatever the Minister might decide around the issue. It was agreed that all communications should go through ARC around this resolution and all matters related thereto.

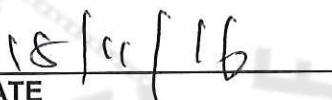
The Chairman then came back to the meeting at 00:37

The proposal was that the Company Secretary should write to the Minister requesting a meeting as soon as the Minister was available, the sooner the better given the inquiry, preferably on Friday or even the weekend. Sunday, Monday, the ARC decision to continue.

The meeting adjourned at 00:45

Signed by Dr Ngubane for purposes of noting the meeting's proceedings


CHAIRPERSON


DATE

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**MINUTES OF THE ESKOM BOARD IN-COMMITTEE MEETING 18-2014/15 HELD ON 30
MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 20H00**

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Chairman
Mr MV Pamensky	Member (Acting Chairman)
Mr NT Baloyi	Member
Ms N Carrim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member (Tele-conference)
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member
Dr BS Ngubane	Member

APOLOGIES

None

BY INVITATION

None

IN ATTENDANCE

Mr M Phukubje	Company Secretary
Mr W Venner	Committee Secretary

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1. OPENING AND WELCOME

It was noted that the Chairman had a conflict of interest around the only item on the Agenda and as a result it was agreed that he be recused as Chairman for this meeting and Mr M Pamensky be appointed as Acting Chairman for this meeting.

Resolved that:

1. Mr M Pamensky is appointed as Acting Chairman for the Board meeting held on 30 March 2015.

The Acting Chairman welcomed members to the meeting.

2. APOLOGIES

There were no apologies.

3. QUORUM

A quorum being present, the Acting Chairman declared the meeting duly constituted.

4. DECLARATIONS OF INTEREST

There were no other declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

The agenda was approved. It was noted that this meeting was a continuation of the meeting held on 25 March 2015

7. MATTERS FOR APPROVAL

7.1 Proposal to Remove the Chairman of the Board

At this point Mr Tsotsi joined the meeting in his capacity as a director

It was agreed that Mr Tsotsi's legal counsel would lead the discussion on the charges noted in the Notice of the meeting and Mr Tsotsi would respond to each one.

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Charge 1: the Director procured the services of an external consultant, Mr Nick Linnell (the "Consultant"), to provide consulting services to the Company without following the Company's prescribed procurement processes or informing the Board of his actions. In doing so, the Director crossed the line from being a non-executive director to exercising executive power without the requisite authority.

Mr Tsotsi stated that on 9 March 2015 he had convened a special Board meeting wherein he put to the Board the idea of an inquiry into the affairs of the Company. The reasons were that the Board was aware of the true state of affairs, the financial predicament and capacity challenges in Eskom. The Board had been keen to ensure that Eskom received relief at the earliest opportunity. He had not employed Mr Linnell but had suggested to the Board that Mr Linnell would provide advice, Mr Linnell had been given the opportunity to make a presentation to the Board on 11 March 2015 at which he explained himself and the ideas he had to assist. During this time the Board had not had the opportunity to state whether it was engaging Mr Linnell or not. The Board had delegated authority and oversight to two Board committees, vis People and Governance Committee ("P&G") and Audit and Risk Committee ("ARC") to set up the inquiry and engage whoever needed to be engaged therefore. P&G had met after the Board meeting and it had been decided that Board would have to decide if it was fair to employ Mr Linnell. Mr Tsotsi was clear therefore that this should have been dealt with by P&G.

In response to a query as to whether the Minister of DPE was involved in the decision to implement the inquiry, Mr Tsotsi stated that the Minister of DPE had been consulted. The Board had requested the Minister of DPE to address the Board on this issue, and a meeting had been held on 10 March 2015 in this regard.

Charge 2: The Consultant commenced with his work to the knowledge of the Director and without the Board of Directors being informed that work had commenced within the Company. The Director was aware that no contract of engagement for the Consultant had been concluded, thus exposing the Company to non-compliance with applicable statutes and procedures.

Mr Tsotsi stated that there was no contract with Mr Linnell and no payments had been made to him. Mr Tsotsi stated further that it was not his duty as Chairman or as a director to employ Mr Linnell, as this was the responsibility of the P&G. In fact P&G had requested Mr Linnell's assistance to draft the letters of suspension.

Charge 3: 1.3. The Director authorised the commissioning of a media statement in relation to an inquiry into the affairs of the Company ("the Inquiry") with the assistance of the Consultant without the knowledge and or consent of the Board. This media statement

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consequently fell into the public domain. The media statement contained numerous inaccuracies and misinformation which may lead to the Company facing potential legal action from third parties named therein.

Mr Tsotsi reported that the Minister of DPE had called him to request that he correct the misconception that he (Mr Tsotsi) would be leading the inquiry. This was necessary to show the integrity of the inquiry. Mr Tsotsi had requested Mr Linnell to draft the media statement around this issue and to his (Mr Tsotsi's) mind, Mr Linnell was acting in an advisory role. Mr Linnell had made various suggestions such as appointing a retired Judge to head the inquiry and retaining the services of Grant Thornton to conduct the inquiry.

Mr Tsotsi stated that he had advised Mr Linnell of the need to consult the Board before the media statement was put out to the media. He had further decided to send it to the Minister of DPE, as well, to obtain her input. He also wanted to confirm that the Board was satisfied with the media statement.

Mr Tsotsi stated that he was unaware as to how the media statement had got into the public domain before it had been approved.

He reported that the P&G had reviewed the media statement and had asked Mr Dlamini to review it further after some members had made further changes. In the interim Mr Kumalo had recommended that the media statement also be reviewed by a media specialist, Mr H Ntshingila. A long session had been held with Mr Ntshingila after the P&G input at Bryanston City Lodge before the media statement was released the next day.

The P&G had suggested that Dr Ngubane, The Acting CE and Ms Klein (in her capacity as Chairman of P&G) should accompany Mr Tsotsi to the media briefing, which had been done.

Mr Tsotsi reiterated that he was unaware as to how the media statement got into the public domain.

Charge 4: The Company is in the process of establishing the Inquiry and the Director's actions put the integrity of the process and the Inquiry itself at risk. The Director's conduct has undermined the reputation of the Board.

Mr Tsotsi stated that the idea of the inquiry had been accepted by the Board. Therefore he did not understand what this accusation was about, as well as all the internal actions around it. He had never done anything alone and had only introduced Mr Linnell. All other actions had been done by the Board. He had voluntarily consulted the Board with the view that he was carrying out the instruction from the Minister of DPE.

Charge 5: The Director's actions did not meet the minimum requirements of the standard of care expected of him as a Director of the Company and a member of the Board.

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Without looking at the specifics of the charge, Mr Tsotsi stated that he was of the view that the inquiry was a necessity in the public interest to indicate to the public that the Board was looking into the affairs of Eskom. He noted that his letter dated 26 March 2015 provided specificity around his actions.

With regard to the incident with Sumitomo Corporation, Mr Tsotsi reported that he had received a letter from Sumitomo Corporation requesting his assistance around an issue with Eskom. He decided that as he knew nothing about the issue he would have to ask the relevant Executive to intervene. He had advised the CE about this and to ask the relevant GE responsible to address the issue. Mr Tsotsi subsequently called Mr M Koko (GE: Technology & Commercial) and advised him about the letter and requested that he look into the matter, sort it out and advise him (Mr Tsotsi) of the response that Eskom should give. After some time he asked for an update and was advised that Mr Koko was still looking into the matter. Mr Koko came back and gave him a letter addressed to Sumitomo Corporation to sign. Mr Tsotsi then asked Mr N Tsholanku as the GM: Regulation and Legal to review the letter and advise if he could sign it. He had never communicated with anyone else. In this regard he stated that he never approached management at all and always only engaged with the CE or members of Exco. He had asked Mr Tsholanku to confirm that he could sign the letter so as to ensure that he was not committing Eskom to any liability. Mr Tsholanku had come back to him to advise that he could sign as the letter did not commit Eskom to any liability.

With respect to the media statement, Mr Tsotsi stated that he had already referred to this. He was of the opinion that when the Board had mandated Business Communications to proceed with the preparation of the media statement, the Board had not stated what Business Communications should and should not do as it was expected that Business Communications would use professional judgement and report back to the Board. The issues in the media statement had been introduced by the P&G and how it came out was how Business Communications wanted it to be published. The document had been produced by Business Communications and he (Mr Tsotsi) had not had any scope to produce it himself.

With respect to the appointment of an Acting Chief Executive, Mr Tsotsi reported that when he had joined the P&G meeting he had been confronted with the names of executives who had been proposed for this position. He had then asked if any of the P&G members knew the people being proposed and where did the list come from. He was advised that Dr Ngubane had engaged with the Minister of DPE who had suggested the people. He had not pushed back against the list. He then made a recommendation that a certain GE be the Acting CE and was advised that the Minister of DPE was aware of his recommendation. With regard to the accusation that he had misled the Minister of PE around this issue, he stated that he would not ask the Minister of DPE to suggest an Acting CE and he knew that such an appointment required shareholder approval.

In respect of the nomination of Mr M Sekhasimbe as Acting CE, Mr Tsotsi stated that although Mr Sekhasimbe was a good candidate, he could not be considered as he was on suspension.

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It was reported that Mr Linnell had confirmed that he had no expectation of receiving a contract or otherwise from Eskom and had undertaken the preliminary work at the risk of no payment. He was aware that he would receive no payment unless he was properly contracted. Mr Tsotsi stated further that Mr Linnell still had no expectations around being awarded a contract but was still willing to engage with the Board.

Mr Tsotsi then proceeded to make his final statement noting that the Board had been appointed on 11 December 2014⁷ at a time when Eskom was experiencing many problems. The Board had full knowledge before accepting their appointment that there as a significant amount of work to be done and he personally had learnt that this Board had plenty of energy to get the work done. The first time the Board had met had been at the induction meeting with the Minister of PE and thereafter at the Eskom induction meeting on 16 January 2015 followed by a Ministerial induction. The first formal Board meeting had been scheduled for 26 February 2015 but this had been cancelled. Therefore the reality was that the first time the Board met was on 11 March 2015, when the Board had also met with the Minister of DPE. In the meantime the members had been active in the Board committees and he had observed a large amount of energy from them.

Therefore this dramatic action had shocked him as he did not understand why the Board was doing this. If he was removed as a director of Eskom he would also be removed as a director from every other Board he served on. He was of the view that he was able to do the work of the Chairman and had explained all his actions to the Board. He did not see why the Board could not resolve its issues with him and that this was an action that the Board should not be proud of. The rotation of the Chairman was a shareholder decision. He was at a point in life where he could only receive director's fees and if he was removed as a director then he would no longer be able to received director's fees from any company, He was also of the opinion that he did not deserve to be removed.

The Acting Chairman thanked Mr Tsotsi for his presentation and asked members if they wanted clarity on any items.

In respect of the letter from Sumitomo Corporation, a member queried in what capacity had the letter been directed to Mr Tsotsi as Chairman and not to the CE and as legal advice was available why had Mr Tsotsi signed instead of giving the letter to the CE. Mr Tsotsi advised that the letter had been addressed to him and that there had been a lot of correspondence before that around this issue. The letter to him had been an attempt by Sumitomo to come to an understanding with Eskom, and he (Mr Tsotsi) had assumed that the CE was fully aware of the issue. Sumitomo had been exasperated with the responses being received from Eskom. He noted that he had requested the GE concerned to advise how to deal with this matter and give a proper response to Sumitomo and that he had advised the CE about the action he had taken. The GE could have advised him that he would prefer that the CE respond but instead had just produced a letter for Mr Tsotsi to sign. Mr Tsotsi had then asked Mr Tsholanku to review the letter and had been advised by Mr Tsholanku that he could sign as Eskom had already made commitments to Sumitomo and the Chairman would not be acting on those commitments.

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The Acting Chairman thanked Mr Tsotsi for his response and requested that he recuse himself while the Board considered his presentation.

At this point the Board went into a caucus session with their legal counsel and all non-board members, except for the Company Secretary, were excused from the meeting.

In-committee minutes are kept separately

CLOSURE

There being no further matters for discussion, the Acting Chairman declared the meeting closed at 22h00.

Signed by Dr Ngubane for purposes of noting the meeting's proceedings

CHAIRMAN:



DATE:

18/11/16

ESKOM

PEOPLE AND GOVERNANCE

IN-COMMITTEE MEETING

11 MARCH 2015



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ESKOM**PEOPLE AND GOVERNANCE****IN-COMMITTEE MEETING****11 MARCH 2015**

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11 MARCH 2015 – PG In-Committee Meeting

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PROCEEDINGS RESUME

[14:48]

CHAIRPERSON: ...asked our Head of Legal to be here as well, just so he is fully abreast with the matters that we are dealing with and that is the aspects from this side of Eskom that he feels that they're aware of it ja ...[indistinct – dropping voice].

10 So Nick the purpose of what we have here Nick is basically the Board members, we had the sub-committee meetings earlier but the rest of the Board is here, and basically I explained to the Board that you had been asked to support Eskom in this whole exercise of this investigation, this inquiry so that certainly the governance issues, and taking care that this thing is done properly and it is done in a manner that cannot be challenged and cannot reflect badly on this issue.

Now the Board has made some significant
20 decisions, and the decisions the Board has made in respect of the investigation are that; one, the investigation will proceed as soon as possible. Number two, those executives who are directly involved with the areas where the investigation will focus will be suspended, and these are ...[indistinct 00.01.53]. This was to inform also the

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Chief Executive and then it is the Executive for Group Capital, the Executive for Commercial and Executive for Finance, and the reason for that is because it is important that the ability to carry out the investigation is not compromised in any kind of way.

]

FEMALE VOICE: Sorry Chair is the Executive for Finance included as well?

[

10 **CHAIRPERSON:** Oh yes, four. And that the work that needs to be done in respect of the investigation must not be compromised by the presence of these particular executives, one of the two that from the work you have done the committee would like to know and needs to be updated in terms of the potential charges that are on the table in respect of the executives, and probably exclude the FD because you were not briefed on the FD as far as I know, but certainly on the other three executives, maybe you want to take the committee through that, and also the
20 processes that need to come into play for this to be effected which include managing the media and the public perceptions and all of those things.

Nick should we just talk around those issues then, how you see the process going forward?

[03:58]

MR LINNELL: Certainly Chair, maybe if I could start in

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the reverse order, maybe ...[indistinct]

[04:07]

BOARD MEMBER: Sorry Chairperson, I think Nick should introduce himself fully to us.

[04:11]

MR LINNELL: Okay, thank you. My name is Nick Linnell, I run a consulting practice, I am an attorney by profession but now I am a business consultant, the bulk of my work is of a legal nature so I do legal commercial work, but from a consultative point of view I typically work with Boards of companies, looking at issues that they need to deal with, so as I would understand what you have been talking about here would fit into typically the sort of things I would have done.

I come from Cape Town, I have done similar work for other State Entities, State Owned Companies, I am familiar with a lot of the legislative requirements of companies which is your – it is really what so I have a legal background and I am a consultant and I do this corporate type of work and there is an element of my work which is always of a forensic nature, because whenever you're working within a corporate typically a – call it a problem or an issue which has to be dealt with and that often is – that often requires one to determine facts, and a starting point in any issue is always what are the facts, and I would imagine in this instance that is also a starting

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point, what are the facts. And the facts would then guide a solution, so right now I wouldn't know if anyone has any solutions in mind because it is premature, whatever the facts turn out to be I think one assembles them in a certain way that people like yourselves will see what you want to do with them.

So that would be my background, I don't know if you want to ask me questions, or is that sufficient?

[06:21]

10 **CHAIRPERSON:** Thank you.

[06:22]

MR LINNELL: I would just add that I have a lot of profile players, wherever I work I work in companies which I am not a person you see in the press, I never publicise what I do and that is not because it is quiet, it is just my profile is get it done when I work in a company I am not the feature or the focus of what's happening, so you won't typically Googly my name and find that I work with certain entities, it is just not the way I work.

20 So confidentiality in what I do is always of primary importance and if I can touch on one thing, the GSS in all my experience and particularly in State owned companies the most – the biggest imperative is every single thing we do must be lawful, it must be procedurally correct and the moment we make one mistake, even if you have good intentions, the whole of it is undone simply because we did

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it the wrong way, and again in my experience I don't have an instance where it is necessary to do it the wrong way [07:30].

CHAIRPERSON: Ja.

[07:31]

MR LINNELL: You know the laws are very good laws, they give a lot of scope for doing the things that you need to do, and you can just follow due process and everyone is happier, and it allows you to focus on the things you want
10 to focus and not things which are of a procedural nature because you've done it. So if anyone wants to ask a question or if you're happy with that then I can just carry on?

If there is anything as you go along please don't hesitate to ask or point it out.

In terms of dealing with the second part of the Chairperson's introduction there, as I understand it you've passed a resolution that you want to enquire into the activities of certain parts of the business to determine
20 facts and I think it's always presumptive in that situation for somebody to come in and say I think we need to do this, because often the people in the organisation are often the best people to determine where the focus should lie and I would think in this case, I understand from the Chair you have got a sub-committee and I think you need a small

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committee in a morning to workshop the principles and the focus areas, because a company as large and as complex as yours this investigation could take five years, but you want it done in say three months, you want the main things identified quickly so you can get on with them and if there is cause to proceed lower than the main things you then authorise a continuation below that, so I would think the first way to do this before you get into determining terms of reference *per se* one considers with the involvement of

10 people on the inside as to where should those focus areas be and where should the limitations and the filters be, and I think that should be done taking my lead from the Chairperson that this must be done urgently, that can be done even this week or Monday, you know to be – it shouldn't take time and then that can evolve, because as one gets into it, it will identify areas that you haven't anticipated and I think that is in your own experience you will find that's typically the case, as you start looking in an area it will highlight things that you hadn't understood to

20 be there and that will – might create some variation to your approach, so that would be the approach, I don't think you should cast it in concrete at the outset.

I think then you've got the issue in this project of who is going to do this and my understanding is basically from the shareholder, the imperative is almost beyond

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anything else it must be independent, and seen to be independent, so it can't be – typically people who worked and consulted in the organisation, because [a] they will have a perceived understanding of what it is they are going to find here ...[intervenes]

[10:38]

CHAIRPERSON: Please take the cell phones out of the meeting please. We agreed the cell phones will be out of the meeting and off. When we have a board meeting, we
10 should take the cell phones and put them out there, please.

[11:03]

MS CARRIM: May I excuse myself, my flight is at five.

[11:15]

CHAIRPERSON: Sorry about that.

[11:22]

MR LINNELL: If I then continue, I think the selection of who is going to do the work ...[intervenes]

[11:28]

MS CARRIM: Sorry, Chair I am going to excuse myself,
20 my flight is at five.

[11:30]

CHAIRPERSON: I'm sorry, oh by the way you have a flight at five, okay, no that's fine, we will count you in the quorum of course.

[11:37]

MS CARRIM: Ja, count me thanks.

[11:49]

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CHAIRPERSON: Thank you.

[11:41]

MALE VOICE: But Chairperson we have taken all the decisions.

[11:44]

CHAIRPERSON: Okay, ja, ja, ja.

[11:47]

MR LINNELL: So in terms of identifying the people, I
10 think again that's a consultative approach because you
yourselves will have an idea of in any situation you need
people of capability to do this, they have to be impartial,
they cannot have preconceived ideas, they can't be
connected parties in any sort of way so one needs to know
who might be available and out of those people who should
not be involved in something like this, but primarily they
must be independent, so that they produce something
which you accept, because it is objectively obtained, it is
...[indistinct - coughing] and then normally when you act on
20 whatever comes out of this the public at large sees the
credibility of what you have done. There is no point in
doing an exercise and when one gets the answer and they
say but there is a reason why this could not be accepted,
so we have to start with the premise so whatever you're
going to do must end up as a credible outcome, because
people will accept it, so it starts leaning itself into the

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reputational risks of it, so I think one – my recommendation there would be two angles to this is obviously a technical stream of inquiry, things which can go wrong in the technical side of your game, the engineering, the chemical side of it, and then there's the commercial side which could be anything from the legal to contracting to governance and a number of other things, contracting, maintenance, that type of thing which are more – if you think of your academic world, you had the arts and you had the sciences, split down that kind of divide.

On that side I would recommend to you people that – who we have worked with extensively and we've checked them out in terms of governances here would be headed up by Edward Nathan Sonnenbergs, they have got ...[intervenes]

[13:59]

FEMALE VOICE: Who is that?

[13:51]

MR LINNELL: Edward Nathan Sonnenberg, ENS.

20 [13:52]

CHAIRPERSON: Oh, ENS.

[13:53]

MR LINNELL: They're kind of colloquially known as ENS. Now the reason for them is a number of fold, and I am not talking about always their legal people. When you're doing an investigation like this and I mention the word forensics

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and maybe that is a misnomer, information gathering rather, they have without doubt the strongest team of commercial investigators in the country and so far as I understand they haven't got previous work with you where they have made findings which will almost say well you can't investigate your own findings, so they might have done little projects from time to time but in the main they haven't really been involved in your company and I know that they have massive skills and capability of all sorts of descriptions and because ENS is arguably the largest legal firm in Africa they have a massive reputational risk if they ever do anything wrong.

So in all the years that I have worked with them, particularly in State Owned Companies I can assure you they have provided very credible work and at the end of this if you say this part of my inquiry was conducted by ENS particularly their Forensics area the people out there and the people who importantly you want to convince it is a good study will find credibility in them, so that side I would, you will have questions about that, but they would be available and I know given the urgency the Chairman meant, they are one of the few people who have the team which can work swiftly in the right areas.

You might have ideas on that and we certainly, ultimately it is your call.

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[15:49]

CHAIRPERSON: I just want to check in terms of the proposal I take it your role as an independent specialist ...[indistinct – coughing] separate from ENS?

[15:55]

MR LINNELL: Oh yes, ja.

[15:56]

CHAIRPERSON: Okay thank you.

[15:57]

10 **MR LINNELL:** What I would suggest to you and I mean this is for you ultimately to decide but my thoughts, if I might, my role would be a coordinating role. I have a legal background by nature, it is an inquiring nature, I do investigative work, not the Paul O'Sullivan type work, we are not involved in that sort of stuff, commercial work, you find out the facts in a company. So that is typically what we do, so – and my company has done call it project management work for many of the big corporate here and in Europe, so we are – have a skill base of coordinating
20 inquiries or projects, call it projects.

[16:46]

MALE VOICE: Sorry Chair, Nick alluded to using ENS, and he said he is aware that they may have not – they have not done any investigation of this nature at Eskom that may create a conflict, if I understood you correctly. There have been two major investigations at Eskom, one was done by

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BNG and the other was done by ENS. I just need to understand you know the extent of the conflict that would emanate from that so that we are able to help check if you know the type of investigations that they have done to not impede on what should happen because I know for a fact that they did a big investigation with us.

[17:42]

MR LINNELL: Can I – we need to establish what did they do here today, the people who would come on this team to
10 my knowledge they have tendered for work here but they haven't got any work here, but if they have done any work we need to have a look at that work and determine whether that raises a conflict because I think it's important that people come here with a clear mind, and if we have got a preconceived ideas because we have done some work yesterday then you start from a position of a paradigm and then to shift a paradigm is quite difficult.

So I think it is better that people – people we use on a project we come in, entirely open-minded and say the
20 facts will speak for themselves, so I thank you for raising that and it has to be looked at.

[18:25]

CHAIRPERSON: It could have been an entirely different part of the business, nothing to do with commercial ...[intervenes]

[18:32]

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MR LINNELL: We must check it.

[18:34]

MALE VOICE: Chair the BNG investigation or organisation investigation, had to deal with issues that pertained to procurement, and also certain sections of the PFMA, and I think, I am speaking under correction ENS also had a similar mandate, we just have to check the nature and the extent of those investigations.

[19:01]

10 **MR LINNELL:** No but good process.

[19:03]

MS MABUDE: Can I come in here?

[19:04]

CHAIRPERSON: Yes.

[19:06]

MS MABUDE: Audit & Risk has raised the ENS as well and BNG.

[19:13]

MR LINNELL: Sorry, I missed that.

20 [19:16]

MS KLEIN; The Audit & Risk sub-committees had a meeting prior to this and we were mandated to deal with this.

[19:23]

MS MABUDE: And we had mentioned the ENS and BNG and ...[indistinct] and Associates so those three as well we were looking at, but ...[intervenes]

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[19:35]

MS KLEIN: It is possible

[19:37]

MR LINNELL: So it is possible.

[19:39]

MS MABUDE: But we were going to get the terms of reference and then understand the work they have done as well, and then select out of those three the companies that we are going to sit with and discuss with and then it was a
10 company amongst the three.

[19:57]

MS NAIDOO: Sorry Nick your suggestion on ENS as a law firm is this not something that falls within the ambit of the Audit & Risk companies in the top four Audit & Risk companies, would they not specialise more in forensic as opposed to a law, a commercial law firm?

[20:14]

MR LINNELL: I think there's been a blurring between accounting firms and legal firms and today for example
20 Edward Nathan Sonnenbergs if required would do an investigation including technical aspects within that team. So they would do investigations of chemical engineering companies of a chemical nature, so in the same way as you have tax advisors and accounting and legal firms ENS would have a team of people who would do far more than any accounting firm, but I think the point with ENS is there

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is not another company out of the accounting firms or the legal firms with a capacity and skills that they have got, because they bring to bear into a situation the right people for the task.

And there is another thing which has been impressed on me from the outset here, we live in a highly politicised world, I am not talking about Eskom I am talking about our country and whenever anyone does anything particularly in a State Owned Entity one has to be very
10 careful about – because the shareholder is the State, as to what is the fallout beyond the company, and what that means is when you do a project in a State Owned Entity confidentiality and very strict confidentiality is extremely important because leakages lead to manipulative outcomes.

So if there's a vested interest and the inquiry is heading in a certain direction which a vested interested does not like there is bound to be interference and that happens when there's leaks from the investigative team,
20 and it is so, so important. If you start at this point where you are and you say we don't want a certain outcome one has to be very careful that you have that built in, and I don't have a brief for ENS, I don't get a single cent out of using them, the value of me using them is if people look to me to deliver I have to deliver and it's the same as if I'm

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doing a trial matter for a client.

For example I am doing some this week, counsel get fed-up with me because all counsel and attorneys will go into a trial matter and to be honest it doesn't matter if they win or lose that matter. Every single legal firm which goes into a trial one will lose and one will walk out as a loser and that happens by just – it's the reality of winning and losing, there's two sides.

So in my case I cannot lose, because my client will
10 not accept that as the outcome whereas with a firm of attorneys going to trial there will be another client tomorrow. My work depends on us doing it right and at the end of the day we deliver a success.

[23:28]

CHAIRPERSON: Sorry but we are contracting with you, and not with ENS?

[23:33]

MR LINNELL: No I would suggest sir that you would contract with me to do what I do, which would be the
20 coordinating role, but I think you should contract with them, but your requirement of me and my scope would be to make sure they deliver but your contract would be directly with them.

[23:50]

CHAIRPERSON: Correct.

[23:51]

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MR LINNELL: With whoever you use. So for example in the technical stream you have to identify the right people and I would think you start off, even the technical side, identifying a credible leader, someone who you say will inspire confidence through himself and then one works with that person, I think on the technical side you are a multi-disciplined technical company and if you just went to a technical consulting firm, and there are numbers here, including internationals, you are going to get rehash of a
10 process package coming out and I would suggest it would be better for you on the technical side to hand-pick people under a credible – you regard yourselves as credible and knowledgeable, but again it is an issue to be discussed, but in your case that's a very important part of this and so if I could, if we can – another thing I am conscious about if you just went out into the market you stood on the corner of a street and you asked people about Eskom, everyone has got a preconceived idea and everyone has got a solution and the more you – if you segregated those people
20 and you said the technical people stand here and the laymen stand over there, the technical people are going to have technical solutions for you than the man in the street. Everyone has got an idea what you should be doing and I think you need to choose people there who demonstrate they don't have a solution so if you're determining who to

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use on the technical side and the person said I think I know what you should be doing here, he is not the right man for you. You want someone who ...[intervenes]

[25:34]

FEMALE VOICE: What are you saying? Are you saying through the right contract a company with good technical acumen around what we want to investigate and also another one who has got good commercial, or there is a company that has got best of both?

10 [26:00]

MR LINNELL: No I don't think so, I think you want the best in both commercial areas, you focus on that but having said that we are going to make a mistake if for example we had a commercial team looking at the arts of it, you know and tertiary standards and then the sciences over here because they have to – they are intertwined. If you're looking at tenders on the commercial side there is a technical aspect to those tenders which has to be understood, so although you have teams the coordination
20 of those teams this side determines something that they think is relevant, this side must be able to pick it up and follow it, and you don't want to go 100 metres and find these people haven't communicated, so communication, effective communication, not sending each other notes, I am saying effective integration of those teams they have a focus, so it's not one team. I think if you have one

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company to do both, they are beholden to one view.

[27:01]

MS NAIDOO: Chairperson, may I?

[27:02]

CHAIRPERSON: Yes.

[27:03]

MS NAIDOO: Ja, Nick I think it's –I think what you've shared with us is very enlightening and I know that you have in your introduction shared with us that you have
10 done quite a bit of work for other State Owned Companies. I must admit I was expecting that you would have been physically involved with some of the detailed, with where we find ourselves right now and not hypothetically this is what you need to do, but to say I am already entrenched in the problem statement as it stands hence this is my position.

Now maybe I understood that brief incorrectly and then I will take responsibility for it but I thought that that is what you were going to bring to the table.

20 [27:41]

CHAIRPERSON: Just don't go ...[intervenes]

[27:42]

MR LINNELL: If I could answer that. It is a good point to answer it, the thing is there's different scores here, I would say my understanding of Eskom from the pre-research that I have had to do to be sitting here in front of you has been

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extensive and it has taken some months, so I think I have an understanding but I think what I see a minute ago is the failing. If you have got someone who comes in here and thinks that what they have, their prior knowledge indicates that they have a solution then you are not going to get what you want out of this, because this is a fact gathering exercise. You want someone to come with a paradigm which says I don't know the answer. I think it is a starting point. If you've got somebody who says I have done a lot
10 of work, I have done an industry and let me tell you I think you should start off here, there and there, you've got very skilled people in your company, you don't need an external person to come tell you often what you know and what he might have a perception is the right thing. I honestly think you need to come in here and say let's discover without preconceptions, but in terms of understanding obviously my understanding the background I have had to do a lot but I don't want to get in my mind thinking that it is any more than a background understanding.

20 [29:10]

MS NAIDOO: But let me push it a bit further, please indulge me. Your background study was commissioned or was it self – how do I – well were you asked to do this or did you do it out of your own volition knowing that there is going to be a piece of work that may look like this in

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future?

[29:29]

MR LINNELL: Well I suppose it is both, I would think in the nature of my work if there is to be work I must understand the industries that I might work in so I think I would know a bit about many industries and many companies within those industries, so I have a general understanding of wherever I work. Have I done it purposely? Well I think your shareholder had some time
10 ago indicated that there might be a need for this and I am required to look at that, and the fact that you got here today in a sense is more coincidental in the sense that if you didn't get here today then I wouldn't be here today.

So no one has asked me specifically to be here today ...[intervenes]

[30:11]

CHAIRPERSON: Nick can I just put this straight? Nick was asked to do this exercise, and he had to do a lot of background work because of the instruction he got to do
20 this exercise. Now what is left is for him to be commissioned formally by Eskom to get into the teeth of what needs to be done. So he has been on board on this for quite a while. I think he is having a difficulty trying to say that.

[30:36]

MS NAIDOO: And actually I am trying to just get to

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because that is what we were told.

[30:39]

CHAIRPERSON: Yes, precisely. So Nick I think what you can do, because I mean you have set the scene, just drill a little bit deeper into the specifics of the issues of the four people, probably not the four, but the three people because you don't know about the fourth.

[30:54]

MR LINNELL: Okay I think in terms of the four if you are
10 going to do investigation of this nature and bear in mind information is gleaned from documents and people and in this – and just observation, if you have the leaders of the areas in which you are going to look at it will not be an unfettered investigation. If the Chair sits in this room and he carries some situational authority it will pervade this room and whether he does it intentionally or not that presence affect some of the discussions here because that is just the nature of human beings.

It doesn't mean he is behaving improperly, it is just
20 the way we are as human beings, so it is well understood in similar situations that if you leave your leaders, your executive leaders *in situ* the people below them will start to say if I share this and nothing comes out of the investigation will I compromise myself, and the moment they question themselves as – it doesn't have to be reasonable, it is a subjective thing, will I compromise

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myself, and if there is a risk to me compromising myself I am not going to be forthcoming and you may as well not start it, so I think to remove the people who are in positions of leadership is a necessary part to start and it sends a message to the organisation that this is going to be open and the organisation wants people to come forth and be candid, so it is important that no one thinks, I am sure you don't think in this room, but no one thinks they have done anything wrong at this point.

10 There are certain things that they might well have done wrong, absolutely, but that is not the reason you are asking to be suspended. The reason you are asking them to be suspended is they have situational influence which will pervade where you want to do the investigation, and certainly there are – we are all aware probably of – there's likely to be as in any organisation things which will come out and are known to yourselves where some of these guys have not behaved correctly but we are on day one and that is not proven or established, these things are just – they
20 are gossip, and some of those gossips have foundation, but I think we as we sit here that is not the reason you are asking them to be suspended. The assumption is they have done no wrong, and if I could follow that up and say for the good of them and the good of the organisation bear in mind what happens in Eskom is a national thing, we are

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not talking about a company here.

If Eskom gets scratched the nation is affected, emotionally, financially and everywhere, so if you have, if you create bad press it will unnerve people outside and this is a confidence game within the country, so I think the ideal would be to say to these executives this is the situation, we are not sitting here saying you have done any wrongdoing, it might turn out that yes you have and that might be so severe you will get dismissed. We do not
10 know at the moment so the suspension is not that you are guilty, but if you volunteered to go on leave and we made the public understand that you as a leader had decided voluntarily to go on leave so that you open up the space to make this a credible thing it stands them in good stead in the public's eyes and in the staff, say let's assume nothing comes out of this investigation and they return, because that must be our assumption at the moment because there's no wrongdoing, we are on day one, you want them to come back without a sense of people feeling that they
20 were – there was something which they were guilty of but it didn't get proven.

So it is ideal for them for them to go on leave with their heads held high and with no people assuming that there is an innuendo in their suspension, that is ideal, people don't often ...[intervenes]

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[35:10]

BOARD MEMBER: That is not what we understand.

[35:12]

MS MABUDI: The question is there has been a debate around the issue that you are discussing now, whether it is suspension or forced leave, or voluntary leave, so it is three dimensions now, therefore there is suspension, it has got its own repercussions and how it is seen by everybody and the forced leave which has got a different view from
10 voluntary leave.

[35:46]

MR LINNELL: If I can answer there, you're saying there's three, I think there's really two, forced leave by nature of to enforce is suspension. It is a kind of colloquial phrase we've adapted saying he is on forced leave. You know if he is forced leave it is by the compulsion of the company which means he is technically suspended and it is precautionary suspension but forced leave means please
20 go away.

So I think we have got two situations, do you want to leave your reputations intact because even though this audio does not intend reputational damage to them at all, it is just human beings that if you suspend them someone is going to read into that something improper because we are human beings, that is how we think.

So you want to avoid that, so if they can go

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voluntarily it is good for the organisation and it is good for them because there's no *skinner*, if they don't want to, I think what you have decided today is that it is essential that you have an independent and fair and thorough investigation, free of anyone's influence, improper influence, and improper is not a conscious thing, it can be a passive thing, I just sit here and I can create influence.

So if they don't want to go on leave and some people take umbrage and their egos get the better of them, 10 then you have to go through a process and you have to say to them following due process you have got to say to them this is my reasons why I think you shouldn't be here during the investigation, can you persuade me otherwise, tell me why you think I have got the wrong starting point and let them argue, and if they can convince you that in fact they don't pose a risk then leave them in place.

Typically, that doesn't happen because if you think about it the principles of not having executives in place is a good one. You run a risk even when people are 20 suspended as you know, other State companies, we have had many lately where a Chief Executive Officer has been suspended and forensically from the very next minute we will pick up 150 phone calls between him and the staff and emails going to their private icloud address communicating with staff, and what are they doing? They're

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communicating about don't share this, please share that, don't do that, don't tell them this, so we've got to be careful but I can promise you the moment they're suspended if they communicate with your staff improperly they will be identified for doing that so it is a big risk, but human beings are human beings, it is not your human beings, it is everyone.

[38:37]

CHAIRPERSON: Well procedurally from where we are
10 sitting, we only have one approach and that is to suspend them, because your processes in-house do not allow for the other approach. So invariably what would happen is you would send them a letter that says this is the intention, we need to have a conversation which Nick is alluding to about whether – why we should not or why we should suspend you and these are the reasons why he or she would say they shouldn't be suspended, and you then have to, the assumption is that you then have to consider those reasons and continue on it, continue to suspend, so
20 invariably from where we're sitting procedurally there is only one process available to us.

[39:34]

MR LINNELL: You're right, there's one process, but I think the law, common sense and good business practice blends, because fundamentally we are about fairness and what is right for the company. If we do something which

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impairs the dignity of that person, in fairness, or we affect the reputation of this company it damages the company. Fundamentally we put ourselves as a company at risk, so the outcome we want is not different from the process, the process must be we are entertaining a suspension, pre-suspension discussion, but the outcome of that, the best outcome of that with someone putting up their hand and saying would you mind if I stood aside because I think it would be best for me and the company and to that the
10 Board has the authority to say I grant you special leave, you may go on full pay and benefits, on the condition that you don't communicate with anyone in the company or its suppliers during that period of time and that is a condition I let you take special leave on the condition you don't communicate.

So you have one process but there are different outcomes.

[40:54]

MS MABUDE: If I can understand now why do you have
20 one – why can't we ask them to take voluntary leave?

[41:03]

CHAIRPERSON: Well the point I was making is from a procedural point of view, because Nick indicated when he started that you know you do these things you have to follow process.

[41:12]

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MS NAIDOO: ...[Indistinct] the legislation and the Labour Act in terms of – we follow that route.

[41:16]

CHAIRPERSON: No legislation and Eskom's policies.

[41:19]

MS NAIDOO: Is it its policy?

[41:20]

CHAIRPERSON: Yes, internally you only have one process, there is nothing that talks to special leave in the process, it is either you suspend or you don't.

[41:31]

MALE VOICE: But in Labour Law is there such a thing as special leave?

[41:36]

MS NAIDOO: The contractual relationship between the other party, where the both parties agree is legally binding, so his suggestion is that we put this indirectly to them, get them to come with their suggestions and then the parties enter into that agreement, now that is a contractual agreement where the party agree to and can't later object.

[41:55]

MR LINNELL: For example if I could agree with you, you have a disciplinary policy which is a Board policy which affects the whole company. Now the legal principle is you don't bind your successors. The Board is always

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...[indistinct] it has the power to do whatever its Memorandum of Incorporation and the law allows it, the Companies Act and other laws, the Labour Act and labour regulations are one such law ja, but in terms of your disciplinary procedures that is a board policy. The board is entitled, I think it will say so in your charter and it will state it in the Companies Act and the Memorandum of Incorporation the Board can change things. You, even in your disciplinary procedures all your Board policies the
10 Board reserves the right to change the policy and vary it and so you always left with the right to say to someone I grant you certain things.

[42:53]

MALE VOICE: It makes a lot of sense, I don't think – it is within the rules.

[42:58]

CHAIRPERSON: I understand Board Member, all I was saying is from a process point of view there is actually only avenue open for us in the process.

20 [43:08]

BOARD MEMBER: Sorry, I think it is going to be a resolution at this committee to do that.

[43:12]

CHAIRPERSON: Well can I suggest that we have taken a decision to suspend the people, can you then lead the committee that is dealing with these matters what is the

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way forward. I mean arguing all these things whether it is voluntary or what, we have taken the decision to suspend the individuals.

[43:33]

MR LINNELL: Could I just – I think when you took that decision you probably, it is ...[indistinct] I think your decision is probably in law that you have an in principled view that suspension of the individuals is appropriate in the circumstances, but when you have a discussion with
10 them at that point a different outcome might come, because that is fair, so you have got to say we as a sub-committee have a view that suspension is the right thing for you and the company right now, but we want you to tell us if you have any reasons why you think we shouldn't do that and at that point you actually haven't made a decision because you have left it open for that person to come back and say for reasons you haven't thought about he gives you a reason then you say that's a good point, I agree, you should remain at work and you have allowed that process
20 and that is a good process, but I think your decision is probably saying we have reached an in-principle view that a suspension is probably the right approach, and you want that to be put to these people and for them to indicate why you are wrong.

[44:43]

CHAIRPERSON: Sure.

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[44:44]

MR LINNELL: So I think that would be the balance of it, and that is probably what your decision is.

[44:50]

CHAIRPERSON: So I think the issues that the Company Secretary must record that very carefully, because what Nick is saying is that he is actually saying the Board should not suspend them as we are sitting, because there's a due process which takes you to suspension, so we
10 should think of suspension as a means to a particular end, which will assist us in getting to where we want to be, so we just need to find a ...[indistinct] to say so, rather than saying the Board has suspended. I think suspension would be consequence of the process.

[45:30]

MS NAIDOO: It's right, following due process.

[45:32]

MALE VOICE: I think the process for the letter we should issue to a person with the intent to suspend.

20 [45:36]

CHAIRPERSON: Ja, what I am saying what we record here ...[intervenes]

[45:39]

MALE VOICE: [talking over] to come and do a meeting with the representative, where then this is discussed.

[45:43]

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CHAIRPERSON: That is correct yes, but I am concerned about what we record. We must be very careful how we record because we can't say the Board has decided to suspend, you follow what I am saying? Because that process is part of a – it is part of a process.

[46:01]

MALE VOICE: So what are we saying Chairman, they must just go and talk to them and then decide whether in fact it is voluntary separation, I mean leave, or it is going
10 to be suspension? I mean in other words we are coming with no decision right now.

[46:16]

CHAIRPERSON: No decision.

VARIOUS PARTIES SPEAKING SIMULTANEOUSLY

[46:19]

MR LINNELL: It is stronger than that sir.

[46:20]

MS KLEIN: Can I just have a turn. Can I just have a chance please, I mean I have done this a couple of times
20 in the bank. It is a very simple case, there has been a decision taken to suspend. Give us a very good reason, give us your reason or convince us that this is not necessary, give us one good reason as to why this should not happen, and then the person responds, but I mean the fact that you are already sitting with a letter and they can't respond within ...[indistinct] but the decision was taken,

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you can't tow-tow around that.

[46:47]

CHAIRPERSON: No, no, no ...[intervenes]

[46:49]

MR LINNELL: It is a decision in principle, you have taken a principled decision but it is not a final decision, you see it ...[intervenes]

[46:55]

MS KLEIN: You still say give us good reason why
10 ...[intervenes]

[46:57]

CHAIRPERSON: No, no we hear that.

[46:58]

MR LINNELL: Which means it is not a decision
...[intervenes]

[46:59]

CHAIRPERSON: All I am saying, let me give you an example, if you say – if there is a record in board minutes which says the Board has decided to suspend X, Y, Z and
20 then you start the process an individual says I would like to see what the Board minutes says, the Board minutes before you came to me and asked me if there is any reason why you shouldn't suspend me you had already suspended me, you understand what I am saying.

[47:25]

MS KLEIN: No I disagree Chairman, I disagree.

[47:28]

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CHAIRPERSON: I don't know, the lawyers must tell us.

[47:30]

MALE VOICE: There is a pre-suspension notice that is usually served on an employee, and the contents of the notice say we hereby notify you that we intend to put you on precautionary suspension for the following reasons, we have reason to believe that you have possibly committed the following offences. Please revert with reasons why we should not proceed to suspend ...[intervenes]

10 [47:52]

CHAIRPERSON: We know that

[47:53]

MALE VOICE: Yes, what I am saying is that the Board should record that precautionary I mean suspension notices will be issued to certain members of the Executive, you resolve it ...[indistinct]

[48:08]

CHAIRPERSON: The intention to suspend.48:08]

[48:09]

20 **BOARD MEMBER:** Of course.

[48:10]

CHAIRPERSON: That is fine, that is what I am talking about.

[48:11]

BOARD MEMBER: Have you got a copy of that, that we can read?

[48:12]

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BOARD MEMBER: We have one in the organisation.

[48:13]

BOARD MEMBER: Have you got?

[48:15]

BOARD MEMBER: But surely, we have heard from the lawyer that in ...[intervenes]

[48:20]

MS NAIDOO: Ja, so that must be recorded.

[48:22]

10 **MALE VOICE:** That is a formal notice.

[48:23]

CHAIRPERSON: And we have had that from Legal that here the policy and the practice is to suspend and then the people in Governance and Risk will then take on the process of telling them there is an intention to suspend you, can you come with a reason why not, but we have taken an in-principle decision that the suspension must ...[intervenes]

[48:51]

20 **MR LINNELL:** It sounds like a nuance but the whole thing is premised on fairness and the way our law works it says any time you take a decision in respect of someone you must permit the other person to have a view before you take the decision. So in everything we do and it goes further into any aspects of administrative law, whenever you do something you've got to have a view of what you

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want to do, you must hear the other side, so it sounds nuanced but it – we must make sure that in our minds if the person persuade you not to do it you are open to that, and you can't – you might not conceive that possibility at the moment and it might well not be a possibility but in your mind you're saying if you can I am prepared to hear you, otherwise the whole precautionary suspension discussion is a nonsense and now it will be turned over within five minutes in a court of law, because you – it is not fair. The
10 outcome is not ...[intervenes]

[49:52]

CHAIRPERSON: It is very simple Nick. Nick the question is very simple, I hear all of this, this is process, what are we recording as a decision? Are we saying the Board has decided to suspend or are we saying the Board has decided in principle to pursue a suspension of these individuals.

[50:16]

MR LINNELL: Ja, I think the latter type wording may be
20 ...[intervenes]

[50:18]

CHAIRPERSON: I think that is more appropriate, the decision has been made to pursue the suspension of these individuals, because we know there is a process involved.

[50:26]

MR LINNELL: You believe, sitting here the only reason

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you are going to a suspension discussion is because you believe it is necessary in the right, you're convicted, it is not as if you are unsure, you are sure that that's the right thing for the company, but what you are saying to that person is I want you before I make my final decision, I am sure, but before I make my final decision on the matter I want you – I want to give you the opportunity to persuade me that I am wrong, but that doesn't mean you as a board is wavering, you are convinced that you think it is
10 necessary because if not you shouldn't bother to go the process, so I think I am hearing you say we are convinced it is necessary to suspend them, but I want to hear whether they can persuade me otherwise and that is the sum of it.

[51:09]

CHAIRPERSON: Sure.

[51:10]

MR LINNELL: And it is very difficult for them to persuade it because your grounds seem to be excellent.

[51:16]

20 **CHAIRPERSON:** So we then record the Board has decided to pursue the intention ...[intervenes]

[51:23]

BOARD MEMBER: The Board has taken the principled decision to suspend certain individuals following the process.

[51:29]

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MR LINNELL: Ja, subject to giving them the opportunity to persuade you otherwise.

[51:34]

CHAIRPERSON: Following due process, that's another one. Okay following due process, I will be satisfied.

[51:38]

BOARD MEMBER: What we are doing is extremely serious, if we have got the slightest doubt, we should talk to ...[indistinct] but ...[intervenes]

10 [51:43]

MR LINNELL: Ja, I think you've got, you are agreeing in principle ...[intervenes]

[51:46]

BOARD MEMBER: You are confident of what we are doing, ja, I think that's right.

[51:47]

MR LINNELL: I think everyone is on the same side, just a question of wording, and the wording is as the Chair says is very important because as soon as people go to court
20 the first thing, they are going to do is say can I have an extract of your minutes.

[51:58]

CHAIRPERSON: And then it says you suspended this man before you even gave him a chance to respond, so your suspension is invalid, so it is important for us to couch the words properly.

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[52:06]

MR LINNELL: You know it's a funny thing labour law because at the end of the day the employer tends to win, because the employer you know you can't work for someone who doesn't want, you don't want working for you, it is just a question of what does it cost you if you make a mistake, and there is a reputational risk, you do it properly and you know – because if these people get suspended I can promise you now within five minutes they will be with
10 their attorneys and you will have an application tomorrow.

[42:36]

BOARD MEMBER: I was just going to say that, and you've got a team, it is not one person, it is a team of four that is going to gang up and come straight to you.

[52:42]

MR LINNELL: And we spend time thinking about that, because in a sense typically when you have a suspension inquiry I am saying
have got an allegation you took money out the till, and I
20 am going to confirm that through an investigation and I need you to be out of the way while I investigate, so you are saying I have got a specific allegation against you as an individual or you as a group, quite often you get unions who are suspended together because they collectively did something wrong.

In this case what you're saying is it is because of

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your situational influence on the business in order for me to do this inquiry free from any influence because we want to do it right it would be impractical and improper for you to sit there, because it will have a negative effect, so you are not imputing anything at this stage into wrongdoing even though I am sure you could write a whole lot of things down if you wanted to. That is not where you are starting.

[53:41]

MS NAIDOO: Chair I think that is ...[indistinct] because I was a bit concerned this morning in our deliberation when we took the decision this is the route to go we actually felt that we are going to say this is not a suspension, we need you to step aside, but I think we have moved from there. This is a suspension ...[intervenes]

[53:56]

CHAIRPERSON: Yes absolutely.

[53:57]

MS NAIDOO: ...but it is based on we cannot do a proper investigation with you in the chair, so that ...[intervenes]

20 [54:00]

CHAIRPERSON: Yes that puts it neatly.

[54:03]

MR LINNELL: So you are not saying they are guilty of anything, they might turn out to be guilty of something, but you're saying I don't know at the moment, I am open-minded, I haven't started the investigation, you haven't

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started your investigation, it is open-minded but in that process it is good for them and it is good for your company if they put their hands up and say look can I suggest this to you because what you do is you don't want to be in the Labour Court tomorrow, you are going to avoid that, I mean it costs an awful lot of money and it gets, the newspapers will never take your side.

[54:33]

CHAIRPERSON: Agreed, agreed. Nick tell me something,
10 if we say that we want you to set – step aside under suspension because we do not believe that the investigation can be done with you present, they turn around and say but that is not correct, we don't think so, so what is it that we need, do we have to show cause in our intention to suspend or in our act of suspending that previously you have demonstrated that you can interfere with things that you know – in other words do we have to substantiate that?

[55:20]

20 **MR LINNELL:** The ...[indistinct] an interesting phrase, you don't have to prove like a court of law that the reasons are such that there is any inference of guilty, what you want to show is if you are not suspended it might impede the investigation and on a reasonable basis you have to say to us it is logical that if the boss is sitting there, his subordinates are unlikely to feel free in advancing

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information and I can promise you every single court in the land will agree with that, because that is just human nature.

[55:55]

CHAIRPERSON: That is what I am interested in.

[[55:56]

MR LINNELL: So it is not as if you have to – but in your instance here you have got some information so when you get into the discussion with these particular individuals
10 there are some known allegations, allegations, not proven, but there are allegations, you are at the beginning of a thing, where at least two of them have made decisions where they have used their authority to influence investigations.

Now you would say to them as human beings leaders typically impose their presence on investigations, it is bad, in your particular case there is this allegation that in this instance you did do this, so I am not saying more than that but there is an allegation to say that even you
20 had a propensity to do what everyone else would do anyway. People, it is human beings, they have the propensity to try and influence the outcome one way or the other and this would just show they have done it in the past and you have got some cases of that with these people. Sorry sir.

[57:06]

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MALE VOICE: Thanks Nick. Suppose that maybe there is no specific incidents to refer to, how do we persuade them to take leave ...[indistinct].

[57:24]

MR LINNELL: I think it's – as the suggestion was we start the process and you say this is a pre-suspension discussion, the Board is of this belief that you should be suspended but it wants to hear from you as to why that should not be the case, these are the reasons, and you
10 advance the reasons, and in that process one would hope and I think skilful management of that discussion often leads people to say would you be happy with this, because they – one of the things they always come back with, I promise, they are going to say but if you suspend me people are going to think I am guilty and you are going to say we don't think you are guilty because we haven't got any grounds to think you are guilty but I agree with you people will think that and then you say to them what other
20 what other way do you think we can minimise the risk and their answer is just one thing, that I be on special leave, and you say well I like that idea.

[58:32]

MS MABUDE: That's the one thing, either special leave or resignation.

[58:38]

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MR LINNELL: Ja, very much, there is always a risk of resignation ja. They volunteer their resignation, that too is a risk.

[58:45]

MS NAIDOO: ...[Indistinct] accepted as part of that, at that stage I don't think you accept resignations.

[58:50]

MR LINNELL: You can't as an employer refuse it, you can just hold them to their contract terms, say I can resign but
10 you say well your contract says you are on a fixed term contract for another six months you have to stay, then you get into a separate discussion about what will it cost me to let me go early, so I would, these guys are on fixed term contracts.

[59:09]

MS KLEIN: Can I maybe just add onto that, I mean we have had occasion where that has happened where you would say no as part of the investigation you may want to go but it is not in our interest to accept your resignation at
20 this stage.

[59:19]

CHAIRPERSON: Ja, exactly.

[59:20]

MS KLEIN: Because I mean you may even have evidence that you still want to act on, but I mean even if people, because I have seen people just then staying away,

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because that's another option, they just don't come to work but that doesn't mean you can't pursue them, if you do find out that they have done certain things that was wrong, you still go after them.

[59:35]

MS MABUDE: But the fact that they resign doesn't mean you can't pursue them.

[59:38]

MS NAIDOO: Correct.

10 [59:39]

MR LINNELL: But in a labour context it makes it difficult because if they resign and you accept it then you have got no employee/employer relationship and a disciplinary procedure is premised on that relationship, so if you terminate the relationship you can't have an employment discussion with you.

[59:57]

CHAIRPERSON: Nick can I just read what Eskom's – what is Eskom's disciplinary code? Article 4, for a
20 suspension of an employee with pay pending disciplinary inquiry, hearing or pre-dismissal arbitration. 4.1 says:

“When it is suspected that an employee may have committed misconduct and that his/her continued presence in the premises of the company might interfere with the disciplinary investigation the manager may decide to suspend the employee with

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pay pending the outcome of the investigation.”

4.4.2 says:

“Depending on the outcome of the investigation the manager may extend the suspension or impose a suspension [if the employee was not suspended] pending the outcome of the disciplinary process.”

Now 4.4.3 says:

10 “The decision to suspend the employee must be considered if and when one or more of the following factors are involved:

- A. Element of dishonesty in the alleged misconduct;
- B. Possibility of tampering with evidence.
- C. Possibility of interfering with the investigation process; and
- D. Possibility of intimidating witnesses.”

[01:01:12]

MR LINNELL: Because I have obviously read, I have obviously gone through your policy before today so I am familiar and it is not the first one, you are not alleging
20 wrongdoing here, it is 2, 3 and 4 or C and D. So we’re saying if you run an investigation it is probable there will be interference with this investigation and that is the premise of it, and your policy provides that.

So what you have read out is in conformity with our discussions. In corporate – in the corporate environment

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you're looking at reputational damage, it is a better outcome if the person wants to go, it is a more positive thing ...[intervenes]

[01:01:59]

MS NAIDOO: Wants to go on leave?

[01:02:00]

MR LINNELL: Go on leave, but you are resolute that in your mind sitting here it is improper for them to be in their offices while you conduct the investigation.

10 [01:02:10]

BOARD MEMBER: Suppose that the person is new into the portfolio that they are the Chief Executive and he doesn't see himself directly or indirectly implicated, how do you pursue that type of a person?

[01:02:30]

MR LINNELL: I thought about that, I think he has been in office about five months, and in that five months certain things have happened in this business which might be evidenced during the investigation. In other words I don't
20 think everything which has been done wrong, if there is anything here, has been done in the far distant past, it could have been done yesterday, but there is also suggestions that the CEO has condoned things or done something even in the short space of time he has been here, so even if he had just been here for a month the same would apply.

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It is quite possible when you have a CEO and particularly one who came from the policy department who was shareholder that there is issues here that have impacted this company which he was not part of as an employee but he brings a knowledge and a position of it. In other words, if the policy dictated to you by your shareholder in the past in the form of the Director General his now being paid out here and there has been something improper about that solution.

10 [01:03:42]

MS KLEIN: It redefines his judiciary duty.

[01:03:44]

MR LINNELL: His on record in the presses to saying in fact that one of the prime problems here is policy. The inference being the shareholder policy has manicured this company. The CEO was part of the policy maker so I am not sure what he meant when he made the press statement but the important thing is his been here for a number of months. His been here for a number of months and that
20 puts him in a position.

The CEO is a critical person overseeing everybody. I have just even doing some work with another re-sized small and less complicated big standing company and the CEO is on suspension and it is quite clear that the CEO's thing is penetrate the business, down to the lowest levels. And if he sat there you would have impact the investigation

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without any shadow of a doubt it is human behaviour. It does not mean it is him it is us all we would all behave like that.

[01:04:57]

MALE VOICE: But my main question is around if from his side he does not see anything that can implicate him directly or indirectly.

[01:05:09]

MR LINNELL: I think you are not suggesting at this
10 stage...[intervene]

[01:05:11]

MALE VOICE: No, not ja no I am saying I would do it that way.

[01:05:15]

MR LINNELL: I think you going to see much, he have been here for five months this investigation is going through this moment back in time and we need to do this. And more importantly in your capacity you're the situational leader of this business it is important you are
20 not sitting there because people below you they do not know. I mean as you go down the line how I think - I do not know the CEO's history. I do not know who is involved and I do not know if when he was at the department, he appointed that division manager or whatever and therefore if he is sitting there, he might see what I would say just because the CEO. So I think even if he had been here a

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couple of weeks the same would apply in this case, he has been here about five months.

[01:06:01]

MS NAIDOO: If I may just add Nick our fall-back position is now he may not see it but we see it and that is where point number 4 comes in because we believe, if maybe he does not believe we believe that him being here is not going to help.

[01:06:16]

10 **MALE VOICE:** Ja.

[01:06:17]

MR LINNELL: It is very difficult for him to persuade a court that you are being unreasonable because I think courts look at human behaviours and I think the courts would say I buy the argument.

[01:06:28]

CHAIRPERSON: I think that is the main interest for us

[01:06:29]

20 **MALE VOICE:** Probably I just want to check in business just a check on us not – I am not questioning anything. We got four topics that it involves this company that we going to sort of attempt to address at the same time. Would it not serve us better if we probably just address the two inner executives first before we touch the two because they also executive members of the board. And do it in a step, one, two and that you must tell us because you have

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the facts on hand.

[01:07:06]

CHAIRPERSON: It does not make the difference.

[01:07:07]

MALE VOICE: It does not make the difference. Okay, thank you at least we have asked that question.

[01:07:10]

MALE VOICE: If you two could stay?

[01:07:12]

10 **MALE VOICE:** No, we cannot.

[01:07:13]

MALE VOICE: Ok we have asked that Can question.
[indistinct-cross-talking]

[01:07:20]

CHAIRPERSON: Okay can we do this then Nick the mandate we would like to give you as you have explained one of coordinating this entire exercise fortunately you have done work on this you are familiar with what is going on. That means to say you worked with it particularly the
20 audit and risk committee.

I think we also need for you to support them in terms of the terms of reference that must be put in place and then assist them as the expert input that needs to come in to do specific things and they will then suggest a modes operandi between them and yourself. There is also the people in governance committee which committee then

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would be doing the suspension issues.

Audit and risk will be doing the operational work around the investigation itself but the people in governance has to do the substantive HR issues in other words pre-call each of the executives, tell them is there any reason not to suspend you. That process we would like you to assist as well.

[01:08:44]

MR LINNELL: Certainly, I can I think as I would
10 understand it is your resolution that you have given the sub-committee the delegated authority from the board. So to put it clear if you delegate authority to me I cannot re-delegate it to someone else.

So the sub-committee is seized with the delegated authority not part of it. So when you come to making those decisions to suspend the sub-committee is acting for the board. So the sub-committee needs to do that not part of the sub-committee.

[01:09:18]

20 **CHAIRPERSON:** Yes.

[01:09:19]

MALE VOICE: So it is wrong to try and re-delegate some of your powers.

[01:09:21]

CHAIRPERSON: No, no.

[01:09:22]

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MR LINNELL: So sub-committee is doing it as a whole.

[01:09:23]

CHAIRPERSON: Yes.

[01:09:24]

MR LINNELL: It is considering this that the sub-committee will come to a decision whether they had deduced to suspend. So that would be fine, on the second part absolutely I am more than happy to work with you on that basis. Can I just sound you out I would think from a
10 perspective of making sure everyone internally and externally accepts your findings. It is so important to the credibility of the outcome because you are going to take some actions and you want everyone to buy in and you do not want disputed words a good thing, a bad thing.

Your audit risk committee should define the principles around what it wants done and then you have had your appointed service providers the investigators to go and do it. Again, unfair to him because even as a board and a sub-committee you unfortunately will have other
20 retractors.

They are going to say no you had an agenda and regardless of whether you had an agenda or not someone will say you had an agenda and if none of you probably have been alive long enough to remember Richard Nixon when he went on TV and said I am not a crook. The moment he said I am not a crook the world his living

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memory he is a crook.

So perceptions are created by things and so we got to make sure the board is protected from people saying you targeted us. You started off, you might not have said it but in your mind, you were gunning for this, that or the other guy. So I suggest you decide the principles and you step back but you oversee it without doubt.

You do not allow free reign you have regular report backs where you test it you say I did not understand your point where you going with this. It does not make sense. Have you checked that because you are not saying do not go down that road but you are saying I want to understand why you think that is relevant and that is good governance because the board is not giving someone a free ticket just to do what they want.

[01:11:23]

CHAIRPERSON: Okay now the timing of all of this and of course managing the media. What is your view on the timing of this and also on my follow-up because we have to do this thing?

[01:11:41]

MR LINNELL: Sure probably the most critical thing after you made the decision. This moment the press will know of your decision.

[01:11:51]

CHAIRPERSON: Correct.

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[01:11:53]

MR LINNELL: So the press...

[01:11:54]

CHAIRPERSON: There will be something buzzing up here we must...

[01:11:55]

MR LINNELL: Ja. Look I have been in boardrooms where the pen has a camera and a recorder and my lapel badge is a camera and recorder.

10 [01:12:09]

MALE VOICE: Ja, ja.

[01:11:10]

MR LINNELL: And so do not ever assume you are in a boardroom and you talking in confidence because I am afraid the same as yourself and it got smaller and smaller these sort of devices get smaller and smaller.

[01:12:21]

MALE VOICE: It is very small.

[01:12:22]

20 **MR LINNELL:** So to coming back to the information the media communication is so important again. The nation agrees on what happens in here. So the press right now is going to read into this which they already know all sorts of things. You are targeting his people; it is political it is this it is whatever that I have mentioned.

So an appropriate media statement is very important

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to come up with. You saying you have taken this course and this is why you doing it because if you can take the initiative and then I can promise the population at large wants to hear what you have done today because they want Eskom to stand up and say we going to save this.

[01:13:10]

CHAIRPERSON: Ja.

[01:13:11]

MR LINNELL: So the people will be biased in your favour
10 you just have to make them understand why you doing it and it is good for a reason and I think particularly it is independent it is not hinged, you not after a lynch, you're not going after someone's neck you are trying to fix your business. And as important as that the moment you start doing what you do you have got thousands of employees who are going...

[01:13:35]

MALE VOICE: Who are in it, ja.

[01:13:36]

20 **MR LINNELL:** Who are threatened, insecure, fearful. Some are going to see opportunity there is all sorts of things from the worst to the least and you have to anticipate this. When you make a communication to your employees it is more the heart than your mind. You are going to tell them the board has done this and this is why we are doing it and that is two sentences. The next 50

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sentences is about your heart, you important, you important to the country, you stand between this and that. All the messages and you write the messages down must have every single one of the company the country relies on you to do it. So it is like going into war.

[01:14:24]

CHAIRPERSON: Ja.

[01:14:25]

MR LINNELL: And I promise if you communicate that with
10 emotion and feeling tomorrow you walk in after having done it you will see a lighter step...

[01:14:34]

CHAIRPERSON: Yes.

[01:14:35]

MR LINNELL: Because people were behind you and now feel committed to where you going and they will not feel endangered, threatened, insecure. So that is the most important communication you are going to give and again you have to do it very quickly because the rumour mill will
20 be flying.

[01:14:51]

CHAIRPERSON: It will be fast, ja, okay.

[01:14:53]

MS NAIDOO: But I think the moral of the staff will be a bit down.

[01:14:56]

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MALE VOICE: Ja, it is going to shock the place.

[01:14:59]

CHAIRPERSON: Now it is now 16:15. The next thing we have to do is to call those individuals.

[01:15:06]

MALE VOICE: I think so to Chair, ja.

[01:15:08]

CHAIRPERSON: Which is one by one.

[01:15:10]

10 **MALE VOICE:** Have them listen and engage with them on this.

[01:15:13]

CHAIRPERSON: Now is there time enough today to that would they still be here?

[01:15:17]

MS KLEIN: I do not think they have got a choice.

[01:15:18]

MALE VOICE: We have to do it Chair.

[01:15:19]

20 **MS KLEIN:** It got to be done.

[01:15:20]

MALE VOICE: We must do it no sorry Chairperson.

[01:15:21]

MS NAIDOO: Is the board doing this or sub-committee...[intervene]

[01:15:23]

CHAIRPERSON: It is the subcommittee.

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[01:15:24]

MS NAIDOO: Ja.

[01:15:25]

CHAIRPERSON: They are now - the two sub-committees must deal with the nitty gritty.

[01:15:28]

MS NAIDOO: Look but are you not getting a service provider to do this?

[01:15:31]

10 **CHAIRPERSON:** Sorry?

[01:15:32]

MS NAIDOO: Are we not getting a service provider to do this?

[01:15:33]

CHAIRPERSON: No, no the individuals.

[01:15:35]

MR LINNELL: Your sub-committee takes that decision.

[01:15:36]

MS NAIDOO: Ja.

20 [01:15:37]

MS KLEIN: Ja but must the sub-committee sit across from the leaders.

[01:15:39]

MR LINNELL: Yes, ja and have that discussion.

[01:15:43]

MALE VOICE: But Chairperson we thinking and in principle decision to suspend. They must now together

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with our service provider work out the processes.

[01:15:52]

MALE VOICE: Okay.

[01:15:53]

MS NAIDOO: We must have had that conversation now with them we need to follow due process. Those letters have to be drafted and everything or is the letters already ready?

[01:16:02]

10 **CHAIRPERSON:** Already ready.

[01:16:03]

MALE VOICE: Ja.

[01:16:04]

CHAIRPERSON: I do not know are the letters ready?

[01:16:06]

MR LINNELL: I have not seen any. [indistinct-cross-talking]

[01:16:08]

MALE VOICE: We have to just check that.

20 [01:16:10]

CHAIRPERSON: No sorry, sorry this is now really a no, no. There are no letters ready these people will prepare the letters with the help of the service provider and carry out the process.

[01:16:20]

MS KLEIN: Ja.

[01:16:21]

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MALE VOICE: Okay thank you very much okay.

[01:16:22]

MALE VOICE: We can have it ready now. [indistinct-cross-talking]

[01:16:25]

CHAIRPERSON: The board's role is over finish except for one thing please advise me. It just happens that the people in governance committee is one of the committees that I sit on. Now is it advisable for me as a Chairperson
10 to be present in that meeting.

[01:16:47]

MR LINNELL: Yes.

[01:16:49]

MALE VOICE: They are not sharing here.

[01:16:51]

MALE VOICE: Okay.

[01:16:55]

MALE VOICE: Without a few words Chairperson as well.

[01:17:00]

20 **MALE VOICE:** No we are in the same governance committee as well. We got Delta...

[01:17:05]

CHAIRPERSON: It is the four of us.

[

MALE VOICE: Isn't the CEO a member of that as well?

[01:17:12]

MR LINNELL: Who's your committee, who is your...

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[01:17:14]

MS NAIDOO: For people and governance?

[01:17:15]

MR LINNELL: No, no for the board has created a sub-committee to oversee this investigation.

[01:17:20]

MALE VOICE: No, no.

[01:17:22]

MS NAIDOO: We asked the risk and audit...[intervene]

10 [01:17:23]

MR LINNELL: So they are in charge so the board has given them the authority.

[01:17:27]

MALE VOICE: And the longer we talk Chairperson the longer we delay their work. [indistinct-cross-talking]

[01:17:31]

MR LINNELL: If you are part of their committee you must just say.

[01:17:33]

20 **CHAIRPERSON**: No okay fine can I just establish are you saying that the audit and risk will take up the whole process from now on going forward.

[01:17:44]

MR LINNELL: No, no.

[01:17:45]

CHAIRPERSON: Or will people in governance do that and hand over once the suspensions have been done.

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[01:17:51]

MALE VOICE: Ja.

[01:17:51]

CHAIRPERSON: Hand over the process to the people in governance.

[01:17:53]

MALE VOICE: To audit risk.

[01:17:55]

CHAIRPERSON: Okay now I understand.

10 [01:17:57]

MS NAIDOO: But Chairperson there is one other thing that came up from Nick as well we did speak about the fact that this information is probably out there somewhere but that does not sit with any of those schematics. Something needs to happen concurrently with the work that now gets done.

[01:18:09]

MS KLEIN: Do you mean a parcel bar thing?

[01:18:10]

20 **MS NAIDOO:** No, no not a parcel bar I am talking about getting statements ready etcetera, etcetera because it has got nothing to do with people and risk sorry people and governance and it has got nothing to do – it is part of a discussion but we must make a decision in terms of who is going to be engaged to help us with that because that becomes critical once this is done.

[01:18:34]

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MALE VOICE: It is a PR exercise yes.

[01:18:35]

MS NAIDOO: Ja.

[01:18:37]

CHAIRPERSON: Remember that we discussed this matter with Ronny and Ronny knows people who can do this

[01:18:44].

MS KLEIN: Who is Ronny?

[01:18:45]

10 **MALE VOICE:** Romeo.

[01:18:45]

MS KLEIN: Oh.

[01:18:47]

CHAIRPERSON: He knows – he said he can give us advise before he left here, he said it was important that we get the best. This is a member of the board ja, we get the best communications person to handle these matters. So we need to now conducting and find out if there is a person to do that.

20 [01:19:08]

MS KLEIN: I have also given a name to which Mia...

[01:19:09]

MALE VOICE: Leo.

[01:19:11]

MS KLEIN: Leo was looking chuck that out the back.

[01:19:13]

CHAIRPERSON: Okay let us hear it then.

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[01:19:15]

MS KLEIN: Ja.

[01:19:16]

MALE VOICE: That communication should come out of your office Chair.

[01:19:17]

MALE VOICE: Ja, and then you take charge of that.

[01:19:20]

CHAIRPERSON: Sure. Maybe we look at the timing
10 remember now we going to look at the issue the letter of
intent or we are going to invite them for tomorrow to come
with their representative. Then you will issue them with
this, we disused this issues it is only then we can
communicate.

[01:19:40]

MR LINNELL: Okay, can I just put some views to you. In
an ordinary situation it is good practice to give a person a
letter and let them think about the letter and then you call
them and have a hearing.

20 But that is again dependent upon the
circumstances, for example if you caught someone doing a
horrendous crime taking money out of the till now you are
not going to give him a letter and then have a you know let
him go home and then come back for that.

[01:20:11]

CHAIRPERSON: Ja.

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[01:20:12]

MR LINNELL: It depends on the circumstances. I would suggest the seniority of these people, the nature of your decision today is serious and significant. You could dispense of the letter call them and have a verbal conversation but the conversation is a conversation two parts. The first part is I am telling you what the in principle decision of the board is, we feel this that you should be placed on suspension for these reasons, okay.

10 Now you need to tell us why that is not the right thing to do etcetera, etcetera what we just discussed and then you say to them – and you have to do it one at a time you cannot do it as a group. We going to go out of the room now you stay here we will come back in an hour okay and when you come back you say please give me your reasons because the process part of it is one of fairness. They going to come back and say you surprised me so much that you only gave me an hour to think about it. These allegations are quite simple, we followed them in, in
20 a few minutes. It is common sense that if you have leaders overseeing an investigation it is going to lead to impairing the process. They do not need more than an hour.

[01:21:30]

MS MABUDE: But...

[01:21:31]

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CHAIRPERSON: Yes.

[01:21:32]

MS MABUDE: What is going to come out of mind is the people of governance sitting discussing this thing and then after that getting into the decisions...[intervene]

[01:21:49]

MR LINNELL: Sorry what is that I do not understand that decisions.

[01:21:52]

10 **MALE VOICE:** Okay let us go again to the Chairperson.

[01:21:54]

CHAIRPERSON: No, no I did not – listen to what they are saying here. What she is saying is this...[intervene]

[01:22:00]

MS NAIDOO: Because Nick is not aware that we started here on the CEO. [indistinct-cross-talking]

[01:22:09]

MS MABUDE: Ja, but let me check.

[01:22:10]

20 **CHAIRPERSON:** Nick, what is happening is that the Chairperson of people and governance happens to be the same individual the board has agreed will temporarily sit in the CEO's position. Now the question that she is asking is if he is going to be the one who is chairing the committee that is harassing the suspension.

[01:22:33]

MR LINNELL: Yes, you are absolutely right it is not good

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practice.

[01:22:35]

MALE VOICE: No it is not good practice.

[01:22:37]

MR LINNELL: No you are judge and jury...

[01:22:38]

MALE VOICE: Ja judge and referee all at the same time.

[01:22:39]

MR LINNELL: Oh yes.

10 [01:22:40]

MS NAIDOO: Does it have to be one of us board members why cannot this be an independents service provider, a law firm?

[01:22:45]

MR LINNELL: No, it is the employer.

[01:22:46]

MS NAIDOO: Is it?

[01:22:51]

20 **MR LINNELL:** Ja in fact if he said I am going to phone my lawyer and ask him to come in here. You say no, no this is a discussion between the employer and the employee.

[01:22:57]

MS NAIDOO: Okay.

[01:22:58]

MR LINNELL: We cannot have outsiders

[01:22:59]

MALE VOICE: Ja.

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[01:23:00]

MR LINNELL: And you cannot have me actually sitting there because then he is going to say but you have got someone to assist you it is only fair that I have someone. Then you open up a can of worms because then you are going to have a whole team in here. You just want the employer to sit there and the employee to sit there and you have – and there is no rules it is just fair and reasonable. It is just constantly saying what is fair.

10 [01:23:24]

MALE VOICE: I think Chairperson you have to do it. The seniority is so...[intervene]

[01:23:29]

MALE VOICE: Ja, absolutely.

[01:23:33]

MALE VOICE: I just want to catch this one point, this two points...[intervene]

[01:23:34]

MR LINNELL: Did you have as a Chairperson received
20 the delegated authority of the board to do that because in a normal situation if you suspending say the CEO who reports directly to the board the board has the power to suspend, no one else. The Chairperson cannot suspend; the board is the majority. So you will just have to be comfortable that the board has given him the delegated authority to do that

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. [01:23:58]

MALE VOICE: Ja.

[01:23:59]

MR LINNELL: Then he can do with it whatever he likes.

[01:24:01]

MS KLEIN: Well right now.

[[01:24:02]

MALE VOICE: Right now the delegated authority, ja.

[indistinct-cross-talking]

10 [01:24:04]

CHAIRPERSON: No, no wait no misunderstandings. It is the people and governance committee that is doing this. That is where the delegated authority who it has gone to.

[01:24:19]

MR LINNELL: Then they must do it but you must...[intervene]

[01:24:21]

CHAIRPERSON: Now hang on.

[01:24:23]

20 **MALE VOICE:** Ja, he is in a complicated position himself.

[01:24:25]

MR LINNELL: Then he just need to recuse himself from that.

[01:24:27]

CHAIRPERSON: No hang on wait a minute let me explain. It is the people and governance committee that the board has delegated to carry out this exercise. Now he being the

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Chairperson of the committee and then subsequently becomes the...

[01:24:42]

MS NAIDOO: The acting CEO.

[01:24:45]

CHAIRPERSON: We feel he is conflicted so they are saying let us get another member of the committee to do it.

[01:21:51]

MR LINNELL: Are there only two members of the
10 committee?

[01:24:54]

CHAIRPERSON: No, there is 1,2,3,4,5.

[01:24:56]

MS NAIDOO: Are you in the committee to?

[01:24:57]

MALE VOICE: But we have agreed on you Chairperson.

[01:24;58]

MS NAIDOO: We have just agreed on you.

[01:25:00]

20 **CHAIRPERSON:** So that is why I am saying to you understand that is not because I am the Chairperson it is because I am a member...[intervene]

[01:25:07]

MS NAIDOO: A member of the committee, ja so we all agree to that.

[01:25:08]

CHAIRPERSON: So and it is not me being delegated to

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do this it is the work of the people in governance committee.

[01:25:14]

MS NAIDOO: Ja.

[01:25:15]

CHAIRPERSON: Do you understand.

[01:25:16]

MS KLEIN: But is that okay?

[01:25:17]

10 **CHAIRPERSON:** But I asked is it okay that I should do it as the Chairperson.

[01:25:19]

MR LINNELL: I prefer it not to be but we can afford to be robust it is just that technically you as a board empowered a group of people. The moment you empower a group of people the group has to act as a unit.

[01:25:34]

MALE VOICE: As a unit, ja.

[01:25:35]

20 **MR LINNELL:** Which means it is the majority of that unit. So if there is five people and three people say yes it does not matter what the other two people said it is yes. So as soon as that body says we going to give the power to one of us you going to say did the board when it took a decision to empower five people anticipate in you re-delegating or abdicating that responsibility to one of you.

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Then we say if the board knew we were going to do that would they still have approved it.

[01:26:04]

CHAIRPERSON: That is not what we want to do. The understanding is that that is not what we going to do. I just happen to be one member of this committee.

[01:26:11]

MS NAIDOO: Yes.

[01:26:12]

10 **CHAIRPERSON:** And they are saying okay his not available to do it so why don't I do it.

[01:26:16]

MR LINNELL: Ja I agree. I do not see why the committee cannot do it with the Chairperson of the committee recusing himself for obvious reasons. The rest of the committee continues with the process and they decide on the matter as a collective.

[01:26:29]

MS NAIDOO: Ja.

20 [01:26:30]

MR LINNELL: Except you recuse yourself and you say, you just recuse yourself you say you are conflicted.

[01:26:36]

MALE VOICE: Yes we put him in his place as Chairman of the governance committee.

[01:26:40]

MALE VOICE: Ja.

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[01:26:41]

MALE VOICE: Him, we members of the committee appoint him.

[01:26:43]

MS KLEIN: That is right given where we going.

[01:26:46]

MALE VOICE: That is allowed in terms of your terms of reference.

[01:26:48]

10 **CHAIRPERSON:** They are saying I should act as the Chairperson of the governance committee something like that.

[01:26:51]

MR LINNELL: Ja that is not an important legal decision you can do that from one meeting to the next. So you sit down at this meeting of the committee that committee and you say the Chairperson is not at this meeting today he has recused himself who shall we have as Chairman for this meeting. You appoint a person, you record he is
20 appointed for this meeting and that is final. So it is a procedure within your committee so it is not a big issue.

[01:27:17]

MALE VOICE: Chair the – I just wanted to also highlight something that may also be an issue to consider. Remember that the chief executive and the FDR non-executive director their appointment is non-executive

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directors comes from the executive directors.

[01:27:40]

MR LINNELL: Except the CEO, ja.

[01:27:41]

MALE VOICE: There appointment comes from the shareholder.

[01:27:43]

CHAIRPERSON: Yes.

[01:27:44]

10 **MALE VOICE**: I am sitting here and thinking have we requested, have we notified the shareholder or recommend to the shareholder that because of A, B and C this is what the board has decided to do because I am still struggling to think whether can the board without a nod from the shareholder suspend both.

[01:28:10]

MS NAIDOO: Are you asking like whether there is a written letter that is beings sent to like a formality.

[01:28:14]

20 **MALE VOICE**: Yes.

[01:28:15]

MS NAIDOO: The nod is there the formality.

[01:28:16]

MALE VOICE: Ah, the formality.

[01:28:17]

CHAIRPERSON: But sorry we are not suspending them as directors only the shareholder can do that. We are just

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suspending them as officers of this organisation but as directors of the board is the shareholder who will do that.

[01:28:33]

MR LINNELL: Can I answer there because that is the right answer. You dealing with them in an employee capacity.

[01:28:40]

CHAIRPERSON: Yes.

[01:28:41]

10 **MR LINNELL:** Not as a director the memorandum of a corporation specifies that there are as ex-officio directors. So this board has no power to remove them.

[01:28:51]

CHAIRPERSON: Yes, that is the point...[intervene]

[01:28:52]

MR LINNELL: Because the memorandum of a corporation determines what this boards powers are and so this board is not interested as you rightly say their role as director and if you have a board meeting tomorrow even though
20 they are suspended as an employee they could come to the board meeting...[intervene]

[01:29:06]

MALE VOICE: Absolutely.

[01:29:07]

MR LINNELL: And we will have to send them a notice of all board meetings as you would normally do you cannot

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exclude them at all.

[01:29:13]

MALE VOICE: That is important.

[01:29:14]

MR LINNELL: It is an awkward position and we recommended it before that state owned companies and private companies change that in their memorandum of a corporation because it leads to all sort of problems because CEO's sometimes gets suspended four or five
10 months and you might be making major commercial decisions and you suspended the person because of his involvement in one of those decisions. So he is not allowed to come to work but he can sit and adjudicate over this decision.

[01:29:41]

MALE VOICE: Absolutely.

[01:29:42]

MR LINNELL: So it compromises the process but at the moment the law, the regulations governing this board says
20 you cannot change it. So you dealing with him greatly as an employee, you do not – I think the courtesy you should tell your CEO or the minister that this has happened but it is not approval. You are not advocating that status.

[01:30:04]

CHAIRPERSON: Can the shareholder then exercise any right to suspend them from directorship?

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[01:30:09]

MR LINNELL: No, she cannot.

[01:30:10]

MALE VOICE: No, until they are proven guilty. Ja, there is no way she is going to act to remove them as directors.

[01:30:16]

MR LINNELL: The company's act provides if you want to - there is no provision in the company's act for suspension of a director you either are or you aren't because even if
10 you do not attend the meeting you are still liable for the activities of the company. So if the shareholder wants to get rid of a director you must give him 14 days' notice and say I want you to tell me why I should not remove you as a director and just like you are having a suspension discussion she has to listen to their reasons and if she thinks their reasons aren't good she fires them for a reason. But you cannot unilaterally do it without fairness so it is rather limited.

[01:30:56]

20 **MALE VOICE:** That is why maybe asking it indirectly or directly because actually I have not, I do not know if each and every word of our MOI...

[01:31:11]

CHAIRPERSON: Sorry can you raise your voice.

[01:31:12]

MALE VOICE: Okay so I am asking a simple question that

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will it be this board that finally suspend them or would it be the shareholder?

[01:31:28]

MR LINNELL: No it is the sub-committee which is acting on, with a delegated...[intervene]

[01:31:31]

MALE VOICE: That is why I am asking will it be the board or the shareholder?

[01:31:40]

10 **MR LINNELL:** It is the board. Look there is some interesting recent cases and there is one going on I think with the Department of Agriculture, Department of Energy at the moment that the board suspended the CEO. So the board took a decision like you taking suspended here and then the Minister came and said to the board no you must put them back and they refused and then they had a meeting and they all walked out of the meeting with their heads down and reinstated him. Now I am afraid to say either they were cajoled to do that but in law the
20 shareholder had no power to that whatsoever it is the board's decision and so the shareholder can say to the board if you do not do as I tell you I have got to fire you guys in 14 days. So that is a thing you think about but you cannot tell him what to do, you are in charge of this business and she is not. But it is an interesting, it will be an interesting case reported to tell the board to reinstate.

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[01:32:42]

MALE VOICE: So you cannot do it.

[01:32:43]

CHAIRPERSON: Okay can we then, sorry...[intervene]

[01:32:45]

NEXT: Chair can I ask that we explore that scenario so that if we have to do it we should do it and we should not allow for it to scupper the process because true you do not want to have a situation that permit it in that agricultural case where because of process. Given what you had to do and what you should have done in the first place, if we could be allowed to...[intervene]

[01:33:13]

CHAIRPERSON: In reference to what? It happens to what specifically?

[01:33:16]

MALE VOICE: The issue with the shareholder because we have a new MOI and Madisella would help us as to what it says so that we then understand so that we following a proper process.

[01:33:33]

CHAIRPERSON: Look you have seen them and however you read it.

[01:33:36]

MR LINNELL: Well if you change in the last couple of weeks, I have not seen it.

[01:33:39]

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MALE VOICE: No it has not changed not in the last couple of weeks.

[01:33:41]

MR LINNELL: Ja.

[01:33:42]

MALE VOICE: But it certainly changed.

[01:33:44]

MR LINNELL: Look it will not deal with your powers in respect of this the principles are the board is empowered
10 to do what it is doing; the shareholder does not have the power to do anything – cannot interfere with your powers all that the shareholders can do is fire you.

They have got no other power you are in charge of the business. So that is what it will say the issue of the two Chairpersons I think it is quite right if you thinking that in the event that you suspend the CEO well you going to appoint someone else and that person is part of the process. He recuses himself it would be improper to be there and he has volunteered in any event to recuse
20 himself.

[01:34:26]

MS MABUDE: No I am just talking about the...

[01:34:29]

MALE VOICE: The board proceedings.

[01:34:30]

MS MABUDE: The acting CE being there as the acting CE

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and the old CE coming in the board meeting as a board member because...[intervene]

[01:34:34]

MR LINNELL: Oh I see what you mean it is always uncomfortable, I promise. You know what one does I think in life the law can compel people to do certain things but at the end of the day the better way to give people to do things is by persuasion and you got to say to the person exactly what you said this will be difficult and it will be
10 difficult for you. Do you want to put yourself through that embracement because things might come in the meeting which, a discussion that we ask you to leave the – recuse yourself from the matter and then you come back and I they ask you to recuse yourself again.

[01:35:18]

MALE VOICE: The acting CE comings to the board meeting or whatever committee but he does not vote because he is not a director. While the existing CE and the FD are directors of the company. That is the anomaly,
20 you can come in and sit there so he is the acting FD but cannot vote because these were directors until the minister removes them as directors only then he registers him as a director and then he can vote. I mean we have been through this many times.

[01:35:51]

MS NAIDOO: Yes we did that in the past, I mean I a

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mindful of the time and what this committee still needs to do today.

[01:35:57]

MS KLEIN: I think the thing about what the minister is or is not going to do regarding them or the executive directors I think that you need to work on. I am more concerned about what we need to do in the time not because I need to leave, I can leave at 12, it does not matter. But in terms of what work still needs to be done by us as a committee
10 today.

[01:36:15]

CHAIRPERSON: Can we then say the board session and then we can finish with that, we finish with the important decisions.

[01:36:22]

MALE VOICE: Right.

[01:36:23]

CHAIRPERSON: And let us then let the people in governance committee sit and deliberate on what to do.
20 [

MALE VOICE: Absolutely.

[01:36:36]

CHAIRPERSON: I think normally...[intervene]

[01:36:37]

NORMAN: Actually, it is a suggestion can we not check with our members whether there is a timeline that provide

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for people to respond to the letter. Is there a specification on the timeline maybe seven days or I do not know?

[01:36:59]

CHAIRPERSON: As far as I can recall it is 48 hours.

[01:37:02]

MR LINNELL: Where would you find that I do not think that is mandated. [indistinct-cross-talking]

[01:37:10]

MALE VOICE: Yes, they give you notice and then within
10 48 hours you must say why you should not be suspended.

[01:37:14]

MR LINNELL: I think give them whatever you want to give them and the letter certainly so if you give them 48 hours it is 48 hours because if you give them 5 minutes it is 5 minutes.

[01:37:20]

MS KLEIN: It is not normally no.

[01:37:21]

MR LINNELL: It is not a regulated period of time there is
20 always a reason. It is a question of fairness and what is reason. So if it is - as I use the analogy if you walk out of here and see someone stealing money you are not going to give them 48 hours to come back and argue. So it is just depends on the circumstances.

[01:37:38]

MS MABUDE: No he is talking about within, within means

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1 minute or 48 minutes.

[01:37:43]

MR LINNELL: That is why I think if you said within 48 hours it implies that you giving the person 48 hours to think about it and I think that would be difficult because and I think that will be entirely inappropriate to even have that as an option in your policy because imagine you are suspending anyone in a position of authority in this business for good reasons for allegations of wrong doing
10 and the guy is walking around in business while you investigated, you investigated him.

What the court would say if you left him for 48 hours you should leave him there for the whole time, you obviously has no right to suspend him. So you cannot have him walking around at 48 hours. After the news of suspend the person now, you say, you call him in and you say we starting this discussion now you must leave the office now and come back and talk to us in the morning but in between you may not be in the office. You can break it
20 up like that. So the board can tell people I am not suspending you but I am giving you an instruction to go home they must follow your instruction.

[01:38:49]

MALE VOICE: Sorry Chair quick just quickly there is an interesting provision in the MOI it says unless the shareholder resolves otherwise a director shall also seize

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to hold office if states then the interesting one is 18.11.4.3 which says he or she stands to be an employee of the company or is suspended as an employee of the company.

[01:39:10]

MR LINNELL: Ja no then it is changed, when did that change? So let me have a look at that when did that print.

[01:39:14]

MALE VOICE: That is interesting

[01:39:15]

10 **MR LINNELL:** Because that is a new change that the state is putting in.

[01:39:18]

CHAIRPERSON: Ja, it is very clear all that.

[01:39:21]

MALE VOICE: Ja we all have that, excellent.

[01:39:22]

MR LINNELL: So for example, most other settings they have not changed that.

[01:39:26]

20 **CHAIRPERSON:** That is very good Mellissa. So if they are suspended on a continuous basis.

[01:39:32]

MR LINNELL: Continuous to serve is it actually suspended now.

[01:39:35]

MALE VOICE: Ja.

[01:39:37]

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MR LINNELL: And this has been signed off?

[01:39:38]

MALE VOICE: Ja, this has been signed off.

[01:39:39]

MALE VOICE: Chair I got two nice phrases that did get to an answer. Independent fact gathering exercise, sounds nice and the other one was to fix the business model. An independent fact gathering exercise to fix the business somewhere you should catch that. An independent fact gathering exercise to fix the business.

[01:40:05]

MALE VOICE: Sure.

[01:40:06]

MALE VOICE: Positive.

[01:40:08]

CHAIRPERSON: Ja I like that.

[01:40:09]

MALE VOICE: Ja, it is not for a second person.

[01:40:11]

20 **CHAIRPERSON:** I like that idea.

[01:40:12]

MALE VOICE: Ja you like that?

[01:40:14]

CHAIRPERSON: Yes, I like that idea.

[01:40:15]

MALE VOICE: Is it in our formal MOI is it, no – I do not understand what you are saying now.

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[01:40:22]

CHAIRPERSON: No what we got from the presentation. Would the board suggest those communications a press release or a press conference?

[01:40:34]

MS KLEIN: Press release.

[01:40:36]

MALE VOICE: Are you able to take questions?

[01:40:38]

10 **MS KLEIN:** Ja you do not want to be in that position right now do you.

[01:40:42]

MALE VOICE: This is a manual I had his name linked to the communication. I do not even know what it is ambassador.

[01:40:55]

MS KLEIN: Ja.

[01:40:56]

20 **MALE VOICE:** But Chair if you do have a press conference, I will recommend the two Chairs to be there and not be alone do not be a loner.

[01:41:02]

MS NAIDOO: Oh but maybe at this stage you would want

[01:41:04]

MALE VOICE: Ja.

[01:41:05]

MS KLEIN: Are you prepared to answer all those

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questions

[01:41:09]

MS MABUDE: We are CE we cannot...

[01:41:10]

CHAIRPERSON: Oh you cannot.

[01:41:11]

MS MABUDE: Ja. [indistinct-cross-talking]

[01:41:15]

MALE VOICE: No, the Chairperson can handle it.

10 [01:41:17]

MALE VOICE: Alright Chairperson.

[01:41:18]

CHAIRPERSON: No I will be the person that is for sure.

[01:41:20]

MS NAIDOO: Ja.

[01:41:21]

MALE VOICE: A press release?

[01:41:22]

CHAIRPERSON: I will not call a press media conference.

20 [01:41:23]

MS NAIDOO: The press will have a field day with you.

[01:41:25]

CHAIRPERSON: I will not do that now.

[01:41:27]

MS KLEIN: Absolutely until we have you know enough information. [indistinct-cross-talking]

[01:41:33]

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MS NAIDOO: Is this meeting over or are we going to dismiss because I think some of us can be excused.

[01:41:40]

CHAIRPERSON: Okay look we done on the board side. [indistinct-cross-talking]. We are done on the board side.

[01:41:58]

MALE VOICE: Yes sir.

[01:41:59]

CHAIRPERSON: So let us just sit as a...

10 [01:42:01]

MALE VOICE: Peoples governance.

[01:42:02]

CHAIRPERSON: As a people's governance and just see where we going to go.

[01:42:04]

MS KLEIN: Okay fine.

[01:42:05]

MS MABUDE: Chairperson.

[01:42:06]

20 **CHAIRPERSON:** Yes.

[01:42:07]

MS MABUDE: Your colleague.

[01:42:10]

MALE VOICE: You had something that you did not even do.

[01:42:12]

MS NAIDOO: You did not even respond to.

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[01:42:14]

CHAIRPERSON: Which is that?

[01:42:15]

MALE VOICE: That he did not respond to.

[01:42:18]

CHAIRPERSON: Nick there is a question.

[01:42:21]

MALE VOICE: Ja actually to the – I wanted to find out from you when you did your background EC checks and
10 balances.

[01:42:32]

MR LINNELL: On people or things?

[01:42:34]

MALE VOICE: No, no on background of...

[01:42:38]

MS KLEIN: Service providers.

[01:42:42]

MALE VOICE: At least up to now whether maybe I mean the status of Eskom at high level whether you have done it
20 to the level where there is a conviction that his decision can be an appropriate decision to take. I mean I am all about the fact findings because actually some of us we are getting information for the first time today and I am trying to find out whether you have got some concrete information that leads to this type of decisions.

[01:43:22]

MR LINNELL: No the answer is, the information I would

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have in terms of decisions and discussions is that this board it would be wise to discover the facts of what is going on here so that they can determine a number of things. Alternative strategies, restructuring different policy and people through actual omissions wilful or negligent have done things wrong here to cause or to exacerbate certain situations.

Now I think what I have done is it confirms in my mind sufficient grounds for you to say we as a board need
10 to find out exactly what is going on here. The situation is being at the moment at the board and at any company relies on its manager its executive to tell you what is going on.

This is such a big and complex business to rely on management always and in this particular situation where the company is facing unusual and extreme crisis. It is almost the dereliction of your duty not to say more on independent guidance as to what is happening here.

[01:44:39]

20 **CHAIRPERSON:** Nick can I, I...

[

MR LINNELL: So I do not have any pre-condition ideas.

[01:44:44]

CHAIRPERSON: Can I, that question does not belong to me.

[01:44:45]

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MALE VOICE: Oh okay I thought the...[intervene]

[01:44:48]

CHAIRPERSON: Look I think it is very clear if we are board members and we did not see that as a problem in the company then there is something wrong then we do not belong here. I want to make that very clear you heard what the Minister said there are cost that are running into billions of rand's in fact this moment the cost we running it is about R40billion.

10 We have load shedding cost by maintenance and irregular maintenance really. We have a financial client here were almost bankrupted as a company. We cannot sit here as a board and wonder why we need to make an investigation. No we cannot it is unacceptable. I cannot have board members asking what is the root cause for us to have this investigation, I cannot accept that.

[01:45:38]

MALE VOICE: No I think Chairperson it the...[intervene]

[01:45:41]

20 **CHAIRPERSON:** If I understand it we will be saying then it is unacceptable, I cannot.

[01:45:43]

NORMAN: No, no it is emanating from the fact that there are some reports somewhere when we had our meeting that there are some reports that you already done hence, I was just hopeful for searching for such reports if they are

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already available to be made available. [indistinct-cross-talking]

[01:46:02]

MALE VOICE: Chairperson.

[01:46:03]]

CHAIRPERSON: Yes sir.

[01:46:04]

MALE VOICE: In starting this afternoon session of the board I propose a resolution that there are no documents
10 available.

[01:46:12]

CHAIRPERSON: Yes.

[01:46:13]

MALE VOICE: A priority to us taking this decision and there is no one else involved in us taking this decision.

[01:46:20]

CHAIRPERSON: Correct.

[01:46:21]

MALE VOICE: It is a decision of the board for the
20 reasons that you have mentioned.

[01:46:24]

CHAIRPERSON: Yes.

[01:46:25]

MS NAIDOO: It is fact finding.

[01:46:26]

MALE VOICE: That was the resolution fact finding exercise there is no document.

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[01:46:29]

MALE VOICE: I think we are done Chairperson.

[01:46:30]

CHAIRPERSON: Okay let us move, can we have the governance committee then sitting please, time is running out. Can you stay?

[01:46:41]

MR LINNELL: Sure.

[01:46:43]

10 **CHAIRPERSON:** Unless the others want to join the committee that is fine we can proceed.

[01:46:47]

MS NAIDOO: Okay I can stay.

[01:46:49]

CHAIRPERSON: Oh they will stay; okay fine we can go into the committees meeting. Now modes operandi since I have now been asked...

[01:46:58]

20 **MR LINNELL:** Pressed by these communications because it is the end of the day and you have media talking straight away.

[01:47:05]

MS MABUDE: Let me ask just one little question. Is it according to the governance now is it right for the committee to handle this only or it should be handled by the issues, the committee should report to the board and then the board handles it? Like take it forward I just want

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to be sure in terms of governance.

[01:47:31]

MR LINNELL: As I understand you the possible resolution give the power to the sub-committee to take those decisions on its part. So you do not take a recommendation as a board you make the decision.

[01:47:42]

MS MABUDE: And implement them.

[01:47:43]

10 **MR LINNELL**: You implement them; you have the power.

[01:47:45]

MS KLEIN: But you can inform the board.

[01:47:46]

MALE VOICE: Ja.

[01:47:47]

MR LINNELL: Very important step you should not cut the board out everything you do you should inform them, that is out of keeping them informed but not to counter your decisions.

20 [01:47:56]

MALE VOICE: Your committee is statutory also, no.

[01:48:01]

MALE VOICE: No audit and risk.

[01:48:02]

MALE VOICE: Oh you talking about audit and risk.

[01:48:03]

MR LINNELL: But not for this purpose.

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[01:48:05]

MALE VOICE: No not for this purpose.

[01:48:06]

CHAIRPERSON: Okay can we have – what were you saying Nick what is the modes operandi?

[01:48:11]

MR LINNELL: I would think that you have got to look at this communication it should be because the rumour mill will be running wild.

10 [01:48:16]

CHAIRPERSON: Yes.

[01:48:17]

MR LINNELL: And if you do not say anything people fill the vacuum with what they think is a good thing to say. So I think you have got to think of the two communications one to the media and one to your staff. At the moment you have not suspended anyone as you sit here so your first communication is probably to tell people that you had taken a decision to do something which is this investigation
20 and you have appointed a sub-committee to do, to have oversight and to do the necessary things to enable it.

That is your first communication and then internally you want to tell them but I again with more heart and then as soon as you have taken any new decisions with regards to suspension you will make another communication both internally and externally and then internally then becomes

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more important because as I say...[intervene]

[01:49:05]

MALE VOICE: But Chairperson just to clear all sorts of if we – I propose a resolution that the people in governance committee has been delegated to implement the in-principle board decision to suspend the four executives and to follow due process. Yes, it summarises...[intervene]

[01:49:29]

CHAIRPERSON: Okay have you got that now.

10 [01:49:30]

MR LINNELL: Ja.

[01:49:30]

CHAIRPERSON: Okay that is the answer.

[01:49:33]

MALE VOICE: Sure. Okay alright in terms of the communication I think there is four key stakeholders here. One is we got to communicate to the shareholder. The other one is we got to communicate to the customers.

[01:49:42]

20 **CHAIRPERSON:** Sure.

[01:49:43]

MALE VOICE: The customers both as an Eskom direct customers and also as the public and we should be able to communicate to the employees and management of the employees of this, there is two things there. So if we can capture that correctly so that we get the message across

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correctly.

[01:49:59]

CHAIRPERSON: Okay.

[01:50:00]

MALE VOICE: If we can do all that in writing.

[01:50:02]

CHAIRPERSON: So the messaging is simply saying that the board has decided that it is – to carry out and...[intervene]

10 [01:50:13]

MS MABUDE: Fact finding.

[01:50:14]

CHAIRPERSON: A fact finding – what did we say?

[01:50:15]

MALE VOICE: A fact finding exercise to fix the business an independent fact gathering exercise fact finding to fix the business, right and do in lieu of that you have requested these particular.

[01:50:37]

20 **CHAIRPERSON:** No before that.

[01:50:38]

MALE VOICE: Before that.

[01:50:39]

MS NAIDOO: Sorry I cannot read you verbatim, can you.

[01:50:41]

CHAIRPERSON: No I just stopped it there. So the communicate will say the board has decided that it will

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institute a fact finding...[intervene]

[01:50:49]

MALE VOICE: An independent fact finding, fact gathering exercise.

[01:50:52]

MR LINNELL: Enquiry is a good word.

[01:50:53]

MS KLEIN: Enquiry yes.

[01:50:54]

10 **MR LINNELL:** It is a softer word.

[01:50:56]

CHAIRPERSON: A fact finding enquiry.

[01:50:59]

MALE VOICE: Ja. Right to fix the business.

[01:51:01]

MR LINNELL: I think fix implies...[intervene]

[01:51:02]

MS KLEIN: That it is broken.

[01:51:03]

20 **MR LINNELL:** That is it broken.

[01:51:04]

MS KLEIN: We need to decide.

[01:51:05]

MR LINNELL: It is a fact finding exercise to...[intervene]

[01:51:06]

MALE VOICE: To establish the status.

[01:51:07]

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MR LINNELL: To establish the status.

[01:51:08]

MALE VOICE: To establish the true status of the business.

[01:51:09]

CHAIRPERSON: The true status ja.

[01:51:11]

MR LINNELL: The capability ja.

[01:51:13]

10 **MALE VOICE:** That is fine.

[01:51:14]

MR LINNELL: And the word true might be a problem because it implies that it is currently not true.

[01:51:17]

CHAIRPERSON: Okay.

[01:51:20]

MR LINNELL: So it is an unnecessary adjective.

[01:51:22]

20 **CHAIRPERSON:** To establish an accurate status of the business.

[01:51:24]

MS NAIDOO: Ja, but Chair you know what I am going to go back to what the ambassador said I think we are getting busy with stuff we are not wordsmiths.

[01:51:30]

CHAIRPERSON: Ja, ja.

[01:51:31]

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MS NAIDOO: Can we get somebody who does this for a living to help us craft something taking into account the heart kind of angles because we are going to sit here and throw words at it.

[01:51:44]

CHAIRPERSON: It is now 16:52 can we find the person before...[intervene]

[01:51:46]

MS NAIDOO: Remember this report came out the 12th do
10 you remember it and you Chairperson said you were going to ask Leo.

[01:51:56]

CHAIRPERSON: Did Leo get the name?

[01:51:57]

MS NAIDOO: No but I am asking you remember we said we going to need to do this. Do you have someone?

[01:52:03]

MALE VOICE: Let me phone our board member.

[01:52:05]

20 **MS NAIDOO:** I have already given a name as well so can I give you that name, can we check if there is and then you check with Romeo and see because we – because word-smithing done incorrectly can have a counter effect on what we trying to do here.

[01:52:16]

MR LINNELL: Ja you also have to be with respect that is

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right 100%. There are not many public relations experts who have a better feel than you do.

[01:52:28]

MALE VOICE: Ja.

[01:52:29]

MR LINNELL: So I guess it is word-smithing but it is a minor part of it. The message is your message because this is your business. PR agencies are kind of flowery by nature. They broadcast it will be better for your internal
10 message. So I think your message is a public now is a very short it is one or two paragraphs. We doing this and you make also the point that it does not imply that there is any sense of wrongdoing or an anticipated or unexpected risks because you do not want tomorrow the financial papers to say Eskom's board is doing this because they heard something awful is going to happen like we going to have a blackout tomorrow. So you have to say we doing this in a sense is proactive but you make a statement this does not mean the board fears there is any reasonable
20 likelihood from a deterioration of the current situation.

So people have got to be understanding we doing this for positive reasons there is no negative influence in this communication and I would keep it at that and say the board will communicate further. So keep that short and sweet you do not want any massaging. I think you would understand any risk phrases coming in and I think soon as

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you do your internal one, I think these people are very good because that has got to have a lot of heart in it.

[01:54:10]

MS NAIDOO: I think my point was a bit further than just word-smithing. The issue of how we say it is one thing there is whole issue of what happens after that and I just find that a lot of these PR companies have got a much better handle on how to put it out and who to put it out with and who to lobby with than many of us either collectively or
10 individually. That was the point I was making.

I see that whatshis name has stepped out; I am also going to make a call and see if somebody – to your question is somebody available because Leo you would obviously not have had the name in terms of speaking to the person. So the ambassador is checking with Romeo quickly.

[01:54:50]

MALE VOICE: Yes.

[01:54:52]

20 **MS NAIDOO**: I will also just make a call and see if there is somebody on standby but then we must make a decision here.

[01:54:56]

MALE VOICE: Yes.

[01:54:57]

MS NAIDOO: To say do we or don't we get somebody

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involved at this stage.

[01:54:59]

CHAIRPERSON: Okay.

[01:55:02]

MS NAIDOO: And then we could see what would you need.

[01:55:05]

MR LINNELL: Yes, there is an issue that you would have to just watch. I would think by now through your
10 shareholder Minister that she has informed her boss which is the President. So we have to watch out when are they making statements.

I would imagine this is going to have such a positive effect on the public that you would find your Minister and the President will make a statement to this effect. Now we all know he is talking in parliament today and so if your Minister has told him about it he might also make a statement in parliament today, who knows but we have to anticipate that your announcement might not be the first
20 announcement because if the Minister is saying President we are doing this he's going to – physically he should tell the public he is the leader of the country. He should stand up and say guys the board is doing this and I support it.

[01:56:08]

CHAIRPERSON: Okay now I think I would have to obviously call the Minister and tell her about the outcome

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of this meeting.

[01:56:15]

MR LINNELL: Very important, ja.

[01:56:16]

CHAIRPERSON: Right, and I will also indicate to her that we intend to put out a statement tonight just about the decision of the board to do this fact finding enquiry. Just so that she knows that that is coming out. Now she may have whatever responses she has but certainly it is
10 important for us.

[01:56:43]

MR LINNELL: It is good protocol.

[01:56:44]

CHAIRPERSON: She may want us to have that emailed to her.

[01:56:47]

MALE VOICE: Ja, listen to this Chairman board in its pursuit to – can I say it? Board in its pursuit of making Eskom would class something like that has resolved to
20 commission an independent fact gathering exercise with the health and condition of Eskom. To this end the board has requested four of the top executives of the company to be relieved of the duties during the period of the fact gathering exercise.

[01:57:18]

MR LINNELL: I would not do that, it is premature.

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[01:57:21]

MS KLEIN: We still need to happen that meeting with them.

[01:57:23]

MR LINNELL: Ja I think adjectives like world class organisation are superlatives which are not necessary because you are business people that is marketing talk.

[01:57:32]

MALE VOICE: Okay.

10 [01:57:33]

MR LINNELL: What you want to do is say we as a board have taken a decision to do this the reason is that we want to better understand the status, the condition of our capacity and capability and make adjustments as are necessary in this business responsibility. And then reassure the public that there is no immediate risk that you are concerned of that they have not been previously told about. So it is a positive statement with countering a negative and then there are no negatives.

20 [01:58:09]

CHAIRPERSON: You will have to put something together.

[01:58:10]

MALE VOICE: Capture all that.

[01:58:10]

CHAIRPERSON: Did you capture all that?

[01:58:11]

MS NAIDOO: But you can work with Nick.

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[01:58:12]

MALE VOICE: Ja.

[01:58:14]

MS MABUDE: And Andrew where does he fit in here?

[01:58:19]

MALE VOICE: Okay let me see, let me just get my...[intervene]

[01:58:21]

MR LINNELL: I did draft something.

10 [01:58:23]

CHAIRPERSON: Did you draft something?

[01:58:24]

MR LINNELL: Ja.

[01:58:25]

CHAIRPERSON: So let us have a listen then.

[01:58:26]

MR LINNELL: But again it is your decision I mean I just because obviously I have been thinking about the logical steps.

20 [01:58:32]

MALE VOICE: We are delaying the process in telling people that they are gone, they are going to go.

[01:58:35]

MS NAIDOO: Ja you all need to go ahead and do that.

[01:58:37]

MALE VOICE: They going to leave the offices.

[01:58:39]

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MR LINNELL: Ja, can I just test an understanding with you as I understand it I might not be right but did the Minister inform any of the individuals that could well be suspended?

[01:58:55]

MALE VOICE: No the Minister is not involved no.

[01:58:56]

MS NAIDOO: No.

[01:58:57]

10 **CHAIRPERSON:** Our Minister is not involved.

[01:58:57]

MS NAIDOO: The Minister not, this is a board decision.

[01:58:58]

CHAIRPERSON: This is a board discussion.

[01:59:00]

MR LINNELL: Okay it might not be so in which case they already know.

[01:59:08]

20 **MALE VOICE:** Ja you sense the fact that sitting members are taken out of meetings for the first time ever shows some...[intervene]

[01:59:18]

CHAIRPERSON: Something is wrong.

[01:59:19]

MALE VOICE: Something is wrong.

[01:59:20]

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MR LINNELL: Well did you ask some people to recuse themselves?

[01:59:21]

MS KLEIN: Ja when the Minister arrived, she did.

[01:59:25]

MR LINNELL: What the executives to remove themselves?

[01:59:30]

MS KLEIN: Ja, because the others had already left.

10 [01:59:32]

MS MABUDE: It is the EC and the FDR directors so when he wants to see the board, they are part of the board but he specifically asked them...[intervene]

[01:59:47]

MR LINNELL: So was there any committee discussions done?

[01:59:48]

MALE VOICE: That is still there.

[01:59:50]

20 **MR LINNELL:** Oh okay she is, it is her call I mean there are no A and B to create directors typically but it is her call and there is nothing wrong with that. Absolutely she is allowed to come and talk in the committee it is not a board meeting. When she was addressing you, she was addressing you as a shareholder informally sharing with you her feelings.

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So it is not wrong but it does create a mind-set and you have to think about people's reactions to events. So we also got to anticipate if I do this what is someone else going to do. It is like the conspiracy theory but it is really necessary to think those things through but they could well be forewarned now and that is some of the reason why as you said we need to act quite quickly because uncertainty is never a good thing.

[02:00:43]

- 10 **MALE VOICE:** By the way, just to add on that Mbalani it is actually very smart because do not forget we are talking commercial and technology and it so happens that Mbalani is already involved in the turn around, in the generation turnaround.

[02:00:59]

CHAIRPERSON: Yes.

[02:01:01]

MS MABUDE: Mbalani?

[02:01:03]

- 20 **MALE VOICE:** That one that was selected.

[02:01:05]

MALE VOICE: Mbalani

[02:01:06]

MALE VOICE: Yes I know him.

[02:01:07]

CHAIRPERSON: So it is a good choice as a matter of fact

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because he can also quote us on the technology side.

[02:01:14]

MALE VOICE: Okay cool.

[02:01:15]

CHAIRPERSON: Okay Nick...

[02:01:17]

MS NAIDOO: Mr Chair can we excuse ourselves?

[02:01:18]

MALE VOICE: Okay.

10 [02:01:22]

MR LINNELL: I assume I would have said something.

[indistinct-cross-talking]

[02:01:42]

CHAIRPERSON: Okay this is Nick's...[intervene]

[02:01:45]

MS KLEIN: Suggested statement.

[02:01:46]

CHAIRPERSON: But we will print it, Leo.

[02:01:48]

20 **MALE VOICE:** Chairman

[02:01:50]

MS NAIDOO: Just read it to us it is fine.

[02:01:51]

MALE VOICE: Okays sorry can I just say Romeo said he has got a person to polish and handle our statement in such a way that it is well received but he cannot see this person right now. We need to draft it and email it to him...

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[02:02:11]

CHAIRPERSON: To Romeo?

[02:02:12]

MALE VOICE: And then he is going to deal with this person.

[02:02:13]

CHAIRPERSON: Okay that is good.

[02:02:14]

CHAIRPERSON: Okay that will work that is fine. Okay
10 here it is we will see how it goes. Number 1, its says
Eskom associate media release 11 March 2015. 1, the
stays in the capacity is not only a critical issue for Eskom
but more importantly for the nation as a whole. 2, supply
outages have had a major effect on people's lives, the
economy and investment in the country.

There can be no denying that the severity of the risk
caused by these outages. 3, Eskom is however working
tirelessly to ensure that the current spate of outages do
not increase and become more severe. The board is
20 confident that all practical steps are being taken and we
are reasonably confident that the position will not
deteriorate further.

Recently the President engaged with the
Chairperson of the board and the Minister, the substance
of this consultation is that the government expects and
subsequent deserves better insight into the current

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uncertainty. That where there are risks that they should be urgently addressed and further that if there was any wrong doing be it negligence or wilful and he did not imply there was then the board needs to address this openly and objectively. The President suggested that an individual...

[02:03:49]

MALE VOICE: No, no too much, just leave the President...

[02:03:55]

10 **CHAIRPERSON:** I am just reading to you what is on here.

[02:03:58]

MALE VOICE: If you have to include them you must take it from his national address.

[02:04:02]

CHAIRPERSON: Yes from his address.

[02:04:04]

MALE VOICE: The state of the nation address and the comments made by the Minister the board have seen it very important that they start acting seriously.

20 [02:04:12]

CHAIRPERSON: Okay.

[02:04:13]

MALE VOICE: Then it is fine.

[02:04:15]

CHAIRPERSON: Okay, have you got the state of the nation address accessible?

[02:04:18]

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MALE VOICE: Ja.

[02:04:20]

CHAIRPERSON: Because we need to quote from there.

[02:04:22]

MALE VOICE: Ja, that will work.

[02:04:23]

CHAIRPERSON: Okay I think what you then ended up doing here Nick is to say this morning the board considered this matter – this is now the issue of an enquiry and at the conclusion of that meeting the board resolved that an independent enquiry into the current status and capacity of Eskom and a review of the past actions would be conducted with urgency. But the board would appoint a sub-committee to oversee an act on behalf of the board.

[02:05:00]

MALE VOICE: No, no.

[02:05:01]

CHAIRPERSON: So okay that is...

[02:05:03]

20 **MS NAIDOO:** The board is mandated.

[02:05:04]

MR LINNELL: Board is mandated.

[02:05:5]

MS KLEIN: The board has mandated an audit committee.

[02:05:08]

MALE VOICE: The board is delegated to the people governance and the audit and risk committee to carry out

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its in principle decision to suspend.

[02:05:21]

MR LINNELL: But I would not mention that...[intervene]

[02:05:23]

MALE VOICE: But you do not go there

[02:05:24]

CHAIRPERSON: We do not go that far.

[02:05:24]

MALE VOICE: Oh okay.

10 [02:05:25]

MR LINNELL: What you're telling them at the moment is that you have taken a decision to have this investigation.

[02:05:27]

MALE VOICE: The investigation.

[02:05:28]

CHAIRPERSON: Okay, alright, right.

[02:05:31]

MS MABUDE: Chair can we leave after the mandatory part with the matter.

20 [02:05:35]

CHAIRPERSON: Okay.

[02:05:36]

MALE VOICE: Just leave it to the Chair.

[02:05:37]

CHAIRPERSON: Alright... [recording cuts off]

END OF RECORDING

ESKOM

BOARD MEETING

11 MARCH 2015



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PROCEEDINGS RESUME

[09:04]

CHAIRPERSON: Once again I think I must say thank you very much to the members of the Board for their quick response to this meeting. It was called at rather short notice. Also, a feature of this meeting will be a visit to the board by the Minister this morning. The Minister will be here at ten o'clock and hopefully she will spend a reasonable amount of time with us.

10 What the board had asked me to do the last time with that was make certain that we can carry on with the presence of the board and that indeed is the case and that is why I thought it prudent that we should go back and resume the meeting that we had postponed on the 26th and try and get that presence done.

 What we then propose to do was, given the time constraints, considering the fact that the Minister will spend some of our time with us that let us work through the urgent business, the business that requires the board's
20 decision, the business that is that time barred in terms of requirements by the shareholder. Let us get that business done, at least, and therefore, we will hold over the balance of the mundane part of the meeting, the minutes and this type of thing, consideration of the reports to the next time around when we decide when next we can meet because I

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do not believe it will be possible for us to finish all of the entire agenda in one day but certainly we will get through an important part of it hence you will see that as compared to the original agenda we are only going up to 9 of the agenda.

There is a small matter of the cell phones that we discussed the last time. I think I want to be guided by the board, do we need a board resolution on this issue to say shall we resolve that we shall not cell phones in the board meeting just so this is a standard procedure. Can we resolve that that is what we will do?

[3.11]

MALE VOICE: Where can we leave them, Chair?

[3.13]

CHAIRPERSON: Okay, so we are agreed on that, there is a box going around. Hopefully they will not be too far if you need to make a call. Okay, thank you, Wayne. Then apologies for this meeting.

[5.06]

20 **MALE VOICE:** Ms Carrim is on her way, I think she is running a bit late. Nazia.

[9.15]

CHAIRPERSON: Okay, Nazia is on her way but otherwise we are all here. Okay. And so were are a quorum, so – I do not know if there are declarations of interests for this meeting by anybody? Okay, that is done, that is fine.

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Hopefully we can adopt the agenda as I mentioned earlier, would that be fair? Incidentally, I think on the side of the executives they may not all be here. They might not have notified them in time about this meeting but hopefully Chief(?) those who are going to be part of the presentation if they need to be, will be available.

[6.17]

MALE VOICE: Ja.

[6.18]

10 **CHAIRPERSON:** Okay.

[6.19]

MALE VOICE: Based on the agenda, Chairman, from the executives' sides will be covered on the – on a corporate plan. Freddy will take us through that very quickly and then on the borrowing programme, the Financial Director was here on the Eskom debt strategy cover is here and then I will talk to the MOU between Eskom and its strategy(?) fund, I will be assisted by head of legal, the layout and so on, so I think we should be covered.

20 It may be that once they have got ratification that they can attend the meeting the other executives will come.

[7.22]

CHAIRPERSON: Okay, thank you very much. Let us go on then to item 7. I just have a few issues really and let me start with the housekeeping issues which have to do

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with what I believe will be the best way for us to work.

I think, if you recall, at the beginning, in the first induction we had, I made reference to the need for us to have the right kind of communication with the office of the company secretary. Now it has come to my attention through him, obviously, that at times there were communication problems which occurred whereby board members were needing certain things and ended up communicating with his people, including drivers, and he
10 himself was out of the room in terms of what is supposed to have happened.

Now these things may appear small but I think at the end of the day it can be very uncomfortable for board members if you do not - you know, if you are not getting a particular service. So I think I want to urge members to please direct all your concerns directly to the company secretary and let him sort out the responsibilities because if we do not do that, he ends up not knowing what is going on and then people make decisions and he finds that he is
20 having to correct those things because people are not communicating to him about what is happening. So I think when it comes to your concerns please just direct them directly to him.

The other issue which I also mentioned earlier was, you know, the communication with the executives.

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Obviously board members will communicate with executives for various reasons but there comes a time, you know, you have to use your judgment here because what I said was that the Chief Executive needs to be in the loop about the things that, you know, that go on in his office basically and sometimes executives will take advantage of the fact that they have relationships with board members and will begin to even make decisions without the knowledge of the Chief Executive and so you may find that
10 it does not work well and consequently he finds that he has to now start patching up things after the fact because, you know, people have done things sometimes in his name without his knowledge.

So I think it would be just nice courtesy, whenever you see the need, to ensure that the Chief Executive knows what is going on, just to let him know that look, I need to have discussions with so and so and so on.

As I say, this may be actually a small matter but, you know, progressively it can get complicated over a
20 period of time so I think it is important for us, as a board, to protect his position when it comes to that.

Okay. Right, just a few things then from my side beyond that, as I said, the minister is coming in to see us this morning and this was part and parcel of what we had requested when we had the induction with her downstairs

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last time, we met with her. So I think we would then be in a position to address whatever issues that we need, we need to address with her. And when I get word that she is coming, as I am aware, I would have to excuse myself and go and bring her into the meeting.

Okay. I do not know if I mentioned the one visit to the board – I am sure I did do it, did I?

[12.13]

MALE VOICE: Yes, you did.

10 [12.16]

CHAIRPERSON: Oh, okay, alright. So the board is fully aware of the visit. So that is fine.

[12.22]

MALE VOICE: Chairman, may I – excuse me for the interruption. I think it was one of the subcommittees that was aware.

[12.28]

FEMALE VOICE: Ja, the social and ethic.

[12.31]

20 **CHAIRPERSON:** Oh, yes. Oh, okay, sorry about that. Ja. No, what happens is that on every occasion and organisation called the World Association of Nuclear Operators visits us in respect of Koeberg, obviously, and they come and do an assessment of how the plant is operating. Now, as you are well-aware, the nuclear industry is very highly regulated, extremely highly

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regulated and everything is absolutely pinpoint I think Steve can certainly give us the, you know, background but this visit is one of those visits that they make and have to satisfy themselves that not only is it management the board is also fully aware of the situation or the nuclear operation so they interviewed me as team of them, I think there were five guys.

[13.52]

MALE VOICE: It was a total of about ten of them, Chair.

10 [13.53]

CHAIRPERSON: Ja.

[13.54]

MALE VOICE: But they broke up into different groups.

[13.56]

CHAIRPERSON: Ja. Just elaborate briefly, Steve, on the purpose of ...[intervenes]

[13:59]

STEVE: So, Chair, this review was a corporate review, WANA, World Associated Nuclear Operators, they – Eskom
20 is an active participant in WANA. They do peer reviews which they do and they have done several peer reviews at Koeberg itself which is basically a very operational one, it looks at the operations of the plant and big focus on nuclear safety, of course.

This corporate review was about looking at the relationship between the nuclear operations which, in our

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case, is only Koeberg and then the corporate functions. Corporate functions both in terms of the nuclear operating unit so within generation and then the other corporate functions, so things like sustainability and commercial and finance, etcetera, and also the governance processes that we have in place. So there they looked at the role of the Nuclear Management Committee which is a subcommittee of Exco, the role of Exco, the role of board sustainability which acts as the nuclear oversight committee for board, 10 the role of board and then the role of individuals in that process as well.

So it was – and the team itself comprises representatives from WANA and then from peer utilities, so power companies that operate nuclear, often with a similar structure to ours and then we had colleagues from Mexico, from the US. Who else was it? Mexico, US...

[15:31]

MALE VOICE: India.

[15:32]

20 **STEVE:** India. Generally it was a very high-powered team, very experienced and in fact I thought they did a very comprehensive job came up with two areas that they highlighted as strengths and they came up with four areas that they call AFIs, areas for improvement, that will be – that was just in the initial feedback that they gave us, that will be formalised in a report and then through our

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government structures, through the management committee, we will come up then with a formal response that will be aimed at maximizing the strengths that have and dealing with the areas for improvement and there will be a regular process to deal with that.

[16:21]

FEMALE VOICE: Can you give us the [indistinct] of the AFI?

[16:24]

10 **MALE VOICE:** And the strengths.

[16:25]

STEVE: Sorry?

[16:26]

MALE VOICE: What were the strengths in the AFI?

[16:27]

STEVE: The strengths were – and I am going to have to remember. The strengths were the leadership development elements, the training. What was the other strength? The areas for improvement related to very clear levels of
20 accountability are required. I cannot recall the rest and they just gave us verbal feedback so unfortunately, I have not got the rest here.

[16:58]

CHAIRPERSON: I think once the report is back ...[intervenes]

[16:59]

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STEVE: Feedback formally once...

[17:02]

CHAIRPERSON: Once they have given us the report we will share it with board members.

[17:06]

FEMALE VOICE: Did they interview [indistinct]

[17:08]

CHAIRPERSON: Excuse me?

10 [17:09]

FEMALE VOICE: They interview or [indistinct].

[17:12]

FEMALE VOICE: I am not sure.

[17:12]

FEMALE VOICE: Can I respond, Chair? No, they did not and I must tell you I felt that it was an opportunity lost because it was in my diary and a day before the time I was told it is not necessary so – but that is something I am going to be taking up because I believe that it is an
20 opportunity lost because my understanding of the scope of that report or the interview was to test leadership readiness and in the sustainability in assess(?) meeting I actually raised concern around the fact that I did not think that we had done adequate work around getting leadership ready for the review, so I will be taking that up but you are right, it was an opportunity lost.

[17:52]

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CHAIRPERSON: No, I am sorry, I assumed because I was aware that [inaudible – speaking simultaneously]

[17:55]

STEVE: I do not know how that happened, Chair.

[17:56]

CHAIRPERSON: I assumed that they did ...[intervenes]

[17:58]

FEMALE VOICE(VENITTA KLEIN): No, a day before the time, it is not necessary so...

10 [18:02]

CHAIRPERSON: H'm, not acceptable.

[18:03]

FEMALE VOICE: Not good.

[18:05]

CHAIRPERSON: I think we will have to look into that.

[18:06]

STEVE: We will fix that up, Chair, I do not – I was not aware of that, I do not know how that happened, we will pick it up.

20 [18:12]

CHAIRPERSON: Okay. I think the last thing for me – thank you, Steve, thanks – has got to do with, you know, the board members have raised concerns about availability of documents prior to meetings. I have raised the issue with the secretariat and I think they had a staffing problem, from what I understood, and now unlock that stuff and problem and hopefully with the people that they now have

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additionally they will be able to jack up their response.

I think also the fact that we had intermittent meetings to ensure] process also impacted on the ability to turn documents around and make them available but in the past I know that they have been able to provide documentation adequately as per the standard requirements of normal seven days prior to meetings so I think once we – you know, our [indistinct] has picked up, I am certain that they will be able to respond so I think I
10 would like to allay the fears of board members that going forward we should be able to do the right thing. Okay, I think that is really all that I want to say for now.

[19:44]

STEVE: Sorry, Chair.

[19:45]

CHAIRPERSON: Sorry?

[19:46]

STEVE: I have just checked my notes, I can give quick feedback on the AFIs, I have got them here, if you want me
20 to, from the WANA review.

[19:53]

CHAIRPERSON: Oh, okay, yes?

[19:54]

STEVE: Apologies, Chair. So the strengths were transmission and the relationship the nuclear safety attitude and transmission which we were very pleased

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about because it something we worked on very hard in the leadership training.

The areas from improvement was human resources and in particular HR interventions that are entered into without considering the impact on nuclear safety and they looked at things such as the issues relating to overtime, the nuclear operators and those kinds of things.

The second one was major projects and they are concerned about major projects and the risk they present
10 to Koeberg and they indicated that there is a variety of major projects that are happening at the moment that have all been delayed for a variety of reasons.

The ones they spoke about was obviously the steam generator replacement, future fuel, the dry casts, the PTR tanks, the replacement reactor heads and they said all of these in themselves are major projects that are working to very tight timelines and they are very concerned at our ability to execute all of those projects within those timelines.

20 And then oversight and standards which is compliance with good operating standards and there there was very specific - it is quite an operational finding, that one.

And then teamwork and alignment through the different structures which is linked to the HR one making

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sure that decisions that are made in governance structures consider nuclear safety and those were the four AFIs.

[21:32]

CHAIRPERSON: Okay, thank you. Alright. Wayne, can you help with the screen there?

[21:41]

FEMALE VOICE(MS KLEIN): Chair, sorry, if I may, and this is with due respect now. You know, I am very happy that you have spoken about all the issues as you see it
10 which are of concern to yourselves, secretariat and Exco but, Chair, I have got a concern that what has been raised, a number of, then in fact, we – I, myself, let me talk for myself, would write an email based on a concern that I have which relates to the business and I get no response and this is when one feels the need, given the significance of what you understand this matter to be, in the interests of the organisation, you start trying to find answers. Can I maybe get a response from you or Exco as to why responses to board mails are just not answered because
20 that is key thing in terms of the board's fiduciary duty in terms of trying to help and support the company that we know is in distress right now.

[22:42]

CHAIRPERSON: Okay, are you asking me specifically or are you asking...?

[22:47]

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FEMALE VOICE (Ms Klein): It is a broader question than this. Just to – I mean, I have written a number of mails to you specifically relating to the work of Eskom and I have not had an answer and I speak for myself. I do not know if there is anybody else but, you know, so it is good for us to from the one side understand how we are going to drive this business better to support or to understand Maisela(?) and secretariat and to understand Exco not for us to get involved in a operational sense but I guess from my side I
10 get involved with trying to connect with Exco if I do not get this answers to pertinent mails in terms of business questions.

[23:22]

CHAIRPERSON: Yes. I think the answer is simply that you must get responses when you have written emails.

[23:26]

FEMALE VOICE: We do not.

[23:27]

CHAIRPERSON: So we are at fault, we are not
20 responding adequately. Including myself.

[23:29]

FEMALE VOICE: There is some significant questions asked and just even simple acknowledgement of – acknowledge receipt and we are working on it would satisfy me to know that it is getting some level of airtime but if you get just nothing it is like you are talking to a big black

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hole, it creates a major problem from a governance perspective.

[23:50]

FEMALE VOICE: Mr Chair, I also have the same issue and I think you made it clear to us at the beginning that you would like emails directed by you. So I think that is – the interest here is that, you know, I have not approached Exco directly, I went through either the company secretary or - so it is important that, you know, you get sort of some
10 feedback to indicate that and that is how we dealt with ...[intervenes]

[24:09]

CHAIRPERSON: Ja, that is true.

[24:10]

FEMALE VOICE: Ja.

[24:11]

CHAIRPERSON: No, I acknowledge that. I tell you, I have – look, I am certainly not going to build an excuse out of it but I am very bad at emails because I get over 200
20 emails a day and I just do not have the capability of going through them. I have actually asked my team to help me screen my emails but I do not know how busy they get that they cannot help me get those emails but...

[24:42]

MALE VOICE: Chairman, we generally do, I was not aware that there is an issue that was still outstanding. I – let us

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take it onboard, let us not – because sometimes the emails come and then there is a conversation and one sometimes assumes that issues have been dealt with in that com(?) but let us acknowledge receipt and let us put it in black and white.

[25:16]

CHAIRPERSON: Yes, ja, I think so. Okay, any other issue whilst we – the subject, can we park it and move on? Okay, we are going to go to item 8. I am feeling pretty hot
10 but I had no power since last night in my house so my shirt is not ironed so I am very scared to take my jacket off. But I will be brave and take my jacket off because I am feeling terrible about it.

[25:46]

MALE VOICE: You must be [indistinct]. Chair.

[25:49]

CHAIRPERSON: Okay.

[25:51]

MALE VOICE: Deal with Eskom, Chair.

20 [25:55]

MALE VOICE: Okay, thanks, Chairman, and thanks board members, there was a document that was sent with the original pack which was just a board overview of the work that myself and the executives have been doing in the company.

[26:21]

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CHAIRPERSON: Yes.

[26:23]

CHIEF EXECUTIVE: So I am going to take that document as read. Given that we are having an unabridged agenda, the Minister may come anytime so I am not going to touch on all the points, all the key points in this document. It is a fairly detailed document. It seeks to reflect on my tenure since the beginning of October when I started here at Eskom, just some of the initiatives that I have undertaken
10 in the organisation to try to get it to move forward.

The first area that was a major concern, even published in the media, was the executive instability, management instability. Prior to my arrival here there were a series of resignations, a number of people were in acting positions and there was just general uncertainty at the top and so within a month having observed the executives, I made some appointments. I confirmed Dan Marokane in his position as Group Executive for Group Capital. I subsequently initiated a process to recruit the group
20 technology in commercial and Matshele was appointed.

This was, of course, in accordance with the mandate with the delegation of authority which requires me to work closely with the people in governance.

We also moved immediately, as executive – I also appointed Elsie Acting Group Executive for human

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resources which was a position that Mongezi was previously a group executive for transmission held jointly, I thought it was too much on one person and, you know, to have a proper focus on HR but I did that ...[intervenes]

[28:41]

FEMALE VOICE: Sorry, [indistinct], you appointed as Group HR or Acting?

[28:45]

CHIEF EXECUTIVE: Acting, yes, Acting. Acting because
10 at that time there was already underway a process, a recruitment process for that position, we could not conclude it with the previous board, current board has taken it up and we should be making that appointment any time soon. The Chairman has set up a panel so we should be making that appointment soon.

We swapped Mongezi from transmission to generation and Thava Govender took over transmission and customer services.

We developed a turnaround plan based on work
20 that had been going on which had been done by management in the previous board.

We updated this - affirmed basic approaches, basic analysis of the situation in that plan and I presented elements of that in the board induction but we also had opportunity to present that to the Deputy President when we engaged with her – with him, sorry, when he visited

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Eskom. We had that meeting at the National Control Centre.

I have also been engaging with labour. I met all the key general secretaries of the key unions in the organisation, labour keys(?) they are called, for us. I have also been interacting in government and in government I will come back, talk about the war room.

I have also been meeting staff, engaging with staff to the extent possible the time that I spent here, I went to
10 visit a few power plants, addressed staff and in this regard, as you will have heard since then, the morale, staff morale is a big thing.

I think what has emerged in the period as the most difficult challenge for all of us, as management, executives, and I think the board also, is the challenge of the performance of the electricity system. What triggered it was the collapse of a silo at Majuba which reduced available supply by quite a significant number and triggering, therefore, load shedding. We had a period of
20 load shedding.

As this happened, the whole issue of plant health, plant maintenance issues, all of that popped up and became the focus and that triggered the war room. That is what triggered the war room. which was motivated by the intention of government to work with Eskom.

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Government acknowledged that the situation of Eskom is not of Eskom's own making. Historically, policy decisions or indecisions that have put the company in a very difficult position and based on that they said we – this is a national issue, it is more than an Eskom issue and of course the rest is history with regard to how the war room has been performing and I will speak to that in a moment but the generation performance has – between it and financial sustainability, our top most pains as a company.

10 So we, in the context of the war room, worked on the generation turnaround, a maintenance plan. All of these plans including the financial issues, we have been sharing that information with the war room, we have been sharing that information with the war room. We have submitted an incredible amount of information that was requested in the context of the war room to enable government to understand the company, to understand our issues with a little bit more, you know, depth, so that then we can work together on submissions.

20 I believe we have achieved that objective, I believe we have achieved that objective. I know expect that government having understood will now say, from our point of view this is the way to go, this is the direction that they believe we should follow, these are the expectations they have of Eskom and of us as a collective, executives and

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the board. I am expecting that we should get to that point in time.

In fact, there was a memo that was being prepared to precisely canvass those issues so that the government can then give us direction. But for our part we have got our plans and the point, as I requested, at the last meeting of the Deputy President to say we have submitted information, all of our issues are here, if there is any area we have not covered, tell us so, we are happy to cover that
10 area but we need to get down to do the work, working, to get down, to do the work, working to get down to do the work under the guidance of the board.

We spent quite a lot of time in the IFC on the financial health of the company. This is an extremely financially distressed company bordering on a non-going concern.

[34:22]

FEMALE VOICE: Chair, sorry, the CE has mentioned that they expect guidance from us, we are not getting
20 information flow as it is supposed to be – or between the war room and the [indistinct – dropping voice]. So how is that going to happen or are we going to discuss it later?

[35:06]

FEMALE VOICE: If I may? I think that was the intention for the second part of this meeting. So the CE is giving his report and then we are going to go through the war room

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updates, my understanding. But if I may just say that the Chair has just had to step away because the Minister has arrived so I guess it would all be dependent on – I would want to believe that engaging with the Minister if there is enough time that we continue this till we get complete update from the CE as well as what is happening in the war room right now and its impact on us as the board.

[35:37]

CHAIRPERSON: Ja.

10 [35:38]

UNIDENTIFIED LADY SPEAKER: Does that help?

[35:39]

MALE VOICE: Yes.

[35:40]

CHIEF EXECUTIVE: Okay, thanks. Ja, so the – I was on the financial situation, Eskom is financially challenged. Again, we have – arising from the engagement in the IFC, I have also with the war room requested that we have managed to identify the key challenges, financial
20 challenges and perhaps options and in summary, without spending too much in that regard, Eskom has now increased funding requirements, our liquidity situation is at risk, we liquidity challenges, in other words, which needs urgent attention.

We have 3 billion promised equity, we hope it comes in time but also other initiatives were undertaking

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with the regulator on the revenue side.

Part of what financial turnaround involves, savings programmes, BPP, it is being presented the IFC as well and I am sure board members are aware of it, we have spoken about it a few times in these forums. So again, I will not spend too much time because I think the issues have been canvassed. We need an opportunity to get – have a deep dive, if we would be available to do so as executives.

10 The PP targets, the savings targets will be met but they have been serious leakages and those leakages have to do with rising primary energy cost, mainly diesel or GCT(?) and then of course municipal debt which we spoke about.

Another area of leakage in the savings is voluntary severance package. The staff reduction package which we have suspended because some risk with regard to loss of skills. The intention is to revise it and put back something else because in the HR area, manpower area, we need –
20 there are opportunities for savings which we will have to pursue.

We undertook a foreign borrowing road show a few weeks ago, the outcome of that still have to be shared with the board and engage with that. The one area which I would like to highlight on group capital and perhaps I can

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stop because I am assuming that members opportunity to read the document but I am happy to answer any part of the document that was circulated. It is on the bill programme.

The board did undertake a visit to Medupi, they saw the amazing achievement, engineering, the construction achievement at unit 6 and the entire project actually represents and we finally after several postponements, postponements of that date of conclusion
10 we were able to synchronise the first unit of Medupi which, in the life of Eskom is a big – it is a big event.

We really need to celebrate that milestone because it is significant in many ways, it is the first time Eskom puts new power, fresh power into the grid in 20 years and it is part of 17 gigawatts additional capacity. You know, for Eskom employees and the people working on the project it is such a morale booster and I do believe we have to make a big deal about it. We allowed the Minister having – she had expressed desire that whenever that
20 whenever big milestones she would like to be part of it, to also, you know, share in that success and we were told that there would be a media briefing. I was supposed to be today led by the Minister but that was cancelled. She is coming here, so the Deputy President will do it but that did not happen.

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The cabinet meeting of last week did acknowledge this achievement. In a statement the cabinet already [indistinct] Eskom for this achievement.

The rest of the presentation details, other projects, Sere, which members of the board will be aware of is another achievement which I believe we under-communicated again having referred to the department that wanted to lead in that regard and so I am going to leave it there, Chair, and say I have I have painted(?) the
10 highlights in a quick overview, if there are any specific questions on the rest of the report of the Chief Executive, I will gladly [indistinct – dropping voice]

[41:18]

FEMALE VOICE: Thank you very much CEO. If there are any questions, we are happy to take those while we are waiting on the Minister to arrive. Any questions from the board, comments, inputs? Norman?

[41:32]

NORMAN: Yes, thanks, Chair. Actually, I am trying to
20 reflect on the 280 billion, will that monies exclude salaries and other bit, the operational work, or it includes it?

[42:02]

CHIEF EXECUTIVE: Are you asking about the Capex?

[42:04]

NORMAN: Ja.

[42:05]

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CHIEF EXECUTIVE: No, it excludes human resources, it is just – it is for project costs.

[42:14]

FEMALE VOICE: So any costs relating to employees that are working on the project would be capitalised and form part of the Capex and expenditure?

[42:24]

CHIEF EXECUTIVE: Actually, I am trying to find out whether Intratel, how much came we say we have in our
10 bank accounts or in our financial...

[42:38]

FEMALE VOICE: So at this point in time I think maybe the first thing to say is normally we would like to keep a buffer, liquidity buffer of R20 billion, it is adequate to allow us at least to run for four months while we go to the local market with a commercial paper in terms of process but currently where we are sitting we are way below that, I think we are currently sitting at about R4.9 billion and the reason for that is that we were expecting two loan amounts that have
20 not come through now and due to the lenders really assessing our situations in terms of the terms and conditions and saying you are actually more risky than we thought so we would like to assess the terms.

So we had to phase it out, we were supposed to get it by end of March and we have had to phase it out as a result of that. We have been in engagement with PIC.

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Last week myself and the Chief Executive went to the PIC to assess us, to help us from that perspective but also asked to see Eskom's credit profile issues around the load shedding, its impact, so we are preparing that for them and we will be going back to them in the next two weeks.

[43:59]

MALE VOICE: Chair, I think that is extremely important.

[44:13]

FEMALE VOICE: Ja.

10 [44:14]

MALE VOICE: And that is why people [indistinct] so you understand the going-concern on liquidity. Even financial institutions are coming now with conditions, or concerns. So I just want the board to note specifically the financial strain that we are in, that is why I keep on emphasising that position we find ourselves in.

[44:21]

FEMALE VOICE: And just to add, Chair, again, in November/December we actually saw our commercial – our
20 bonds being dumped in the market following the Moody downgrade that took place in November but also African Investment Bank limited SADAC, that we saw happening, most investors were uncomfortable to really take up our bonds or even, you know, take the commercial paper from our perspective.

So it has been difficult. I think December, if we

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did not go to the PIC, to National Treasury, we were ready for an overdraft but we managed to get short term bridging finance to pick it up and we ...[intervenes]

[45:03]

MALE VOICE: So what rate did we pay? What was the interest rate roughly?

[45:07]

FEMALE VOICE: It is prime, it is about 6 – it was 6.85. Sorry, it was about 6.85.

10 [45:14]

FEMALE VOICE: Can I maybe make a comment? I think this was a point that - I am not sure about anybody else but I certainly would want to just deliberate a little bit further and I would want to hold it over as part of our discussions after when the Minister has left, if that is okay with everybody? It looks like there are other people with input as well. Alright? I will take further comments, inputs, Doctor?

[45:33]

20 **DR NGUBANE**: Thanks, Chairperson, the issue of primary energy cost, I think are a concern to some of us, we saw the article in the Sunday Times saying Eskom was entering a crazy [indistinct – dropping voice]
we would like to know exactly how pricing is set for primary end. For instance, Glenco gets R40 per CV whereas other

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suppliers get R13. What is the differential, why such a big differential? Can it be justified, you know, and so on.

And also, the cost obviously of diesel with OACG. We need a comprehensive analysis for us on how the costs are broken down and what is the standard pricing, what is the average, etcetera.

[46:25]

FEMALE VOICE: Thanks for that, Doctor, who is going to take that one? I do not know that we will be able to fully
10 cover it, particularly with the analysis that I think is required, but can we have a high-level response at this stage?

[46:35]

CHIEF EXECUTIVE: I am going to ask, Chair, as the group executive for commercial who sources coal and by the way, this is an area that the whole room has focused on, [indistinct – dropping voice] the dynamic changes in the coal supply, the coal supply space that is complicating our financials. So the different tiers, price tiers, depending on
20 the nature of the contract, actually can give a big overview, [indistinct – dropping voice]

[47:10]

FEMALE VOICE: Okay.

[47:12]

UNIDENTIFIED SPEAKER: Chair, I think you are right, we will not do justice to it, can you – it is common cause that

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we have got three different contracts.

[47:19]

MALE VOICE: Sorry, Chairperson, I was not expecting an answer.

[47:22]

MALE VOICE: Oh, okay, alright.

[47:23]

FEMALE VOICE: So you do not need high level [indistinct], okay.

10 [47:24]

MALE VOICE: Alright.

[47:25]

FEMALE VOICE: Let us agree a way forward then that in terms of this, it is either going to be deliberated at another time or we get the set information with the detail info attached to it at different times. CFO, do you want to...?

[47:38]

CFO: Ja, I just wanted to say to you we are trying to arrange a board workshop for the committee for the board
20 members to do deep dives on maintenance, I think it was requested [inaudible – speaking simultaneously]

[47:48]

MALE VOICE: We have got the details but I think, Chairman, looking, so just to highlight the subject.

[47:51]

MALE VOICE: So what I will do because we have this information readily available.

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[47:57]

MALE VOICE: Correct.

[47:59]

CHAIRPERSON: At least the board must have the benefit of that information, highlight it.

[48:07]

FEMALE VOICE: Thanks, Matshela(?). thank you very much. Any additional comments, questions, inputs? It does not seem so. Can we then move on? You see, I am
10 just not sure how much time have we got left. Madisela, have you got any idea of how far they are? Because I know that the Minister is already on her way up.

[48:27]

MR PHUKUBJE: No idea, Chair, I can – sorry, Chair?

[48:33]

MALE VOICE: Chair, just on that point. Sorry, after you?

[48:34]

MR PHUKUBJE: No, done my thing.

[48:37]

20 **CHAIRPERSON**: Just in terms of deep dive under the board recovery and build a subcommittee, we have captured four immediate focus areas.

The first one is Kusile.

The second one is Medupi.

The third one is Primary Energy.

And fourth one is financial sustainability.

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Just to give us those four big ones and then we will deal with the rest later.

[48:56]

FEMALE VOICE: Ja – but, Doctor, and then Mark.

[48:59]

DR NGUBANE: Chairperson of the board tender committee, I am deeply concerned, there are now different centres of decision-making as far as procurement is concerned. I think the board bid must make
10 recommendations, the board tender committee and not decide on procurement contracts and so on. Otherwise I am going to get thoroughly confused as to where responsibility lies.

[49:27]

CHAIRPERSON: Fully agree.

[49:28]

FEMALE VOICE: Can I make a proposal on that point, Mark, before we get to you? I think this is from a governance perspective, some of the issues that this board
20 needs to deliberate on with the Chairman. So if somebody – I think Wayne, you and Madisela, please just take that as a point of discussion which is key in terms of how this board functions and what decisions sits where.

If I could just add. Also, as Chairman of the sustainability social and ethics committee, I have also asked for various deep dives and just this morning we

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wrote to secretariat to remind them that we have asked for the deep dives to be considered and dates to be proposed just to be told that there is various other deep dives that is also coming up all over the show. I think that has got to be properly coordinated because what is happening right now, in the absence of having the fully functional board meeting, various subcommittees are raised their needs. So I think we do need, as board, to have a little bit more – to pull this thing together.

10 So I would want to maybe when – after the Minister is done, for us, after the war room, if we can maybe spend some time on governance issues around how this board should operate.

[50:39]

MALE VOICE: Chair, is it possible for the board to maybe use the breakaway type for – to consolidate all these deep dives and go into detail on all the aspects that I have reported because – which is scheduled to be held in two weeks time, yes, because scheduling a special day for all
20 of them would be a challenge, we will need a full day or at least two days to go through everything and the board breakaway is ideally structured for that. So if we can agree to – I am proposing that it be considered for use for that purpose.

[51:15]

FEMALE VOICE: I am happy with the proposal, Malisela,

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on condition that it does not impact on anything else that was already planned because I would have assumed that there is a set plan for a board breakaway.

[51:29]

MALE VOICE: Ja, Chair, the board breakaway is intended to allow the board to get detail on matters. So it is definitely suited for that.

[51:41]

FEMALE VOICE: For that.

10 [51:42]

MALE VOICE: However, you know, maybe there are other opportunities outside of that.

[51:50]

FEMALE VOICE: Okay, I think just before I allow somebody to comment let me just ask one question, though, are all of the board members available for this breakaway?

[52:00]

20 **MALE VOICE**: I cannot confirm now, Chair, I do not have my phone.

[52:02]

FEMALE VOICE: No, I definitely am not [inaudible – laughing]

[52:08]

FEMALE VOICE: Can I – I want to make a point which has been a bit of bugbear for me and I have got to be careful,

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the moment the Minister walks in, I will stop talking, but I have been at pains and I want it minuted to say this whole diary was agreed with the previous board which means when it was given to me – I talk for my colleagues now, there is many things including the board breakaway which will – it does not fit into my diary, I cannot.

So if you are not going to have a hundred percent attendance then those deep dives are just not going to work. So the response I keep on getting – and this is to
10 the board - the response I keep on getting is the fact that secretariat have not been told that you are not available, means you are and I have asked secretariat to confirm that in writing to each of you. So the secretariat – I am sorry, I had my moment in the sun but I have already now picked up people not available.

[53:01]

MALE VOICE: But, Chair, I think in fairness we sent the calendar, we requested members to indicate to indicate their availability, all the dates were indicated on the
20 calendar. We only got or received feedback from you on dates on which you will not be available and we have sent reminders, if I recall, nothing has come through. So, you know, we find ourselves in a difficult position where we either assume that you are available or you are not in absence of anything that is said and we took it that for

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those meetings board members will be available.

[53:35]

MALE VOICE: We will still appreciate feedback because there is no use planning a meeting when no board member would be available to attend it so if we can still have feedback, I request board members. Give us feedback on your dates once again and let us coordinate our diaries properly.

[53:49]

10 **FEMALE VOICE:** Thank you, Varanshni, then Doctor, and I think Matshela(?) you also had something?

[53:53]

FEMALE VOICE: Okay, on the first part that we were talking about in terms of the breakaway, can all of these auctioned items be included? I mean, in terms of what we are talking about now. If you put them in an action list to be spoken of there.

You are definitely incorrect because I did advise you that I was not available, I followed it up with a
20 telephone call and you said to me it was not confirmed. I am hearing for the first time now that it has been confirmed or it is in two weeks time and I am definitely not available but I did tell you that and I did speak to your verbally on it as well.

[54:24]

MALE VOICE: I do not want to enter into a ping pong

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[inaudible – speaking simultaneously]

[57:26]

FEMALE VOICE: We can have this two way discussion a little bit later, alright? I have got Doctor, then I am going to give Mark a chance because you have had your hand up and then Matshela.

[57:34]

DR NGUBANE: But I think what you do in three days you can do in two days with adequate preparation. We do not
10 really have three days free. I think almost all of us, just to go off into a *bosberaad* situation. If we prepared beforehand so we know exactly what we are going to address at the breakaway, it can happen in a shorter time.

[54:58]

FEMALE VOICE: Thank you. Alright, thanks, Doctor. Mark, Matshela and then the CEO.

[55:02]

MARK: I just want to say – mine was to say we had the time, I think we should move to the Eskom debt strategy of
20 9.3 and [indistinct] this conversation, but I think we have had a presentation on it and I thought it would just be quick thing to get the agenda out in connection with that Eskom strategy, Chair, if there was in between time.

[55:20]

FEMALE VOICE: Alright, we will certainly note that. Thank you, Matshela, and then the CEO.

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[55:24]

DR NGUBANE: Mr Chair, I just need to assure the board that from the official side we have now taken an approach that we will use the board committee on build to make recommendation to the board tender, so that is how our documents – you will see we have done the last time, even in the last submissions ...[intervenes]

[55:42]

FEMALE VOICE: So the governance around that is in
10 place.

[55:44]

DR NGUBANE: Is in place, ja.

[55:45]

FEMALE VOICE: Thank you very much. CEO?

[55:47]

CHIEF EXECUTIVE: No, Matshele covered me on the one issue which is that any committee has a mandate to take [indistinct] decisions other than the board [indistinct – dropping voice] If it is taken care of then it is fine. I
20 wanted to assure the board that the purpose of the breakaway – and Dr Ngubane, you are spot on, you are making the point for the [indistinct – dropping voice]. Typically, the Eskom tradition is three days, but we do not have to take three days. We have planned an Exco breakaway, part of which will be to prepare for the breakaway, taking account all of the issues that we have

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heard the board raised, so we prepared them for the two days which the board breakaway – I think we can manage because a lot of these issues we have canvassed already in the what do you call it so it can just go from, you know, very sharp objectives on the key priorities.

[56:55]

MARK: Sorry, Chair, just also one questions what Nasier(?) – so, in other words, by the time the build comes to IFC it will be approved by the board and the tender committee respectively because we do not want to receive and IFC unless it has gone through the correct channels. I just want to understand that that is the correct...

[57:12]

UNIDENTIFIED SPEAKER: No.

[57:13]

FEMALE VOICE: Other way around.

[57:14]

MALE VOICE: It is the other way around. The board tender will not deliberate on it unless it has been seen by the investment decision, you stopped(?) us. If it is an investment transaction, it is a normal maintenance then the IFC only decide. Okay, thank you.

[57:29]

FEMALE VOICE: Thank you very much. Romeo, did you have your hand up there? Alright, fine, then it looks like we may have a minute or here in between. Is that enough

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time to cover the point that Mark has put on the table in terms of the debt strategy?

[57:45]

MALE VOICE: I should think so, we are not looking for extensive discussion.

[57:50]

MALE VOICE: No. Thank you, Chairman. We had presented the debt strategy previous time, we had a long discussion. We had presented the munic and the
10 residential side and we also spoke about the Soweto. The Soweto, we did not put something on, we presented what the issues are and we said we must take more engagement and we said we will give the board time think about it. We will come back to that.

What the board requested, that we put a strategy in place around the unit debt(?) which we did put forward for the last board meeting. It was a strategy and a letter that should be drafted to the Minister to inform her of the intention, so that was part of a pack and that is the idea
20 that we want to share today, is that strategy. I take it as read because it was in the previous board pack and subsequent to that when a previous meeting was cancelled, I did raise a concern, I spoke to the Chief Executive and I said we have to move on this issue, so that letter that was part of a pack, we did pull it out, we gave it to the Chief Executive and I believe that the Chairman has signed that

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letter, it is going to – was a document to the Minister so I believe it is signed by the Chairman.

So the only thing we need now is that strategy approval so that when we next load shed, we can follow all those issues where we cut munics off and we use them off – cut about 30, 40% of the load on proportion to what they owe.

We look at the NMD, we also use them sometimes during evening peaks when we see we need maybe 3, 400
10 megawatts instead of using, you know, gas turbines, we use them as well. So that is basically in essence what the strategy says.

[59:19]

MARK: Now, Chair, can I just jump in?

[59:20]

FEMALE VOICE: Yes, please go ahead.

[59:22]

MARK: Because I have discussed this part with the IFC members, just so the board are familiar where – some of
20 these munics, and I will give you example, [indistinct] Tshwane(?) is a prepaid meter. If you go and pay your prepaid account for your electricity, they do not give you electricity, they cut you off and say we are taking that money to pay for rates and taxes and then you have to go back again and buy another prepaid voucher to keep you going. There is about 20 munics that are doing that.

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So they are enforcing electricity cuts to the consumer and collecting the money which should be our same policy. The only amendment that I had to the strategy was to add in that you can disconnect, which is fundamental. You know, to squeeze them and move them down, yes, is a good strategy there, but you should follow the disconnection route. The reasons are obvious, not just for the debt but for the funders around the world and for the people on the street to know and listen, we are
10 collecting our monies.

They obviously need to take account which you had to keep key sites like hospitals and that, electricity still going, which is fine, but I am of the strong opinion that we have a fiduciary duty to collect our debt and the strategy doc needs to go one step further which is disconnection because we need that and that is the only way you are going to collect debt and if we do not get this correct, the funders from her side will increase the rate or may even not lend you any more money because they say you are not
20 collecting your debt.

So, from my perspective, I think it was well thought of doc, it was a very good – except it needed the disconnection and I just wanted the board members to understand that they are disingenuous, these municipalities, by using the reverse on their customers

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while Eskom does not switch them off. Thank you, Chair.

[01:01:05]

FEMALE VOICE: Thank you very much, Mark, do you want to respond? CEO, is there any comment you want to make there?

[01:01:10]

MALE VOICE: Chair, if I may go first? The disconnect, we have – like other munics besides the four munics in the Free State, we follow a process and then we disconnect.
10 The issue of disconnect, I just want to clarify that, also applies to the four munics in Bloemfontein even though we had that letter, says we cannot disconnect. So I just want to clarify that point.

[01:01:28]

MARK: Sorry, Chair, which letter said we cannot disconnect?

[01:01:31]

MALE VOICE: The letter from the Minister of DP, says the four munics in Bloemfontein, we were stopped from
20 disconnecting.

[01:01:36]

MARK: Sorry, that was from the old board.

[01:01:39]

UNIDENTIFIED SPEAKER: Yes.

[01:01:39]

MARK: You know, this is a new board and we are running

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our fiduciary duties so if it gets approved today we need to follow the correct procedures to collect our money which is what you currently do today.

[01:01:51]

MALE VOICE: Okay.

[01:01:52]

FEMALE VOICE: Thank you, Varashni, and then CE? I just want to understand, are you waiting for like a sign from us or already – I mean, you have already got that. At
10 the last meeting I think we all supported that.

[01:02:02]

MALE VOICE: We all supported but they wanted to see the strategy first and the letter.

[01:02:05]

FEMALE VOICE: Okay.

[01:02:06]

MALE VOICE: And then we said once it has gone to the board then – like we have load shedding tonight, we would implement - the system operator would be given a list of
20 munics that they can cut off or partially reduce, that is what we would do.

[01:02:16]

MARK: At the top.

[01:02:17]

MALE VOICE: At the top, ja.

[01:02:18]

MARK: Before they go into load shedding schedules.

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[01:02:19]

MALE VOICE: Before they go into load shedding. So we were waiting for the ...[intervenes]

[01:02:22]

FEMALE VOICE: Varashni, I think you need to get a response from the board how they feel. I mean, I support it one hundred percent. Mark's proposal?

[01:02:28]

FEMALE VOICE: Ja, I agree. I agree on that absolutely.

10 [01:02:29]

UNIDENTIFIED SPEAKER: I support it, absolutely support it.

[01:02:31]

UNIDENTIFIED LADY SPEAKER: Which is 15 years from what it was, cover(?). So what else do you need from us? This is a board resolution.

[01:02:37]

UNIDENTIFIED SPEAKER: No, nothing, we still have to come back with the Soweto issue. That is the free(?) issue
20 we agreed on.

[01:02:40]

UNIDENTIFIED LADY SPEAKER: Okay.

[01:02:42]

UNIDENTIFIED SPEAKER: That is it.

[01:02:45]

CHAIRPERSON: Can we just see, so we have three in support. I just want to go through the board members.

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[01:02:46]

CHAIRPERSON: Ja, can we just show of hands?

[01:02:50]

MALE VOICE: Everybody it looks like.

[01:02:52]

CHAIRPERSON: So we have got a comment from legal down there?

[01:02:55]

MALE VOICE: With the proviso that we should be mindful
10 of the fact that before you disconnect there has to be a process that is followed.

[01:03:02]

UNIDENTIFIED LADY SPEAKER: Yes. Thank you very much, Neo(?).

[01:03:07]

UNIDENTIFIED LADY SPEAKER: Thank you.

[01:03:08]

UNIDENTIFIED LADY SPEAKER: Can we just take another board [indistinct]. CEO, then over to you.

20 [01:03:11]

CHIEF EXECUTIVE: Okay, in terms of munics using a tactic to block, to disconnect or to force people to pay their account, we need to follow it up with legal because the impact on the customer side as if the cost of electricity is too high, yet is not correct. But at the same time it affects our sales which has got nothing to do with the munic.

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[01:03:42]

MALE VOICE: The process that we were alluding to earlier on does take that into account because it also involves sending out notices to people that are – or maybe potentially affected by the discontinuation of the service.

So what we normally do invariably is to go out on the newspapers that operate locally to decide where we want to disconnect and issue a notice and also invite people to have comments on the proposed discontinuation
10 before we actually get to a point where we discontinue supply.

[01:04:23]

CHIEF EXECUTIVE: No, no, no, I think you are missing the point. I think you need to engage the munic legally whether is it right for them to use electricity as a lever to collect other rates.

[01:04:36]

UNIDENTIFIED SPEAKER: Oh, okay.

[01:04:37]

20 **UNIDENTIFIED LADY SPEAKER:** Challenge what they are doing.

[01:04:39]

UNIDENTIFIED SPEAKER: Good point.

[01:04:40]

UNIDENTIFIED LADY SPEAKER: Okay and I think that there is also – Chair, if I may, there is two views. There

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are consumers buying directly from Eskom and then there are consumer buying through the Municipalities. So can we ask legal to give us a view on that, to look at – tell us legal – it is what they are doing. Neo?

[01:04:56]

MALE VOICE: We will do that, Madame Chair.

[01:04:58]

CHAIRPERSON: Okay, ASAP, because it looks that could be something that will help us. Can I just quickly propose,
10 CEO, I am going to ask you to quickly if there is any input from you, maybe in a minute or two? Then I am just going to just take – I am going to allow everybody to do a leg stretch and be back in their chairs by half past. If we can all do that because I do not want people running in and out while the Minister is busy.

[01:05:16]

MALE VOICE: Very good.

[01:05:17]

UNIDENTIFIED LADY SPEAKER: Okay, so CEO?

20 [01:05:19]

CHIEF EXECUTIVE: No, when we got deliberate – first of all, I think the board has taken the correct decision which we have communicated where the issues arose in the context of the war room [indistinct – dropping voice]. We raised the fact that the board – our board, this current board, has mandated us to implement that collection policy.

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[01:05:41]

UNIDENTIFIED LADY SPEAKER: Yes.

[01:05:42]

CHIEF EXECUTIVE: Of course that is a very intense debate and that debate was deadlocked. I would – because the board had concluded when we had the last discussion – I remember Mark saying we need to engage the Minister, the shareholder on this because unless we do that, you see, we are sitting with the position where, as
10 [indistinct] has indicated, she wrote to us, said no, do not disconnect, you see?

So unless we align this position with her and justify, explain to her why we need to do this, we are going to be in the same situation, you know? We will give notice of disconnection and then we will get a letter from her. It is very, very important that we align, you know ...[intervenes]

[01:05:37]

MARK: Sorry, so what we did do – sorry, Chair, what we did do, we did send a letter. I wanted to add onto the
20 letter. I was not sure that it went out because of it was coming to [indistinct] before that, we will disconnect, but we have a fiduciary duty up here, we are out of money. We have 4.9 billion in cash, you have seen – you have gone to raise funds, we cannot even get funds. People are asking. We are looking after this company and that is our responsibility. So when someone else comes here, they

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are welcome to point their point but at the moment we have got no funds available. We need to collect this debt and I understand – and it is the Chairman's responsibility, I believe, to liaise with the shareholder and inform them and protect the board and the management's decision which is the right decision.

[01:07:23]

UNIDENTIFIED LADY SPEAKER: Can I make a proposal, given where we find ourselves, we have the Minister in the
10 room, what would be the difficulty with positioning it today? If the board is comfortable, then we position it today because...

[01:07:37]

UNIDENTIFIED LADY SPEAKER: Absolutely.

[01:07:38]

CHAIRPERSON: Alright. Who is going to raise it with the Minister?

[01:07:40]

MARK: Sorry, Chair, it has been raised via a letter, we
20 have done our duties and we informed them accordingly. I would not, from my opinion, want to engage more and open up a debate. The war room has had a chat, many discussions about it in the document what the war room feels and the war room has invoked certain municipality experts, we have performed out duty by doing a courtesy letter to the Minister to inform her what our intentions are

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but going forward, we, as a company, need to, as our fiduciary duty, collect our debt.

[01:08:10]

UNIDENTIFIED LADY SPEAKER: Okay, just so that I am clear so that I give guidance here. We have got the Minister in the room, are we saying that we do not want to engage on the point or are we saying we are just going to sit back and wait? I needing to understand.

[01:08:20]

10 **UNIDENTIFIED LADY SPEAKER**: Perhaps we should have been informant to advice her ...[intervenes]

[01:08:22]

MARK: Sorry. We did advise via a letter, it is fully aware – I do not think it one of the agendas on the topic.

[01:08:27]

UNIDENTIFIED LADY SPEAKER: Okay.

[01:08:28]

MARK: I do not want to get into a debate at this element where the issues happened in the past. We have had our
20 Chairman sent a letter, board has made a decision, that is my ...[intervenes]

[01:08:40]

UNIDENTIFIED LADY SPEAKER: Okay, can we just take some points, [indistinct] and then Thaba and then Varashni.

[01:08:46]

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UNIDENTIFIED LADY SPEAKER: I think we need to highlight it.

[01:08:48]

UNIDENTIFIED LADY SPEAKER: I can understand why.

[01:08:49]

UNIDENTIFIED LADY SPEAKER: The reason why we need to highlight is because the paper is not as tacit as it is when you actually indicated to him and we are going to tell him – tell her and tell her all the – everything that we need
10 to tell her around our responsibility with the energy that we have now so that she is aware so that when we write a letter back to us saying we must know that we are not going to accept it even before she writes it.

[01:09:19]

UNIDENTIFIED LADY SPEAKER: Okay. So we have got two positions. Can I just get support, are we going to raise it with the Minister? That looks like the answer is yes.

[01:09:24]

MALE VOICE: Yes.

20 [01:09:25]

UNIDENTIFIED LADY SPEAKER: Yes.

[01:09:26]

UNIDENTIFIED LADY SPEAKER: Yes.

[01:09:28]

UNIDENTIFIED LADY SPEAKER: Okay, alright.

[01:09:29]

UNIDENTIFIED SPEAKER: Through – via the Chair.

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[01:09:30]

UNIDENTIFIED LADY SPEAKER: Ja, via the Chair. Thaba, then Varashni and then lastly we are going to go the FD and then we are going to take a loop break before the Minister comes in here now. So Thaba?

[01:09:38]

UNIDENTIFIED SPEAKER: Just check hundred percent that the letter did go off. I know the Chairman did sign, the Chief Executive, must just find out hundred percent with
10 the Chairman.

[01:09:44]

UNIDENTIFIED LADY SPEAKER: Who can confirm?

[01:09:45]

UNIDENTIFIED SPEAKER: Neo.

[01:09:46]

UNIDENTIFIED SPEAKER: Yes, yes.

[01:09:46]

UNIDENTIFIED LADY SPEAKER: Did it go off?

[01:09:47]

20 **UNIDENTIFIED SPEAKER:** Yes, yes.

[01:09:48]

UNIDENTIFIED LADY SPEAKER: When did it go off, Neo?

[01:09:49]

UNIDENTIFIED SPEAKER: I can check.

[01:09:50]

UNIDENTIFIED LADY SPEAKER: Because if it went off yesterday it would not be fair to assume she received it.

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[01:09:52]

UNIDENTIFIED SPEAKER: That is the point I am trying to make.

[01:09:54]

UNIDENTIFIED SPEAKER: No, no, no, it went off yesterday.

[01:09:55]

UNIDENTIFIED SPEAKER: Mr [indistinct] as well.

[01:09:56]

10 **UNIDENTIFIED LADY SPEAKER:** Okay. Our leg break is not going to happen.

[01:09:58]

UNIDENTIFIED SPEAKER: Not going to happen.

[01:10:00]

UNIDENTIFIED LADY SPEAKER: I apologise to the board and to everybody. You see, this is what happens when you talk too much.

[01:10:19]

UNIDENTIFIED SPEAKER: Morning, Minister.

20 [01:10:20]

MINISTER BROWN: Morning everybody, please sit.

[01:10:27]

UNIDENTIFIED LADY SPEAKER: Chairman, am I sitting in your house.

[01:10:30]

DR NGUBANE: No, no, no – ja, sit next to the CE, I will sit here.

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NO FURTHER RECORDING ON AUDIO FILE 9.1

CONTINUING ON AUDIO FILE 9.1.1

PROCEEDINGS RESUME

[12:21]

CHAIRPERSON: ... for, and if anybody wants to interfere with that, they will stop them from doing so. So, there are some serious misdemeanours that are going on in the business, that is serious. Yes?

[00:13]

10 **FEMALE VOICE:** Mr Chair I agree with you because from even a corporate prospective and from my experience the tendency is that you do not get better result in whistle-blowing if you do not make that change and if the executives are – continue to be in the position that they were in they will suppress investigations, so I am afraid I support that, because I have seen it happen.

[00:34]

CHAIRPERSON: Oh yes, Norman sorry?

[00:36]

20 **MR TSHOLANKU:** Thanks Chair.

[00:37]

CHAIRPERSON: You are so far, I cannot see you from here.

[00:41]

MR TSHOLANKU: Ja, actually my take on this is that I don't know whether these issues that you are referring to

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are issues that happened under the watch of the previous Board or this Board because, for example, I will expect that structural changes at high level are approved by the Board and if it happened under the watch of the Board, then the Board had to take some responsibility and also, my other undertaking is that before we can rush into a decision, I wish - or recommending that we gather all the facts in terms of reference so that we don't take a decision based on allegations that don't refer to – that are not
10 relevant for certain people because we can take decisions that don't affect somebody or the person who is totally innocent and so on.

So I wanted us to, maybe, when we get into the terms of reference the decision is made on certain issues that are critical for the business, for this business, for this decision for this business within the organisation so that when we do suspend, we suspend having the facts that there is a serious issue that is in this division that needs to be looked at seriously and a person has to be set aside so
20 that we can investigate this particular point seriously because there is a serious consequence on this specific issue.

I will not prefer that we take a blind spot to say that Executives must be set aside because they must ...[indistinct], there may be Executives that are totally

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innocent and putting them on special leave or forced leave, and we'll find ourselves going to Labour Court time and again, fighting the same battles with the ...[indistinct]. So, I wish that we deal with terms of reference on issues that are critical and consequences that came out of those – these positions or those ...[indistinct] of things so that we are specific whenever we take that decision because my big worry is that we'll lose focus and we will not be able to stand firm in our decision based on – I mean each of the
10 forensic investigations, for example, Chairperson, depending on the nature of it can be done with or without the Executives but depending on the nature of the issue that needs to be investigate, I think that will let us much better that, maybe this one no, we must not take that decision on this person *per se*, this one we can take this decision on this person.

[04:22]

CHAIRPERSON: Yes, I must make – probably make use of the term forensic implies criminal act. I would say
20 suspending the top layer of the organisation while you investigate the causes of the present problems is probably less accusatory than us trying to find facts about what has happened.

[04:49]

MR TSHOLANKU: Yes.

[04:50]

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CHAIRPERSON: Look, yes – sorry.

[04:54]

MS CHWETHA: Thanks Chair, I think the Minister has indicated a whole lot of issues that needs to be looked at and in her speech, if you noted what she was saying, it was – it is the basis for the terms of reference, so if we can use that speech as a way of putting the terms of reference and from that speech it was indicated to me, indicating the critical sections that needs to be looked at
10 and in looking at those critical sections, just keep the leader in each section from what she was saying and if we can – if the Company Secretary can give us a summary of the first part – of the first five minutes of her speech which was more elaborate on what she wants to say to us.

Leave the rest of the discussion when we are asking questions but that speech was more elaborate and indicating the focus points – the focal points, where we need to ... [indistinct]. The problem is when we are here, the – Eskom is ...[indistinct] and we are not able to see the
20 whole of Eskom, we're supposed to because we are at the top level where we need to be able to see everything and understand everything and the next thing – what happens, as she was indicating as well, she was saying, I tend to defend Eskom, blah, blah, blah. She is not supposed to defend Eskom, she needs to be listening and come and

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attack us but she ends up ...[indistinct] because it's happened, we do the same and we do it at the disadvantage of Eskom at the advantage of the Execs but today we are being asked by the Minister and she even says, I'm using some of the words that I would never use in public to actually step back and attack Eskom and do what is right for Eskom. Attacking the suspect, put ourselves out of where we're supposed – where we defend and try and zoom and critically analyse and be able to come out
10 with the right – correct results that we pave the way forward that we then go back and say, we have found the worms that are eating Eskom but we can't do that if we continuously defend.

[07:50]

CHAIRPERSON: Okay, I think, based on what you're saying ... [indistinct] there are four areas that Denise has spoken about. She spoke about maintenance and that is engineering, maintenance is driven by engineering. She spoke about procurement and that is commercial and she
20 spoke about the new bill programme that's group capital and technology and she spoke about finance.

So, these are the four focal areas that she talked about and each one of those has got a specific group Executive responsible for it. So I think what the Board needs to do is to make a decision in terms of – let's

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resolve about how it is, that those Executives can be placed while this is going on and I take the point that one is saying, maybe there's a forensic investigation, might subsume that we – there's a criminal issue around it, maybe we should give it a different, more appropriate title.

[09:01]

MS NAIDOO: Mr Chair, she also spoke about the fact that the load shedding, sort of occurred at different and odd times, so is that not generation?

10 [09:09]

CHAIRPERSON: No, no, no that's once again, don't forget load shedding is a consequence of maintenance and lack thereof so it is still engineering it's not generations.

[09:20]

MS NAIDOO: Okay.

[09:22]

FEMALE VOICE: Chairperson, look, I think as a Board we've been grappling with a whole lot of issues which, as she's correctly pointed out, she was concerned we're
20 worrying ourselves about the rats and mice and the burning platforms not being attacked but I think as a Board, this is going to be one time when we must step up to the plate and must make hard calls because we've been saying we've been disengaged, now we're engaged.

Now, the real question becomes, do we now want to now delay this by going into sub-committee work before we

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make hard calls. Sitting here today and knowing – and it doesn't have to be proven or evidential proof, the fact that our Chairman tells us – unless we believe he's lying, we cannot ignore what is being put on the table.

I think this is where we need to make hard calls with a parallel process of finding the evidence on what is being – you know, what's happening but I get a bit scared if we want to now palm off to sub committees, number one, and number two, you know people are going to be treated
10 like criminals. You know what guys, today and in the business world public and private sector people are being set aside which is why that word is quite good, it's not suspended but its set aside while something bigger happens. This not about you or me, this is about the entire country and I think this is a Watershed moment for us as a Board but for the country. So if somebody can make a hard call to show we will leave no stone unturned to see if we can turn this thing around and we can make a mistake we are going to make some mistakes as we go, but don't
20 forget this Board has been seen, or I certainly feel like a sitting duck from the 10th or 12th of December.

I've said it a number of times, now this is one thing I've got to challenge myself and say, given what I now know, am I still going to do that.

[11:19]

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MALE VOICE: So, who are the people, so we understand so that you can give us comfort of the lower levels because one of the people you said is the FD because we had finance, I don't know if it is finance. You know we had maintenance, capital, commercial and...[intervenes].

[11:38]

MALE VOICE: The top layer, what's the top layer.

[11:40]

CHAIRPERSON: Okay, let me ask you a question... The
10 divisions that are directly concerned is commercial and technology which is led by Matchela Gogo, it is group capital, that is a new build, that is led by Dan Marokane and technology led by Gogo Matchela, he's also responsible for maintenance and obviously finance is led by Tsholofelo, the FD. I think we just need to, you know, make a determination ourselves, as to the value of the exercise that we want to have achieved and how best that exercise can be achieved. That is really what is the core of this – this is what, I think ... [indistinct] is saying, less
20 accusatory than us trying to find facts about what has happened.

[12:40]

MR LINNEL: I do agree with you, but I just want you to give me comfort on one area on the financial side I understand that those guys can put pressure on the people below, can the ME also do this...[intervenes].

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[12:51]

CHAIRPERSON: No, I don't think so.

[12:52]

MR LINNEL: That's what...[intervenes].

[12:53]

CHAIRPERSON: I personally don't think so. The financial issues are quite different.

10 [12:57]

MR LINNEL: Yes.

[12:59]

CHAIRPERSON: They're quite different. Don't forget the financial crunch that Eskom is experiencing is not as a result of an operational issue, it is as a result of consumers not being given adequate tariff for us to run the operation. So the financial is in a different realm whereas the other issues has got to do with specific operational things that can and do go wrong as a consequence of
20 whatever the consequences are which then lead to the load shedding, lead to the cost of ...[indistinct] and so on, so I think those are two different situations, okay hang on a second I thought...[intervenes].

[13:42]

FEMALE VOICE (MS CHWAWWE): Thanks Chair, on the issue that the Board can just discuss everything and not allow the sub committees to discuss and report, I don't think it's proper in terms of trying to make sure that

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everything ...[indistinct] and the governance is followed properly and when the sub committee discusses and comes up with a proposal to the Board it's not an investment, it's not what the Board is going to take ...[indistinct] but it's in the initiation of the discussion that when it comes to the Board and then gets confirmed by the Board, discussed further, changes being done, you know. This is not a usual- it's a critical stand that we're taking and it's going to attract a lot of media attention, it's going to attract a lot of process issues as the – one of the lawyers was emphasising, policy, policy, policy. So let's just follow the policy and bearing in mind when you are in a committee, Board members can join in the committee but cannot be part of the final decision making and then it comes back to Board but it's just process issue to make sure you follow the policy – the processes that we have agreed on as a Board.

[15:28]

CHAIRPERSON: Okay, hang on I think – either Norman or yourself were going to...

[15:35]

MALE VOICE: You can go first, I can come later on.

[15:38]

MALE VOICE: No I was just raising the issue again supporting ...[indistinct] to say, it's good to give the overhead but let's go into details on – in the groups of how

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we can...[indistinct] because trying to debate it here, we're taking a lot of precautions, sometimes unnecessary. We look at – because we're going to look now at the seriousness of the case that is levelled against the individuals.

[16:09]

CHAIRPERSON: Okay.

[16:11]

NORMAN: Thanks Chair, there was a gap from the war room information coming into the Board so all of us are not aware of the issues that the Minister is coming from. I mean the issues – the accurate information from that got submitted to the war room and I'm talking about the issues of one or two months, probably when this thing started, of the war room and my caution around this is that, here's and advice from the Minister, let us take the advice seriously but not urgently because when we take it urgently we will be faced with serious consequences. I think let us get the facts of what those inaccuracies are and we
10
20 determine for ourselves whether they...[indistinct] any sanctions or not because my caution around this, Chairperson, is that talking things at high level without actual facts, I gave an example that, during the structural changes that you spoke about was it endorsed by the Board, the previous Board or not because you would expect that structural changes are put by the Board.

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So, if you have to suspend based on that for example, the two Executives concerned of those structural changes, had the Board endorsed it, we don't have a case when the Board has endorsed it and approved it. So I will prefer that we go into the details of issues so that when we do take a decision, we take a decision that we'll be able to defend from the Board's point of view and furthermore, you know, people do come back because of winning cases in Labour Court because there were no processes that gave
10 them to get input into why they should not be suspended and at the same time, I mean, it also had direct implication, I mean, when people get suspended perhaps they should get...[indistinct].

So, there has to be some elements of having the actual facts that we can say, this is the reason what we are suspending you for.

[19:02]

CHAIRPERSON: Can I just explain something all of it you're talking about is long been done. Remember I said
20 to you that this thing has not started now, the Presidency started this thing several months ago. So all of this is in place, they've done all this investigation, they can tell – if the Board insists, we can bring somebody here this afternoon who can give you all the things that I'm talking

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about if that – if the Board wants to get to that level, it's fine.

[19:29]

MALE VOICE: Then it's informed.

[19:30]

CHAIRPERSON: That's not a problem but I'm just saying to you that the precaution around doing an exercise like this is something that has long been – the President actually, the President demanded an entire analysis of the governance of Eskom and I have a document this thick
10 which was given to me which was then a Presidential analysis of what the Board can and cannot do, what the Minister can and cannot do around Eskom what the governance of issues around Eskom are, all of those things. All directed at trying to establish how you can do an investigation of this nature. So, there's been a lot of work that's been done already. On the question of urgency, remember on Monday what I said, what I said was this, we have been given up to the 30th of June to complete
20 this exercise. Now, the fact that the Minister did not mention that is maybe because she might not have decided to go into that detail but there is no question about the urgency of this matter, it is very urgent. So, we already have a timeline in which we have to work so I just wanted to point out the fact that, yes, there is a sense of urgency that we must deal with this issue.

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[21:02]

MALE VOICE: Any suggestion of culpability or criminality directed at any of the Executives will land us in the situation he's describing therefore I'm saying, no mention of the Presidency, no mention of the Minister. We as a Board are concerned with the lack of knowledge and understanding of where the problems emanate from and therefore, we instituted an investigation for information purposes. The accusation of, you did – slept with a woman
10 or whatever, that will come later but we just want the body of information that can help this new Board understand where the problems are. Therefore, we want to give, forced holiday to certain individuals so that we can gather information without prejudice.

[22:00]

DR NGUBANE (FEMALE VOICE): Mr Chair, I agree with Norman to an extent, I understand his concerns but I also understand that this is something that needs to be done. For me that's semantics and I agree with the process we
20 need to then – you said we've already got lawyers involved in this process, this is something that they need to do, they need to – we need to give them the instruction they need to ensure that we comply with the Labour Act we do everything in step by step, what we're supposed to do in terms of those particular Executive's contracts and whatever, so they need to put us in place and make sure

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that we're in compliance with legislation but – and I think if they do, do that correctly, the right way, there can be no implications at a later stage that we didn't follow due process but I think the most important thing is that, this needs to be done but obviously the right way.

[22:47]

FEMALE VOICE (CHWANE): Chair, if I can come in, I want to concur with the doctor, we are in South Africa, in case we have forgotten, we are in South Africa and the problem
10 in South Africa is that most things are discussed on the newspaper and I don't want us to leave this room forgetting that, in as much as we have responsibility to take...[indistinct] we have a responsibility to protect our leaders. The point that we had said here when the Minister was here to say, the Minister must be excused on some of the decisions that we need to report to her about, it's a good – it's something that we need take very seriously. The mention of the President in this Boardroom is something that we need to know that it is wrong, if it is
20 mentioned to emphasise something we must not – not even one person must leave with the word President because we know the attack against Government through our President and for him – for us to open an attack as well at our level, that would result in him being attacked further than he is now, is not right and for us to – as the doctor says, we

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need to take ownership of this process. He might have been shady, the Minister might have given us guidance but she cannot own this process, we need to own it and the manner that – the newspaper is going to outline that she arrived after this inspired her. So it means therefore that, we can't – we need to defend that, we need to always make sure that we prevent our leaders and we fail to do that, we have failed Eskom as well and we have failed the country if we are part of the people that are sabotaging, effectively, our leaders, we have failed.

[25:13]

CHAIRPERSON: Okay so, my understanding is quite clear. First of all, this exercise is to be termed an inquiry into the status quo of Eskom right, number one. Number two, this inquiry, for it to be effective requires us to ask specific Executives to take forced leave or whatever you call it, to be removed then from the situation. This is not an investigation into individuals or wrongdoing by individuals, so that the media has to get right, it is the status quo of Eskom because there are definitely situations that one has to look into, what is actually happening in the organisation and we are asking that this be done by non-Eskom entities, an independent inquiry right and then we are then saying that the specific Executives who are directly involved here would be, the group capital Executive, commercial

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Executive and the Chief Executive. Well we said the FD, his situation is different it's not...[intervenes].

[26:40]

CHAIRPERSON: No, not necessarily.

[26:42]

FEMALE VOICE: It's what you said it says – you said that the financial situation is not based on, obviously the problem here but it's because of the tariffs but you know some of the sub committees that I'm involved in there is
10 just so much of overrun of budgets in million, in billions. That lies with the FD.

[26:59]

MALE VOICE (MARK): Sorry, can I just, all I want to do is, one of my concerns is with the FD. These things have got to do with procurement and I'm hearing diesel, it doesn't involve the FD, when it comes to the FD, she pushes the button. Why I'm so protective of the FD is in this crisis I can't afford...[indistinct], I can't afford the market here that we also side-lined the FD because then they say it's money
20 involved, who's going to run all this finances that we're doing, continue running with the markets etcetera, when we've got that, it scares me completely ...[indistinct], it wasn't mentioned by the FD, she said the financial information they get is not accurate. She wasn't saying that there is something untoward in that sense. So, it scares me when you suspend the CFO and a CEO, not

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suspend, you put them on leave, it really, really scares me, I just want to put that point across because who then is responsible to sign the cheques and the money.

[28:02]

CHAIRPERSON: I support fully what Mark is saying. The expectation is that the financial integrity of Eskom is unquestioned. If we find stuff that question that, then we get to the FD later but for the moment as we have mentioned, all the senior people who need to be on leave, 10 you know...[intervenes].

[28:24]

MALE VOICE: I can see the cost of ... [indistinct] don't occur in finance, they occur in this different parts of the company as so finance then, has to try to account for them, when in fact, they don't originate from Finance.

[28:36]

MALE VOICE: Just one-point Chair, just for clarity, Minister did talk about the bonds, the prices and the rates and whatever it is, she wants the full story about that, just 20 for clarity?

[2:45]

CHAIRPERSON: Ja.

[28:47]

DR NGUBANE: I think, also from a like, auditing, you know, you always get your CFO's right there and the auditors, you know, they can pick up situations like that, so

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I don't think she was – as much as I – maybe now I agree with what he's saying that, maybe she will not be able to influence otherwise, because a paper trail you can't miss out from an audit perspective. So, even if we've got auditors involved in this investigation, they could pick up issues even though she's around.

[29:09]

CHAIRPERSON: Yes, no I don't think that is... [indistinct].

[29:13]

10 **MALE VOICE**: Just let me raise it first, maybe you guys want to ... [indistinct], the FD is personally involved certain violation... [indistinct].

[29:15]

MALE VOICE: [Inaudible].

[29:26]

DR NGUBANE: Information on it.

[28:29]

MALE VOICE: Violation of the procurement process.

[29:30]

20 **MALE VOICE**: Such as?

[29:32]

MALE VOICE: Such as she wanted to meet the people during the tender process which was then... [indistinct].

[29:38]

MALE VOICE: Oh boy.

[29:42]

CHAIRPERSON: Is that reported?

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[29:44]

MALE VOICE: Ja.

[29:45]

MALE VOICE: But Chairperson, I still say match point in terms of the market in general, this will override everything. Only when we find some wrongdoing can we go after the FD but if we don't do – if we go for her straight off, I'm telling you we issue paper, tomorrow it will be thrown away.

10 [30:12]

UNIDENTIFIED PERSON: Chair, we have a slightly different ... [indistinct 30.12].

[30:14]

DR NGUBANE: Ja, don't stop that investigation.

[30:15]

MR PHUKUBJE: I don't think we should look at individual, I know you've got the contents around the individuals now. I think we should look at it from a governance point of view, from an audit and risk point of view. We're looking at
20 the total organisation, total organisation, so we're not particularly focusing on any specific area or sector, we vouch the total top layer to please the...[indistinct] while this investigation is in process so we're not finger pointing to nobody, we're not doing anything and then let the forensics go through it and in this interim period we've got acting appointments made in terms of sorting this thing out

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and it's purely from a risk point of view that we're now batting this issue as we believe that the situation of Eskom in the country is serious enough for the new Board to get a handle on it, sort of generalised.

[31:10]

MALE VOICE: We must finalise this today.

[31:11]

MR PHUKUBJE: Today ja.

[31:12]

10 **MALE VOICE**: If we leave here, I mean, then we are in serious trouble.

[31:16]

MR PHUKUBJE: Ja, don't finger point to any particular individual.

[31:18]

CHAIRPERSON: No, no, no I think we're dealing with specific areas of the business, I mean, if you talk about transmission, you set somebody aside in transmission for what reason. No, no, I understand, you see we must
20 understand, we have to be clear, people take accountability for the things that they do, from that position.

[31:38]

MR PHUBUBJE: I agree.

[31:39]

CHAIRPERSON: We mustn't soft pedal when it comes to saying, we need to investigate specific areas in the

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business and for that reason the presence of the people there are going to make those investigations difficult, let's be clear about that because that is a reality. So, I don't think – I don't think setting aside the entire Executive is going to help us because there are areas that are not concerned with what we're talking about. We're very clear where we want to focus our investigation at, so I think we should be clear-cut, unequivocal and be clinical about what we need to do and we have to be and we have to be seen
10 to be clinical about what we need to do. So, I think a step change is required, you mentioned a word, I can't remember the words you mentioned...[intervenes].

[32:25]

MALE VOICE: [Inaudible 32.25].

[32:26]

CHAIRPERSON: Yes, we have to do – we have to be very clear and bold about what we need to do, and we have to do it today.

[32:33]

20 **MR PHUKUBJE:** Can we not be diplomatic about it, that's what I'm saying, do it but do it diplomatically.

[32:36]

DR NGUBANE: That's common cause.

[37:41]

MALE VOICE: Remember when we issue the letter for the person to go on leave, you have to be specific of the area

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that the person is going to be investigated on, you can't be generic. That's why I say, guys, this thing is done is specific to individual for a specific reason. We must be bold enough to make decisions, let us now start now, even here, and start waffling and waffling about certain things, we need to be bold.

[33:09]

CHAIRPERSON: I think, let's modify what you are saying. We are not investigating individuals, we are investigating
10 the areas of the business, what is going on in those areas of the business because you see, if you are investigating individuals, then you have to suspend that individual because that individual then – there is an element of wrongdoing. I think what you are saying and what I'm hearing you are saying, is that, we are looking at specific areas of the business where we know there are difficulties. We have mentioned procurement, we've mentioned engineering, we've mentioned – so we are saying those people who are responsible for those areas, let them take
20 forced leave whilst we are investigating those areas because you see, we believe that them being there is going to impede the investigation, let's be clear on what line we are taking.

[33:59]

MR LINNEL: You need to apply your mind now for the CEO, I understand that specifically, specific departments,

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which is easy, now how do you justify or the media for the CEO, we just need to apply our minds guys.

[34:12]

MALE VOICE: I think we have deliberated on the matter.

[34:13]

DR NGUBANE: We need to make a point.

[34:14]

MALE VOICE: Let's go to the specific, let's go to the sub committees let them – this Board must sit here and reconvene later and get the recommendations from the sub committees, rather than to keep on debating there now.

[34:28]

ALL PARTIES SPEAKING AT ONCE

[34:32]

CHAIRPERSON: Ja, let's do that. I would do justice to see the Board make a decision and let the implementation be the responsibility of the sub committees. The only decision we are left with...[intervenes].

[34:42]

20 **DR NGUBANE:** How, and the process.

[34:44]

CHAIRPERSON: And how we are going to do it and which levels of the organisation we are going to focus on and hence which Executives we are going to ask to take time off.

[34:56]

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MR PHUKUBJE: And how can we get maximum ...
[indistinct 34.58] from a public point of view, from a
customer point of view, from a country point of view, we
need to emphasise that.

[35:04]

DR NGUBANE: The sub-committee must have discussions
with the lawyer concerned, the strategies, legal advice and
opinion on the process involved.

[35:12]

10 **MALE VOICE:** Chairperson, we endorse the suggestion put
on the table, we've taken the decision, we are delegating
the sub committees of people in governance and audit and
risk to deal with the terms of reference and so on and so
on and who takes over the acting position, you know, and
then we come back and endorse that, once they've
decided...[indistinct 35.37].

[35:38]

CHAIRPERSON: Okay, yes ... [indistinct 35.38].

[35:40]

20 **DR NGUBANE:** Can I just understand, I mean, because I
think I was the one who raised the issue, as a Board we
keep on pushing it back. Are we saying the sub
committees goes now, does it now and comes back today?

[35:50]

UNIDENTIFIED SPEAKER: Now, now, now.

[35:52]

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DR NGUBANE: Okay well, then I think we're all saying the same thing. I think we're just worried about timing because I mean, if we leave any time flap till next week, we're already too late. So, we're all going to go now...[intervenes].

[36:02]

MR BALOYI: Why is – why you briefing today, if I can ask, why is it such a ... [indistinct 36.05] because some of us will want to read that report that is readily available so that
10 we understand the key critical issues that we raised. I think for us – you know, there is something that she mentioned, that to me, it sounded very strong. She said that imagine if you – the Minister comes to meet the Board and then immediately on the same day the Board has made a serious decision and how do we protect each other, the Minister, then the Board and the newspaper stories will be, the Minister instructed the Board and so on and so on and ...[indistinct 36.56] of our Board really is going to ...[indistinct 37.01]. I don't understand, why now, because
20 yes we do have much to [indistinct 37.07] until June the three months we can – after we have read the documents and understand the issues we can still meet before the end of the month, we are meeting on the 30th and – I mean, into it somewhere meeting and some of us want to take a decision we are comfortable with, things that we can

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always defend and for us, I mean, we can make a decision there on those break always and the committees would have met in their own times in this two weeks. I, really – this issue of meetings that we are creating now, to me is...[intervenes].

[37:51]

CHAIRPERSON: Mr Baloyi, I think you're focusing on something different, I don't think you are hearing what the committee is saying. The committee is saying, there is a
10 clear need to assess the status of Eskom, there are a number of things that we need to do to look at in the organisation and we've identified the areas that we believe we need to scrutinise, what has taken place in the organisation, right. The second thing we're saying is this, we are not blaming or putting blame on individuals about what is happening in – we're not pointing fingers at people. What we are, indeed saying is this, that in order for us to expedite and be efficient about doing this inquiry, we need to ask the individuals who are heading those particular
20 areas where we are concerned with, to take forced leave or to step aside because there is need for that investigation and inquiry to be unimpeded by their presence. It is common cause that when people come in, it doesn't matter for what reason, because a potential for culpability may be there and if you sit there as the head of the organisation of

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that particular division you are seriously saying, hey there might be a problem here arising and I'm going to catch the problem. So, your instinct is to try and be as protective about what there is there as possible without you being blamed for anything. So, it is imperative, as we are saying, that these people should give the space for that inquiry to take place. Thirdly, we are sitting here as a Board, the Minister made it clear that we have to be decisive, the buck stops with this Board. Now we are
10 sitting as a Board, we've got all the information we need to do what we have to do and we're asking ourselves to defer this thing to some other time, no we can't work like that.

[40:08]

MR BALOYI: I don't have information Chairman

[40:09].

CHAIRPERSON: What information are we looking for.

[40:10]

MR BALOYI: No, no you said we do have the reports available and I'm asking for that report so that I can see
20 what is contained in that report and then secondly I said that the issues from the war room, the information has never been sent to the Board so that we understand those inadequacies for example and the third point that I'm concerned about is that – my understanding is that when we say we leave this with the committees then the committees will have to meet shortly within one or two

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weeks, I didn't expect that they are going to meet now and then we would make a decision and so on because we don't have information Chairperson, can we get information so that we take concrete decisions that we can always defend from our side because some of us, really, we don't want to use hearsay information to make decisions, we want to see decisions that...[intervenes].

[41:17]

CHAIRPERSON: Yes Mr ... [indistinct 41.17]

10 [41:19]

MALE VOICE: Well, you know, I understand where Norman comes from but we are not at that stage yet to be writing people, give us reasons why you shouldn't be suspended, we are not there. All we want – we have no document, there may be a document somewhere in Government but it's not our document, it's not Eskom Board document, so that is a sign. All we want to establish is the status quo as you have said, what has happened in Eskom informing ourselves, therefore, we investigate.

20 [41:53]

CHAIRPERSON: We are going to get to where Norman wants us to go to.

[41:55]

FEMALE VOICE: Chairman, you know, I always think in numbers and I think we all heard the CFO this morning, she said that we normally run on a four month buffer as a

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reserves, she called it 20billion, so effectively you're looking at a business of R5billion per month, running costs, if you take everything into account, that's R30million an hour. So, you want to know what the urgency is? With everything we've heard today this Board has got to make decisions based on a cost of R30million an hour and if we fail to do that speedily, we've got to think of the numbers that it's costing this country, I'm sorry I don't...[intervenes].

[42:35]

10 **CHAIRPERSON**: Okay I think we can safely say, at least we have got a decision that we have to now ask the two committees to expedite in terms of what – how to proceed in getting this work done.

[42:51]

MALE VOICE: And we reconvene today.

[42:52]

CHAIRPERSON: Ja okay.

[42:53]

MR LINNELL: Sorry Chair, last question, just to say it was
20 three people that we look into?

[42:57]

CHAIRPERSON: Yes, correct. So, let's break for lunch...[intervenes]

[43:03]

UNIDENTIFIED SPEAKER: He has something to say.

[43:04]

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CHAIRPERSON: Oh, you've been quiet the whole day.

[43:08]

MALE VOICE: No, just a point on governance and process. So, I agree there needs to be an investigation but I think you need to consider that Eskom is not just a parastatal that doesn't touch the independent market, there's an economy outside of Eskom which is independent of what happens in Government by the way. Eskom applies for bonds, there are agencies we're going to be looking at, we downgrade and we downgrade what's happening. So I'm appealing to all the sub committees that are going to look into this, that you need to consider – the decision is done, but you've got to be careful around the process of how this is going to be managed internally in terms of the process that we're going to follow, the governance around it because believe you me there's a ton of bricks coming our way, externally not just from the media, I'm not worried about – I'm not concerned about the general media but from people who are running the real economy, there's an economy that runs – there are people that run the real economy outside who are going to impact on Eskom and I'm talking about rating agencies, I'm talking about banks so we need to be really very careful how we manage the governance and the process. We can't, after we're done

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with this, people are poking holes at the process that was followed and the governance around it.

[44:37]

CHAIRPERSON: Yes, absolutely.

[44:38]

UNIDENTIFIED SPEAKER: Yes, we must be careful ja and after we've done it, we want to see our share price go up, that's what I'm saying.

[43:44]

10 **CHAIRPERSON**: Okay can we break for lunch then.

[43:45]

UNIDENTIFIED SPEAKER: I think we'd have to...

[

ALL SPEAKERS SPEAKING AT ONCE

[44:58]

CHAIRPERSON: The resolution is to proceed with the investigation as quickly as possible and we'll give it...[indistinct 45.08] by asking the specific layer that's concerned and the Chief Executive to take forced leave so
20 that they don't impede the investigation and then from then on terms of reference have to be prepared for the investigation and this is work that will be done by the audit and risk committee with whatever support it gets and then all of that, then gets reported back to the Board. Now, it may be that all of that cannot be completed today. So, in

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reporting back to the Board it may not be feasible to do it on the turn, just like that, because of the time involved.

[45:50]

DR NGUBANE: I don't think the discussion with the people concerned should be today, we need to consult with our lawyers to make sure that they follow process and everything is complied with, HR should not do it.

[46:05]

CHAIRPERSON: Okay so what people in governance has
10 now got to do also, is look at who are going to be acting in that and bring that back to the Board.

[46:10]

DR NGUBANE: Correct, and consult with our lawyers.

[46:14]

CHAIRPERSON: I suspect he's here already.

[46:15]

DR NGUBANE: Oh okay.

[46:17]

MALE VOICE: So, just to – on Mr Baloyi's point, I think we
20 need to leave it to the Chairman of the audit committee and the Chairman of the people in governance to run this process. We as a Board have taken the call – have made the call, then the Minister can be informed that the Board has made this call but the execution of it and how it's going to happen, the terms of reference, who are the consultants, how much it's going to cost, what are the –

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you know, both the Chairman of the people in governance and the audit and risk must then convene their committees, make the decisions and report back to the Board, I'm not sure if that's going to happen in the next few minutes.

[46:55]

CHAIRPERSON: I don't think it's going to happen

[46:56].

MALE VOICE: The decision of the Board has been taken so I don't think that we are still lurking around whether
10 we're going to do this or not, that decision has been done. Now, it's about the modalities of how it's going to be done, that's up to the two Chairman's to...[intervenes].

[47:09]

CHAIRPERSON: Okay, can the team then come back to the Board at the time when the work has been done, has progressed, it doesn't have to. [indistinct 47.17.

[47:18]

UNIDENTIFIED SPEAKER: It doesn't have...[intervenes].

[47:23]

20 **FEMALE VOICE**: I propose that the audit and risk committee sit or a few minutes before lunch ... [indistinct 47.32] remain in the boardroom so that we can decide how to go about... [indistinct 47.40]

[47:41]

MALE VOICE: But the delegation must be, specifically mentioned in the resolution that we are delegating them.

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[47:48]

CHAIRPERSON: Yes, that's something that...

[47:52]

UNIDENTIFIED SPEAKER: [Indistinct 47.52] governance I think we have to...

ALL SPEAKING AT ONCE

[47:58]

CHAIRPERSON: Ja, after lunch, not before lunch.

[48:00]

10 **DR NGUBANE**: Before lunch, we can also meet before lunch.

[48:02]

CHAIRPERSON: Okay you meet before lunch we'll meet after lunch.

[48:05]

MR LINNELL: Chair what happens to the Board meetings...[intervenes].

[48:08]

CHAIRPERSON: No, no we're coming to that.

20 [48:15]

MR BALOYI: Sorry Chair, let risk meet first then we will meet up with risk once we get their input.

[48:22]

MALE VOICE: Sorry Chair, I just wanted to – just one last minute... [indistinct 48.22] in this process.

[48:25]

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CHAIRPERSON: The CEO, the head of group capital and the head of commercial are the three individuals we're going to ask to step aside.

[48:35]

MR BALOYI: Because I thought, maybe then the CEO and the CFO are excluded.

[48:39]

CHAIRPERSON: No, the CEO is not excluded, the CFO is excluded that's what we've decided. Okay, can I just make
10 it...[intervenes].

[48:47]

MR BALOYI: Just one last thing from me, can I ask that, just for process, the Chairs of the two committees who have been delegated, be provided with whatever reports and documents available, at this stage?

[49:01]

CHAIRPERSON: Yes, that's fine. The rest of the Board meeting, I don't recall where we were, what we have not completed.

20 [49:09]

MR LINNELL: I'll fill you in Chair, we finished and we approved the debt strategy which I'd like to tell management that the Board's approved, we missed a lot of other points, we didn't get to the corporate plan which we're uncomfortable to approve now based, until we get this specific report because the Minister was saying to us,

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this corporate plan, you know, I've got a lot of questions for it, she said this corporate plan it's just much of a muchness, how we know what to believe.

[49:36]

CHAIRPERSON: Okay, do we – we grant what the Minister is saying about the corporate plan that we need to go back.

[49:41]

DR NGUBANE: Ja.

[49:43]

10 **CHAIRPERSON**: So obviously we cannot deal with it, so we have to shelf it.

[49:48]

DR NGUBANE: [Indistinct 49.48] we have not received any other versions.

[49:49]

MALE VOICE: The borrowing plan – the borrowing plan as well, we're supposed to ... [indistinct 49.53].

[49:53]

CHAIRPERSON: Okay there's a corporate plan, then
20 there's a borrowing plan, the borrowing programme, was that discussed?

[49:58]

DR NGUBANE: No, just the debt strategy but the corporate plan, the version that we got is the one that we received the day before the Board meeting. I had my meeting last week with Exco, they sent three versions after

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that, we're not totally abreast with latest versions after all of us gave our comments, so if we can, maybe request that.

[50:15]

CHAIRPERSON: I presume that, what is in here would be the latest one.

[50:17]

DR NGUBANE: This is from the 26th meeting.

[50:21]

10 **MALE VOICE**: Chair, I sent, by email the latest version that was going to be presented.

[50:24]

DR NGUBANE: This morning.

[50:26]

MALE VOICE: Correct yes.

[50:27]

DR NGUBANE: We haven't seen it yet.

[50:29]

CHAIRPERSON: Okay so the only item that is left in the
20 agenda is the borrowing programme.

[50:33]

MALE VOICE: But we can't do that before we agree on the corporate plan.

[50:38]

DR NGUBANE: Because that's against it.

[50:41]

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CHAIRPERSON: Oh yes, of course. So, we have to defer this, can Board members be flexible in terms of when next we can meet?

[50:51]

ALL PARTIES: Yes.

[50:52]

DR NGUBANE: Chairman, we want to agree that but can I just maybe caveat it, you know, a lot of us have got other things that we do. The only time that you don't typically
10 have meetings is over a weekend, so being flexible is easy but for those people who've got stuff in their diaries to be flexible is very hard. I'm not – I'm somebody who don't work over the weekends but I'm saying, we're a company in crisis can't we just do a weekend.

[51:16]

CHAIRPERSON: I don't believe in weekends, people work hard during the week, its family time during the weekends.

[51:28]

DR NGUBANE: But this is unusual.

20 [51:30]

CHAIRPERSON: So, we can extend our working day in the week, we can meet at 6pm if we have to.

[51:35]

DR NGUBANE: Fine with me.

[51:37]

CHAIRPERSON: [Indistinct 51.37] come back and meet.

[

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DR NGUBANE: That's if you're in town.

[51:42]

MR LINNELL: Chair, can I ask one other thing? We are meant to have a IFC meeting at 2 o'clock, I'm going to postpone it and I'll probably do a teleconference with the people because there were two things on the agenda so I just want to inform my fellow IFC members that I'll arrange a teleconference because it's a very simple discussion, it's on the short-term purchase agreements.

10 [51:59]

CHAIRPERSON: But we are finished so you can still have your meeting.

[52:02]

DR NGUBANE: Ja but there's going to be other meetings now, HR and audit, the same individuals.

[52:08]

CHAIRPERSON: Okay fine, so we'll be flexible then in terms of the next time we convene but we must convene when we've got all the information in order to complete the corporate plan and the borrowing programme, alright.

20

[52:22]

MALE VOICE: Chair, can we please check, maybe with Board members if we can't schedule meetings from around four, four thirty.

[52:29]

CHAIRPERSON: Perfect.

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ALL MEMBERS SPEAKING

[52:35]

FEMALE VOICE: Chairperson, as a rule I also want to have it minuted, you know, that I will make every effort to be here but guys some of us travel out of time.

[52:44]

CHAIRPERSON: Do we need the relevant Executives to be here now when we make this determination about what we need to do with the corporate plan and the borrowing programme because they're going to have to do the work, will they know – will someone be able to give them an instruction as to what it is that is required to be done in order to complete the work on the corporate side.

[53:06]

MR LINNELL: The borrowing plan?

[53:07]

CHAIRPERSON: The borrowing programme and the corporate plan because, evidently from the Minister's statement something needs to be done.

20 [53:16]

DR NGUBANE: When I met with Execs, they kept saying to me they've got to comply with the set requirements that comes from public enterprises.

[53:22]

CHAIRPERSON: Well we've written to them to say that we're going to....

	Terms of Reference	Company Secretary Office
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Date:

Date:

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1. CONSTITUTION

The People and Governance Committee ("the Committee") is a committee of the Board and has been established to assist the Board in dealing with the nomination and remuneration of directors and senior executives, human resources strategies and policies and with its role as custodian of corporate governance.

The duties and responsibilities of the members of the Committee are in addition to those as members of the Board. The deliberations of the Committee do not reduce the individual and collective responsibilities of the Board members in regard to their fiduciary duties and responsibilities, and they must continue to exercise due care and judgment in accordance with their statutory obligations.

The Committee shall exercise its delegated authority as determined by the Board from time to time, in accordance with the DoA approved by the Board from time to time, subject to the provisions of the Companies Act, the PFMA and any other applicable legislation, the Mol and the Shareholder's Compact.

Members and officials shall, in exercising their duties, apply the principles and practices set out in King III or explain why they are not applying them.

2. COMPOSITION OF THE COMMITTEE

- 2.1 The Committee shall comprise at least three directors, the majority of whom shall be independent, non-executive directors, appointed by the Board
- 2.2 The Board shall appoint a chairman from the independent, non-executive members of the Committee.
- 2.3 The Chief Executive is a member of the Committee and shall recuse her/himself from meetings where s/he has an actual, potential or perceived conflict of interest.
- 2.4 The tenure of members of the Committee is at the discretion of the Board. The Board shall have the power at any time to remove any members from the Committee, and to fill any vacancies created by such removal.
- 2.5 The Committee may, as and when required, appoint independent advisors or consultants to assist in executing its duties, subject to the Eskom procurement procedures and general financial authorities set out in the DoA. The costs of appointment of such consultants or advisors shall be borne by the appropriate business unit, and failing clarity in this regard, this matter shall be determined by the chief executive.
- 2.6 The Chief Executive may appoint senior Eskom executives as officials, including the co-ordinating official, to assist the Committee. Officials shall not form part of the quorum and shall not have any voting rights.

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- 2.7 The co-ordinating official to the Committee shall:
- 2.7.1 provide assistance to the committee secretary in drawing up meeting agendas and preparing the necessary documentation; and
 - 2.7.2 review the minutes of meetings for correctness prior to circulation to members;
 - 2.7.3 ensure that all action items from each meeting are addressed by the responsible Eskom executives and that the list of outstanding matters is complete and action item responses are accurate prior to circulation to members;
 - 2.7.4 prepare a list of all resolutions passed and ensure that they are actioned and reported to the Committee annually.
- 2.8 The Chief Executive shall, in consultation with the Chairman of the Committee, have the power at any time to remove any officials appointed in terms of clause 2.6 above from the Committee, and to fill any vacancies created by such removal.
- 2.9 A senior Eskom executive shall be delegated with authority to sign off all submissions to the Committee.

3. NORMATIVE/INFORMATIVE REFERENCES

3.1 Normative

- 3.1.1 Companies Act
- 3.1.2 DoA
- 3.1.3 Mol
- 3.1.4 PFMA
- 3.1.5 Shareholder's Compact

3.2 Informative

- 3.2.1 King III
- 3.2.2 ISO 9001:2008

4. DEFINITIONS

- 4.1 **Board** means the board of directors of Eskom from time to time;
- 4.2 **Business Day** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

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- 4.3 **Companies Act** means the Companies Act, 71 of 2008, as amended and includes its regulations;
- 4.4 **DoA** means the Delegation of Authority Framework approved by the Board from time to time;
- 4.5 **Eskom** means Eskom Holdings SOC Ltd;
- 4.6 **King III** means The King Report and Code on Governance for South Africa, 2009;
- 4.7 **Mol** means Eskom's memorandum of incorporation, as amended from time to time; and
- 4.8 **PFMA** means The Public Finance Management Act, 1 of 1999, as amended from time to time.

5. ABBREVIATIONS

Abbreviation	Description

6. ROLE AND RESPONSIBILITIES

- 6.1 **Role**
The role of the Committee is to assist the Board with Nomination, Remuneration, HR and governance matters.
- 6.2 **Responsibilities**
The Committee is responsible for:
- 6.2.1 **NOMINATION**
- 6.2.1.1 Board
- 6.2.1.1.1 Identifying and evaluating candidates to fill vacancies as and when these arise;
- 6.2.1.1.2 Ensuring that recommendations for the re-appointment of directors are based on and subject to a formal evaluation of directors' performance;
- 6.2.1.1.3 Ensuring that reference and background checks are conducted on candidates prior to nomination;
- 6.2.1.1.4 Reviewing the Board's size, composition, qualifications, skills, experience and making recommendations to the Board in regard to any adjustments that are deemed necessary;

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6.2.1.1.5 Reviewing and assessing the independence of directors.

6.2.1.2 Board Committees

6.2.1.2.1 Reviewing and making recommendations to the Board on Board committee structures and membership;

6.2.1.2.2 Ensuring that formal terms of reference of Board committees are developed and reviewed annually.

6.2.1.3 Prescribed officers and senior executives

6.2.1.3.1 identifying and evaluating candidates for nomination to fill prescribed officer and senior executive vacancies in Eskom, as and when these arise;

6.2.1.3.2 making recommendations to the Board on matters pertaining to the appointment, removal, and resignation of prescribed officers and senior executives and of Eskom;

6.2.1.3.3 Ensuring that the process for appointing prescribed officers and senior executives is credible and transparent.

6.2.2 **REMUNERATION**

6.2.2.1 Ensuring that the Remuneration Policy for Eskom:

6.2.2.1.1 incorporates any remuneration guidelines and/or standards of the shareholder from time to time;

6.2.2.1.2 is confirmed by the company on an annual basis.

6.2.2.2 Ensuring that the remuneration payable to executive and non-executive directors and prescribed officers (Exco members) are approved by special resolution (except where such remuneration has been approved by the shareholder by special resolution within the previous two years, unless otherwise determined by the shareholder);

6.2.2.3 Within the parameters of the approved Remuneration Policy of Eskom, determining and recommending the individual remuneration packages, benefits, bonuses and adjustments to such packages of directors and, in consultation with the chief executive, the prescribed officers of the company;

6.2.2.4 Adhering to the following principles:

6.2.2.4.1 implementing remuneration and incentive standards set by the shareholder;

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- 6.2.2.4.2 ensuring that directors and prescribed officers are remunerated fairly and responsibly to ensure sustainability of the company;
- 6.2.2.4.3 ensuring that remuneration and incentive policies and strategies are aligned to shareholder compacts as well as organisational and individual performance;
- 6.2.2.4.4 disclosing sufficient detail of remuneration and incentive standards, policies and payment in the company's Integrated Report; and
- 6.2.2.4.5 adopting principles 2.25 and 2.26 on the remuneration of directors and senior executives as contained in King III;

6.2.2.5 Determining the criteria necessary to measure the performance of directors and prescribed officers in discharging their functions and responsibilities.

6.2.3 SUCCESSION PLANNING

Ensuring that appropriate succession plans are in place for executive directors, senior executives and prescribed officers.

6.2.4 BOARD INDUCTION AND DEVELOPMENT

- 6.2.4.1 Overseeing the development of a formal induction programme for new Directors;
- 6.2.4.2 Ensuring that inexperienced Directors are developed through a mentorship programme; and
- 6.2.4.3 Overseeing the development and implementation of a continuous director training programme.

6.2.5 BOARD AND COMMITTEE EVALUATION

Ensuring that the Board and its committees, as well as individual Directors, are evaluated on an annual basis.

6.2.6 ETHICS

Monitoring the effectiveness and implementation of the ethics management programme which includes the code of ethics; other key ethics policies and procedures; ethics training and awareness.

6.2.7 HUMAN RESOURCES

While it is the Chief Executive's responsibility to manage the organisation, the Committee should assess the effectiveness of the Human Resources strategies and policies, monitor the effectiveness thereof and review reports detailing the adequacy and overall effectiveness of the skills and people management processes in the Eskom Group.

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7. DELEGATION OF AUTHORITY

- 7.1 The Committee acts in terms of the responsibilities delegated to it by the Board as recorded in these terms of reference.
- 7.2 The Committee, in carrying out its responsibilities under these terms of reference is authorised to investigate any activity within its terms of reference.
- 7.3 The Committee has reasonable access to the Company's records, facilities, employees and any other resources necessary to discharge its duties and responsibilities subject to the Board approved process.

8. MEETING PROCEDURE

8.1 Meetings

- 8.1.1 The Committee shall hold sufficient scheduled meetings to discharge all its duties as set out in these terms of reference, subject to a minimum of one meeting every quarter.
- 8.1.2 Meetings, in addition to those scheduled, may be convened by the chairman of the Committee or at the request of a member, with the approval of the chairman.
- 8.1.3 The meetings of the Committee may be held in person, or by electronic communication as circumstances might require, provided that the required quorum is met.
- 8.1.4 Reasonable notice of meetings and the business to be conducted shall be given to members, even those for the time being absent from the Republic of South Africa, and officials of the Committee.
- 8.1.5. When the Committee deals with executive remuneration or nomination issues, such discussions may be held in-committee with non-executive directors only. The company secretary is responsible for taking and retaining the minutes of such in-committee meetings.

8.2 Quorum

- 8.2.1 The quorum for meetings shall be a majority of members present, in person or by electronic communication, throughout the meeting.
- 8.2.2 Where a member or official declares an interest and is recused from the meeting, the meetings remains quorate during her/his absence.
- 8.2.3 if a meeting is inquorate, it can still proceed and the resolutions taken can be ratified at the next meeting or approved by way of a Round Robin Resolution ("RRR").
- 8.2.4 the resolutions cannot be implemented until either one of the two actions in 8.2.3 is completed.

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8.2.5 this RRR requires a 100% approval.

8.2.6 if any member abstained from voting then there would not be a 100% response.

8.3 Agenda

8.3.1. The Committee must develop an annual agenda plan to ensure that all matters within its terms of reference are covered by the agendas of the meetings planned for the year.

8.3.2 The number, timing and length of meetings and the agendas are to be determined in accordance with the annual agenda plan.

8.2.1 The chairman of the Committee may meet with the committee secretary and other officials prior to the meeting to discuss important issues and agree on the agenda.

8.4 Attendance

8.4.1 Committee members must attend all scheduled meetings of the Committee, including meetings called on an *ad hoc* basis for special matters, unless an apology, with reasons, has been submitted to the chairman of the Committee or the committee secretary.

8.4.2 If the chairman is absent from a meeting, any other non-executive member may act as chairman for that meeting, as agreed by those present, or as nominated by the chairman.

8.4.3 No member shall be entitled to appoint an alternate in his/her stead.

8.4.4 Members shall be fully prepared for meetings to provide appropriate and constructive input on matters under consideration.

8.5 Decisions/Noting

8.5.1 A decision carried by the majority of members present at a meeting, voting in favour of a decision, shall be a decision of the Committee. In the case of an equality of votes, the chairman shall not have a second or casting vote and the matter being voted on fails.

8.5.2 The Committee may refer a matter to the Board for a decision.

8.5.3 No official shall have a vote at meetings of the Committee.

8.5.4 In the case of round robin approvals, a resolution voted on in writing, including those submitted electronically, approved by 75% (seventy five per cent) of members within 10 (ten) Business Days after the resolution was submitted to them, shall be valid and effective as if it had been passed at a meeting of the Committee duly called and constituted.

8.5.5. Every member of the Committee, even those for the time being absent from the Republic of South Africa, shall receive notice of the resolution to be voted on in writing.

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- 8.5.6 In the event of a member not being able to sign and return the signed round robin resolution within the period prescribed above, confirmation of approval of the resolution may be provided in writing and in electronic format and the resolution there after signed by the said member as soon as reasonably possible.
- 8.5.7 A round robin resolution shall be deemed to have been passed on the latest date on which it was signed or approved in writing by way of electronic means as envisaged above by the requisite number of members as provided for in paragraph 8.5.4.
- 8.5.8 Such a round robin approval shall be tabled at the next meeting for noting.

8.6 Minutes

- 8.6.1 Minutes of meetings shall be completed by the committee secretary within 10 (ten) Business Days after the meeting for review by the coordinating official where after it shall be circulated to members for comment.
- 8.6.2 The minutes must be verified by the Committee at its next scheduled meeting and signed by the chairman of the Committee.

8.7 Reporting

- 8.7.1 A written report on the matters considered and decisions taken by the Committee shall be submitted to the next Board meeting.
- 8.7.2 The chairman (or in his/her absence another member of the Committee) may highlight issues in the report for the attention of Board.

9. EVALUATION

- 9.1 The Committee shall ensure that an evaluation of its performance and effectiveness is conducted at least once a year.
- 9.2 An evaluation report must be submitted to the Board for consideration.

10. APPROVAL OF TERMS OF REFERENCE

- 10.1 The terms of reference shall be approved by the Board on the recommendation of the Committee.
- 10.2 It shall be reviewed on an annual basis and may, from time to time, be amended as required, subject to the approval referred to in clause 10.1 above.

11. REVISIONS

Date	Rev.	Remarks
7 May 2015	0	Annual review

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12. DEVELOPMENT TEAM

This document was influenced and supported by the following:

Name	Designation
M Phukubje	Company Secretary (1 July 2014-30 September 2015)
S Daniels	Company Secretary (appointed 1 October 2015)
D Jackson	GM (Corporate Governance)
W Venner	Committee Secretary

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2/1

DENTONS

REPORT

in respect of the investigation into the status of the business and challenges experienced by Eskom,
instituted by the board of Eskom Holdings (SOC) Ltd in terms of a resolution passed on 11 March
2015

2 July 2015

(reflecting the state of the investigation as at 18 June 2015)

CONFIDENTIAL

Dentons South Africa
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INTRODUCTION

1 Background

- 1.1 This document constitutes the report ("Report") of Dentons South Africa in respect of the investigation ("Investigation") commissioned by Eskom Holdings SOC Limited ("Eskom") pursuant to a request for proposals ("RFP") issued on 8 April 2015 under number CORP3254R, in terms of a resolution adopted by the board ("Board") of directors of Eskom on 11 March 2015.
- 1.2 The Investigation commenced on 20 April 2015. A draft report was required to have been provided on 20 July 2015, with the final report to follow on 31 July 2015. Progress reports have been provided to Eskom at approximately two-weekly intervals in the form of activity reports and presentations.
- 1.3 On 11 June 2015, we were requested to prepare a detailed presentation to the Board, in addition to a draft report dealing with the state of the Investigation to date. We understand that this was due to the need to meet the deadlines for various other commitments that had been made by the Board in respect of the time frames of the Investigation. A detailed presentation to the Board was delivered on 25-26 June 2015, which was followed by our draft preliminary report. For these purposes, investigatory activities ceased shortly after 11 June 2015 and resources were redirected from the normal course of the Investigation to the development of preliminary findings, preparation of the above mentioned presentation, and preparation of a draft preliminary report.
- 1.4 Subsequent to our presentation to the Board, we were advised that (i) the Board was satisfied with the Investigation and the degree of detail covered in a very short period of time, (ii) the Investigation had provided the Board with the information it needed to take decisions as to how best to manage the affairs of Eskom, and (iii) no further investigatory activities were required.
- 1.5 A draft preliminary report was submitted to the Board on 3 July 2015. This was followed by an executive summary on 6 July 2015. A presentation was made to the Minister of Public Enterprises on 9 July 2015. We were then requested to prepare this Report as our last submission.
- 1.6 This Report represents a snapshot of the Investigation at the midpoint of the investigation period (about 18 June 2015) and is provided to Eskom on the specific request of Eskom. The findings, views, conclusions and recommendations set out in this Report are accordingly (i) subject to verification and testing, (ii) provided to Eskom as a record of the Investigation as at the midpoint of the investigation period, and (iii) do not constitute definitive findings, views, conclusions and recommendations.

2 Form of Contract

- 2.1 The form of contract between Dentons South Africa and Eskom relating to the Investigation is the Professional Services Contract ("PSC") forming part of the New Engineering Contract 3 ("NEC") suite of contracts, which is published by Thomas Telford Publishing on behalf of the Institution of Civil Engineers, United Kingdom.

- 2.2 As indicated by its name, the NEC suite of contracts is designed for engineering and construction projects. It was a condition of the RFP that bidders contract on the basis of the NEC suite.
- 2.3 NEC provides for various contract options. In the present case, the PSC was subject to option G, which is a task order based option. In effect, Dentons South Africa was only required to perform work in respect of the Investigation in accordance with task orders issued by Eskom.
- 2.4 In the circumstances, a letter of acceptance ("Letter of Acceptance") was executed by both parties on 17 April 2014. The PSC was executed by Dentons on 7 May 2015, and thereafter by Eskom on or about 25 May 2015.
- 2.5 A task order ("Task Order 1") was issued by Eskom to Dentons South Africa on 29 May 2015. A version countersigned by Dentons South Africa was provided to Eskom on 1 June 2015. It is important to note that Task Order 1 repeated the scope of work specified in the TOR and did not in any manner limit this scope of work or provide any degree of specificity in relation to the scope of work.

3 The Investigation

- 3.1 The RFP describes the Investigation as a "Forensic Fact Finding Enquiry ... into the status of the business and challenges experienced by Eskom". The RFP states further that on completion of the Investigation, the Board of Eskom is to be provided "with an independent view of reasons for the following:
- 3.1.1 The poor performance of Eskom's generation plant
 - 3.1.2 Delays in bringing the new generation plant on-stream
 - 3.1.3 High costs of primary energy
 - 3.1.4 Eskom's financial challenges
 - 3.1.5 Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
 - 3.1.6 Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general. *[sic]*
 - 3.1.7 Security failures and accountability at Eskom as a Key National Point *[sic]*."
- 3.2 In addition to the RFP, we were provided (after execution of a confidentiality agreement) with certain terms of reference ("TOR"). A copy of the TOR is attached as Schedule 1.
- 3.3 The description of the Investigation in paragraph 3.1 is repeated in the TOR.
- 3.4 The TOR provides further that:
- "The Board seeks to obtain an independent and unfettered view regarding the credibility and the correctness of information that Eskom's Executive Management ("EXCO") provides in their reports relating to:

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Eskom's financial challenges
- Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
- Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.

The Board has indicated that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO, whose areas would be directly impacted by the enquiry") so as to lend credence to the reports that the independent party would produce."

- 3.5 The items set out in paragraphs 3.1.1 to 3.1.7 are elaborated in greater detail in the TOR and also in Task Order 1. See in this regard paragraph 4 of the TOR (attached to this Report as Schedule 1), and paragraph 2 of Task Order 1 (attached to this Report as Schedule 2).
- 3.6 Similarly, the matters dealt with in paragraph 3.4 are also traversed in paragraph 2 of Task Order 1.
- 3.7 We note that the scope of work set out in the TOR and Task Order 1 is extremely broad. We were assured in the course of the pre-contract negotiations that the actual investigative work required would be as set out in the task orders to be issued post contract. Nonetheless, after our appointment it was apparent that the Investigation would be required to cover the entire scope of work, which was definitively conveyed to us when Task Order 1 was subsequently issued.

4 Purpose of the Investigation

- 4.1 The institution of the Investigation took place shortly after the highly publicised suspension of four of Eskom's executives ("Suspended Executives").
- 4.2 The TOR refers to the above mentioned suspensions only obliquely, stating in respect of the Investigation "that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO, whose areas would be directly impacted by the enquiry" *[sic]*) so as to lend credence to the reports that the independent party would produce".
- 4.3 The written material setting out the scope of the Investigation never contemplated the Investigation as being one that was directed specifically at the conduct of the Suspended Executives.
- 4.4 The timing of the Investigation led to speculation in certain circles that it was the conduct of the Suspended Executives that was being investigated.
- 4.5 In our meetings with the Board and Audit & Risk Committee ("ARC") of the Board, it was confirmed that the Investigation was not directed at the Suspended Executives and that the

Board was dealing with the Suspended Executives in accordance with a separate methodology.

- 4.6 The TOR and Task Order 1 state expressly that the purpose of the Investigation was to obtain an independent view on the credibility and correctness of the reports of Eskom's executive committee ("EXCO") to the Board. This was further qualified with reference to the matters set out in the scope of work sections of the TOR and Task Order 1.
- 4.7 The minutes of the meeting of the Board on 31 March 2015 authorising the Investigation records as follows:

"The Terms of Reference were based on the audit. ... Members were generally comfortable with the Terms of Reference in that they adequately addressed all the issues the Board wanted to be dealt with."

- 4.8 The purpose of the Investigation is accordingly to develop information that would serve to determine the credibility of EXCO's reporting to the Board with reference to the matters specified in paragraph 4 of the TOR and paragraph 2 of Task Order 1.
- 4.9 The TOR do not require investigation of misconduct of any specific individuals. Accordingly, no recommendations are made in respect of action to be taken to deal with misconduct by any specific individuals.

5 Methodology

- 5.1 Task Order 1 prescribes the methodology to be applied by the Investigation in the following terms:

"Eskom's Terms of Reference prescribed the following methodology for the Enquiry:

3.1 conducting interviews with employees and any other party/ies or person/s who may have information regarding the Enquiry; and

3.2 obtaining and analysing, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by employees or any other persons interviewed in accordance with the above.

Shortly following commencement of the Enquiry, the Dentons team will engage with the Audit and Risk Committee ("ARC") to discuss the details of the Scope of Work and methodology and to discuss the logistical arrangements for collection of data, review of documents, points of interface with Eskom, engagement with Eskom staff, reporting, etc. Dentons will thereafter prepare a preliminary list of documents and other data/information as well as a list of meetings/interviews that that are required for the Enquiry. It is expected that the data required will comprise, inter alia, minutes of Board and EXCO meetings including supporting information, reports, letters, emails. Interviews will be conducted with Eskom staff and, where deemed necessary for the purposes of the Enquiry, non-Eskom staff.

The investigation will be conducted in two phases:

Phase 1: Review of available information

In this phase, the Dentons team will conduct reviews of the available documentary information and interviews to obtain an understanding of the information that has been provided to the Board on the key issues identified under the Scope of Work. This phase will entail review of a large volume of information, a key intent would be to distil and extract from these documents those aspects that are most pertinent to addressing the Scope of Work and will be used for the more detailed assessment to be conducted in Phase 2.

Phase 2: Detailed Assessment

In this phase, the Dentons team will conduct assessment of the credibility and completeness of the information that has been provided to the Board on the key issues identified under the Scope of Work. This may require review of additional information such as more detailed reports as well as further interviews to fully address the issues identified under the Scope of Work.

The review of available information and the detailed assessment will be at a level which can be reasonably expected to be conducted within the time frame of Task Order 1. Although, specialist studies will not be conducted under Task Order 1, the verification of certain matters may require additional studies of a specialist nature that may fall outside the methodology set out in Eskom's Terms of Reference. Any such studies will be discussed and agreed between Eskom and Dentons as part of new task orders."

- 5.2 In effect, the methodology of the Investigation was limited to (i) interviewing employees of Eskom and also other persons, and (ii) review of documents.
- 5.3 The prescribed methodology excluded specialist and technical investigations and certain types of investigations that would ordinarily be included in the scope of forensics work.
- 5.4 The limitations of the above mentioned methodology was recognised by the Board, and this led ultimately to an extension of the methodology to include site inspections. This extension was authorised by way of a resolution of the Board adopted at the time of our presentation to the Board on 27 May 2015. Any additional investigations would require authorisation by way of a new task order.

6 Team Structure

- 6.1 It is clear from the scope of work set out in paragraph 2 of Task Order 1 that the investigative team would be required to include specialists in engineering and finance. More specifically, paragraphs 2.1 to 2.3 involve a strong engineering component, whilst paragraph 2.4 is financial and accounting in nature.
- 6.2 The investigative team accordingly comprised of specialist engineering, finance and legal sub teams, co-chaired by the managing director of Dentons South Africa, Noor Kapdi, and Adv Dumisa Ntsebeza SC.
- 6.3 The investigative team was further divided into a core team, three primary working teams, and four further sub teams.
- 6.4 The three primary working teams were allocated the following tasks:
 - 6.4.1 engineering team – investigation of the matters set out in paragraphs 2.1, 2.2 and 2.3 of Task Order 1;

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- 6.4.2 finance team – investigation of the matters set out in paragraph 2.4 of Task Order 1;
- 6.4.3 legal team – investigation of the matters set out in paragraphs 2.5 to 2.7 of Task Order 1.
- 6.5 In addition, the following four sub teams were appointed:
 - 6.5.1 coal team – investigation of coal supply and related contracts;
 - 6.5.2 diesel team – investigation of diesel supply contracts;
 - 6.5.3 business intelligence – gathering of business intelligence; and
 - 6.5.4 document review team – review of (i) selected reports received by EXCO from the various Eskom divisions and business units, (ii) selected reports made by EXCO to the Board, and (iii) minutes of EXCO and Board meetings.

7 Period of the Investigation

- 7.1 The RFP provides that the Investigation is required to be concluded in a period of three months commencing no later than two days "after the signing of these terms of reference". The Letter of Acceptance was signed by both parties on 17 April 2015.
- 7.2 As indicated above the form of contract used by Eskom for the appointment of Dentons South Africa to conduct the Investigation is task order based. Work is required to be performed only in terms of a task order. Nonetheless, the Investigation formally commenced on 20 April 2015.
- 7.3 At the meeting of the Board on 31 March 2015, it was noted that the period of the Investigation could take up to 12 months.
- 7.4 The contractual three-month period for the Investigation was possible only (i) on the assumption of full cooperation by Eskom for the purposes of the Investigation, and (ii) on the basis of the specified purpose and prescribed methodology of the Investigation (see in this regard paragraphs 4 and 5).
- 7.5 In the circumstances, we were requested to prepare this Report reflecting the state of the Investigation as at the mid point of the investigation period on the basis that the Investigation had at that stage revealed sufficient information for the purposes of the Board.

8 Conduct of the Investigation

- 8.1 Eskom specifically requested that work on the Investigation commence on 20 April 2015 and that work proceed thereafter without delay.
- 8.2 The Investigation accordingly commenced formally on 20 April 2015 with a meeting between the Dentons core teams (being engineering, finance and legal) and ARC at Eskom's premises in Megawatt Park, Johannesburg. Certain preliminary steps were undertaken both on, and in the days before, 20 April 2015 to assemble the various teams and to develop a definitive understanding of the TOR.
- 8.3 Further meetings with ARC were held in Cape Town on 21 April 2015 (to discuss the scope of work in greater detail) and on 22 April 2015 (to discuss points of clarification in respect of the scope of work in the TOR).

- 8.4 An informal introductory meeting with the Board took place in Cape Town on 22 April 2015.
- 8.5 The above mentioned meetings were followed by initial scoping interviews on 24 April 2015 for the purposes of scoping the Eskom environment and understanding its divisional structure and reporting lines. These interviews were with key Eskom personnel from the following organisational areas:
- 8.5.1 Group Capital Division;
 - 8.5.2 Primary Energy Division;
 - 8.5.3 Human Resources;
 - 8.5.4 Treasury;
 - 8.5.5 Information Technology; and
 - 8.5.6 Procurement.
- 8.6 An initial document request was made on 22 April 2015. This was followed by several other document requests as the investigation progressed.
- 8.7 Interviews have been conducted with persons regarded by the investigative team as being sources of information relevant to the investigation.

9 Limitations

- 9.1 Access to Documents
- 9.1.1 Certain documents were available only at Eskom's premises. For a period of several weeks, these documents were available only until 17h00 during business days.
 - 9.1.2 Arrangements were put in place some weeks later to grant the document review team better access to these documents.
- 9.2 Access to Emails
- 9.2.1 Although the prescribed methodology requires review of emails, we were not provided with access to any emails.
 - 9.2.2 The prescribed internal form for access to emails is titled "Eskom Forensic & Anti-Corruption Information Management (Employee E-Mail Records) Request". A duly completed and signed copy of this form in respect of specified data subjects was delivered by hand to Eskom on 28 May 2015. A copy is attached as Schedule 4.
- 9.3 Interviews with Suspended Employees
- 9.3.1 Interviews were requested with certain employees who were under suspension.
 - 9.3.2 We were advised that these interviews could not be arranged due to the suspension of the employees in question. We were required to make direct contact with these employees for these purposes.

- 9.4 Interviews with Senior Management and Employees who have left the employ of Eskom
- 9.4.1 Interviews were conducted with several members of Eskom's senior management, including certain members of the EXCO and the Board. We had planned to interview all persons who had been members of EXCO or the Board over the last two years, but were unable to do so in the limited time leading up to the presentation of this Report.
- 9.4.2 Furthermore, we identified certain ex-employees as potentially being in possession of information relevant to the Investigation.
- 9.4.3 These ex-employees advised us that they had entered into confidentiality agreements with Eskom and would only discuss the affairs of Eskom with us if Eskom were to provide written consent to them doing so. We directed correspondence to Eskom on 23 June 2015 requesting that Eskom provide such written consent.
- 9.5 Conflict of Interests
- 9.5.1 Dentons South Africa represents Areva in respect of review and related appeal proceedings currently pending before the courts, in connection with the Koeberg steam generator upgrade.
- 9.5.2 We were accordingly precluded from investigating matters related to the above.
- 9.6 Methodology Limitations
- 9.6.1 The prescribed methodology for Task Order 1 limits the information sources for the Investigation to review of documents and interviews.
- 9.6.2 This limited the methods available to us to obtain, test and verify information.

10 Reporting

- 10.1 The following reports have previously been provided to Eskom:
- 10.1.1 activity report delivered on 8 May 2015;
- 10.1.2 activity report delivered on 27 May 2015; and
- 10.1.3 activity report delivered on 8 June 2015.
- 10.2 In addition three presentations have been made, as follows:
- 10.2.1 presentation to ARC on 14 May 2015;
- 10.2.2 presentation to the Board on 27 May 2015; and
- 10.2.3 presentation to the Board on 25-26 June 2015.
- 10.3 In view of the Board's request for a detailed presentation on 25 June 2015 followed by a preliminary report and then this Report, no activity reports were prepared for the period subsequent to 8 June 2015.

11 Structure of this Report

- 11.1 This Report comprises of seven chapters, dealing with the items contained in the scope of work set out in paragraph 2 of Task Order 1.
- 11.2 Additional material is provided in the schedules.
- 11.3 The assumptions and qualifications on which this Report is based are set out in Schedule 4.
- 11.4 A glossary is provided in Schedule 5.



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- 12.5. The "bugging" incident amounted to nothing more than "the paranoia of the executive at the time. A sweep was done of the executive's office and nothing was found. Forensics compiled a report regarding the incident.



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Schedule 1

Terms of Reference

This schedule contains the terms of reference that formed part of Eskom's RFP.

**TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY
COMMISSIONED BY ESKOM HOLDINGS (SOC) LTD (hereinafter referred to as "Eskom")**

TERMS OF REFERENCE

A Forensic Fact Finding Enquiry ("the enquiry") into the status of the business and challenges experienced by Eskom is hereby instituted in terms of an Eskom Holdings (SOC) Ltd Board ("the Board") resolution taken in a properly constituted meeting of 11 March 2015 held at Megawatt Park where it is envisaged that upon completion, this enquiry will provide the Board with an independent view of reasons for the following

- The poor performance of Eskom's generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Eskom's financial challenges
- Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
- Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.
- Security failures and accountability at Eskom as a Key National Point.

1. PROBLEM STATEMENT

The Board seeks to obtain an independent and unfettered view regarding the credibility and the correctness of information that Eskom's Executive Management ("EXCO") provides in their reports relating to:

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Eskom's financial challenges

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- Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
- Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.

The Board has indicated that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO, whose areas would be directly impacted by the enquiry") so as to lend credence to the reports that the independent party would produce.

2. PREAMBLE AND CHALLENGES FACING ESKOM

The Board recognises and is alive to the fact that it is uncommon for the Board to undertake such an enquiry and at the same time, allow senior Management to go on special leave because these enquiries are normally within the purview of senior management. Be that as it may, the following issues weighed heavily in favour of the decision taken by the Board.

2.1 For the past 2 (two) years, the Office of the Chairman and the Board (both the new and the old Boards) have been inundated with complaints and concerns raised by various sources internal and external to Eskom with regard to the unreliable power supply, escalating build project costs, escalating maintenance costs, high costs of primary energy and the inordinately high costs of the borrowing programme that Eskom has participated in recently.

2.2 In addition to the above, in the last few months, countrywide load shedding has become the order of the day and thus leading to an increased outcry about the economic impact of the uncertainty brought about by load shedding. This matter has escalated to a national power challenge which has also attracted the anger and concern of ordinary citizens, (private and corporates), Cabinet, Parliament and its oversight bodies, rating agencies and investors alike. This is so particularly because Eskom continues to make commitments that it is unable to meet.

2.3 To this end, the Board resolved to institute an enquiry into all of these concerns. Having so resolved, the Board delegated the authority to institute this enquiry to the ARC, with assistance from other Board committees where necessary. ("ARC"). Included in the authority to institute this enquiry, is also the authority to:

- Appoint a Service provider/s;
- Manage the costs of executing the enquiry; and

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- Ensure that the Service provider/s delivers on its mandate within the prescribed time lines and within budget.

3. PROCESS TO BE FOLLOWED FOR THE APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER/ERS

- 3.1. The Board has delegated the ARC full responsibility to appoint a Service provider/s that will assist Eskom with the enquiry and to manage the Service provider/s during the execution of the enquiry.
- 3.2. The Service provider/s will report to the ARC who will in turn report to the Board.
- 3.3. The procurement of the Service provider/s will follow normal Eskom procurement policies and procedures, namely a close tender process or the use of a sole source process should it be necessary, given the time constraints.
- 3.4. Once a Service provider/s has been appointed, and the terms and conditions of performing the enquiry are agreed upon, the information set out below will be completed
- Name of the entity/ties:
Estimated costs:
Estimated time to complete the enquiry:

4. SCOPE OF THE INVESTIGATION

The Service provider/s will investigate and report on the following:

- 4.1. The poor performance of the generation plant in particular:-
- 4.1.1 confirm the true state of the generation plant and the manner in which the fleet is managed with reference to and in relation to best practice.
- 4.1.2 whether the underlying reasons for the state of the fleet are known and could have been avoided. In particular, the increase in the UCLF ("Unplanned Capability Loss Factor").

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- 4.1.3 whether the strategies, tactics and plans to address the decline in the capacity of the fleet to ensure the security of supply were appropriate in terms of their design and application in practice.
- 4.1.4 whether any load shedding by Eskom in the recent two years was in all instances necessary and appropriate under the circumstances.
- 4.1.5 whether the maintenance philosophy and regime adopted and followed by Eskom in the recent past and any recent enhancements thereto are appropriate to achieve the required UCLF and justifiable under the circumstances.
- 4.1.6 whether the present reports on the state of the generation fleet has been faithfully reported on a consistent basis and that the reports were correct in terms validity, accuracy, completeness and timeliness of information.
- 4.1.7 whether maintenance contractors ("OEM")²⁶² are giving Eskom value for money and whether there is effective monitoring of their work by Eskom.
- 4.2 Delays in bringing the new generation plant on-stream, including cost overruns**
- 4.2.1 confirm the current status of the new generation plant and the quality of the project management practices designed to bring the generation plant into commissioning stage on time and within budget.
- 4.2.2 whether the project, contracts management philosophies, practices adopted and applied by Eskom compare favourably with international best practices
- 4.2.3 whether the lessons learnt from previous delays and costs overruns have been documented, communicated to relevant stakeholders and institutionalized to prevent recurrence.
- 4.2.4 whether the underlying causes for cost overruns and delays in completing new generation plans are understood, adequately disclosed and properly mitigated against to enhance the likelihood that the projects would be delivered in time and within budget.

²⁶² Original Equipment Manufacturer

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- 4.2.5 whether the organization is likely to deliver all these projects within the current targeted timelines and financial budgets or whether there are significant constraints beyond the control of management which require special intervention.
- 4.2.6 whether the reports from EXCO with regard to the status of the new build are correct and can be relied on.

4.3 High Cost of Primary Energy (Nuclear, Coal, Diesel, Liquid Oils and Water)

- 4.3.1 confirm the current primary energy costs currently incurred by Eskom and whether they are necessary, unavoidable and are in line with industry practice.
- 4.3.2 whether the underlying causes for increase in primary energy costs are fully understood, adequately reported and that strategies, tactics and plans adopted to ensure the security of supply in the most economical and efficient manner most appropriate in the circumstances.
- 4.3.3 whether the strategies and tactics adopted by Eskom to procure primary energy (Nuclear, Coal, Diesel, Liquid Oils and Water) are the most appropriate to both Eskom and the country as a whole, in particular the use of *ad hoc* Diesel suppliers.
- 4.3.4 whether the forecasting model for the use of diesel is appropriate and in line with best industry practice.
- 4.3.5 whether the primary energy costs paid by Eskom are reasonable and commercially viable.

4.4 Eskom's Financial Challenges

- 4.4.1 confirm the current cash flow position of Eskom and whether the methodology and models used for cash flow management are in line with best practice.
- 4.4.2 whether the cash flow status of Eskom has been faithfully reported consistently and that the reports are correct in terms of validity, accuracy, completeness and timeliness of information.

- 4.4.3 Confirm the circumstances around the recent high costs incurred with the financial instruments that form the nucleus of the borrowing programme and whether the process that was followed in the circumstances was the most appropriate and efficient (in particular establish the existence of other viable and cost effective financial instruments that could have been pursued as alternatives).
- 4.4.4 Establish whether the interest rates offered to Eskom in the financial instruments that form the nucleus of the borrowing programme are normal under the circumstances.
- 4.5 Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies**
- 4.5.1 Confirm that the integrity of the procurement policy, processes and procedures designed by Eskom and their compliance with the Constitution of the Country, other relevant key legislation and key governance protocols, including best industry practice.
- 4.5.2 whether the procurement policy and related Eskom policies including but not limited to conflict of interest, are consistently adhered to and there are adequate processes to deal with noncompliance. Also, establish whether in instances where transgressions are identified, appropriate sanctions are applied.
- 4.5.3 whether the procurement processes are effective to ensure that Eskom obtains the best quality products and services at the best price.
- 4.6 Contract management, in particular high costs escalation, frequent modifications, penalty costs including capacity within Eskom to manage contracts generally**
- 4.6.1 Confirm that the organization has an appropriate contract management policy, strategic and procedures and resources that are consistently applied to safeguard the organization from failures to enforce its rights to avoid incidents that give raise to third party obligation.
- 4.6.2 whether the design of the contracts (fit for purpose); is appropriate with regard to contract terms.

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4.6.3 whether there is a defined modification approval and monitoring process which is adequate and effective. Further, to also establish reasons as to why contract modifications always result in increased costs and delays.

4.6.4 whether there exists a contract performance monitoring system, particularly in the maintenance of the Generation fleet.

4.7 Security failures and accountability at Eskom as a National Key Point

4.7.1 Whether the Eskom's strategies/plans with regard to safeguarding of Key National Points are adequate and effective.

4.7.2 Whether there is any reason why the persistent information leaks are not being arrested? If they are or have been dealt with, whether there has been a sanction imposed upon the responsible people.

6 PROCESS [SIC]

The Service provider/s will follow the guidelines below in conducting the enquiry

6.1 Conduct interviews with employees in its investigation.

6.2 In addition to employees, mentioned in terms of clause 6.1 above, the Service provider/s may further conduct interviews with any other party/ies or person/s who may have information regarding this enquiry.

6.3 Obtain and analyse, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by an employee or any other person interviewed in accordance with 6.1 to 6.2 above.

6.4 At the end of the enquiry, present its Report to the ARC a report which report will contain the following:

6.4.1 Documents relied upon during the investigation;

6.4.2 Details of evidence submitted by the Parties and/ or employees interviewed;

6.4.3 Analysis of the evidence and documentation referred to in 6.3 above as presented by the Parties and/ or employees; and

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6.4.4 Conclusions and remarks

- 6.5 Notwithstanding the provisions of clause 6.4 above, the Service provider/s will provide to the ARC a progress report every two weeks and/or at the finalisation of any critical milestone. The first progress report will be due two weeks from the date of the signing of these terms of reference by the Party signing last.
- 6.6 The Service provider/s shall ensure that it establishes a communication mechanism that will allow for effective and efficient communication between the ARC and the Service provider/s, which communication mechanisms shall be approved by ARC.

7 DURATION OF THE ENQUIRY

- 7.1 The enquiry will be concluded in a period of three (3) months commencing no later than two (2) days after the signing of these terms of reference by the Party signing last.

8. THE OUTCOME OF THE ENQUIRY

- 8.1 The conclusion/s and recommendation/s in the report will be final and will be tabled at the Board and ARC who will in turn recommend the conclusion/s and recommendation/s to the Board.

9. FEES

- 9.1 The Parties will negotiate and agree the fees that Eskom will pay to the Service provider/s, which fees will take into account the imperatives of the Business Productivity Programme that Eskom is presently embarking on.

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Signed at _____ on this the _____ day of _____ 2015

For and on behalf of Eskom

Signature

Name of Signatory

Designation of Signatory

For and on behalf of
Service provider/s

Signature

Name of Signatory

Designation of Signatory

Schedule 2

Task Order 1

TASK ORDER 1 - 4502166423**FORENSIC FACT FINDING ENQUIRY COMMISSIONED BY ESKOM****1. Introduction**

Eskom appointed Dentons to conduct a Forensic Fact Finding Enquiry (the "Enquiry") into the status of the business and challenges experienced by Eskom in the areas identified by the board (the "Board") of Eskom Holdings (SOC) Ltd. A contract for the execution of the Enquiry was entered into between Dentons and Eskom Holdings (SOC) ("Eskom") on 20 April 2015 (the "Contract"). The Contract defines the key objectives of the Enquiry and the broad areas that are to be considered in the Enquiry. Pursuant to the Contract, task orders are to be agreed between Eskom and Dentons for the execution of the areas identified in the Contract.

This task order defines the details of the scope of work and methodology to be executed by the Dentons team with the associated deliverable and time schedule under this Task Order No 1. The need for additional task orders (which may include specialist studies) may be identified during or after the execution of Task Order No 1 and will be discussed and agreed with Eskom in the form of new task orders to be executed under the broad scope of the Enquiry.

2. Scope of work

In preparing the scope of work for Task Order 1 (the "Scope of Work"), we have sought to address the Problem Statement and key areas of concern described in Eskom's Terms of Reference. The Problem Statement that the scope of work is intended to address is defined as follows:

"The Board seeks to obtain an independent and unfettered view regarding the credibility and the correctness of information that Eskom's Executive Management ("EXCO") provides in their reports relating to:

- *The poor performance of generation plant*
- *Delays in bringing the new generation plant on-stream*
- *High costs of primary energy*
- *Eskom's financial challenges*
- *Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies*
- *Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.*

The Board has indicated that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO,

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whose areas would be directly impacted by the enquiry") so as to lend credence to the reports that the independent party would produce."

Thus, the principal objective of the Enquiry is to obtain an independent view of the credibility and correctness of information provided to the Board by the EXCO. The forensic fact finding enquiry will comprise an independent review of the credibility and correctness of the information provided to the Board in relation to the following aspects:

2.1 The poor performance of the generation plant

2.1.1 the state of the generation plant and the manner in which the fleet has been managed with reference to and in relation to best practice;

2.1.2 whether the underlying causes for the state of the fleet are known (in particular, the increase in the Unplanned Capability Loss Factor ("UCLF") and the actions taken by Eskom in response;

2.1.3 the application and impact of the strategies, tactics and plans to address the decline in the capacity of the fleet to ensure the security of supply over past twelve months;

2.1.4 the underlying reasons for load shedding by Eskom over the past two years;

2.1.5 the maintenance philosophy and regime implemented by Eskom over the past six months in its attempts to achieve the required UCLF;

2.1.6 whether the most recent reports on the state of the generation fleet have been prepared on a consistent basis with other reports in the last six months, and that the reports were credible in terms of validity, accuracy, completeness and timeliness of information;

2.1.7 the pricing of maintenance contracts commissioned by Eskom and the monitoring of performance of these contracts by Eskom.

2.2 Delays in bringing the new generation plant on-stream, including cost overruns

2.2.1 the current status of the new generation plant and the project management practices designed to bring the generation plant into commissioning stage on time and within budget;

2.2.2 the project and contract management philosophies and practices implemented by Eskom in relation to best practices;

2.2.3 whether the lessons learnt from previous delays and cost overruns have been documented, communicated to relevant stakeholders and institutionalized to prevent recurrence;

2.2.4 whether the underlying causes for cost overruns and delays in completing the new generation plants are known and have been disclosed, and whether the actions taken in response are likely to enhance the likelihood that the projects would be delivered on time and within budget;

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2.2.5 the measures that have been taken to ensure that the organization is likely to deliver these projects within the current targeted timelines and financial budgets, and whether any significant constraints beyond the control of management have been identified which require special intervention; and

2.2.6 whether the reports from EXCO with regard to the status of the new build are consistent with underlying reporting.

2.3 High Cost of Primary Energy (Nuclear, Coal, Diesel, Liquid Oils and Water)

2.3.1 the primary energy costs currently incurred by Eskom and whether they are commercially supportable;

2.3.2 whether the underlying causes for increase in primary energy costs are known and reported;

2.3.3 whether the strategies and tactics adopted by Eskom to procure primary energy (Nuclear, Coal, Diesel, Liquid Oils and Water) are commercially supportable, in particular the use of ad hoc Diesel suppliers; and

2.3.4 the forecasting model for the use of diesel.

2.4 Eskom's Financial Challenges

2.4.1 the current cash flow position of Eskom and the methodology and models used for cash flow management;

2.4.2 whether the cash flow status of Eskom has been reported consistently with available contemporaneous information;

2.4.3 the recent costs incurred as a result of the financial instruments that form the nucleus of the borrowing programme, the process that led to their adoption, the existence of other viable and cost effective financial instruments that could have been pursued as alternatives); and

2.4.4 establish whether the interest rates attached to the financial instruments that form the nucleus of the borrowing programme are commercially supportable under the circumstances.

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2.5 Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies

2.5.1 the procurement policy, processes and procedures designed by Eskom in relation to the Constitution of the Country, other relevant key legislation and key governance protocols, including best industry practice;

2.5.2 whether the procurement policy and related Eskom policies including but not limited to conflict of interest and the processes to deal with non-compliance, are consistently adhered to. Also, establish whether in instances where transgressions are identified, appropriate sanctions are applied;

2.5.3 whether the procurement processes are effective to ensure that Eskom obtains the best quality products and services at the best price;

2.6 Contract management, in particular high costs escalation, frequent modifications, penalty costs including capacity within Eskom to manage contracts generally

2.6.1 Contract management policy, in relation to its strategic focus, procedures and resources. Are the policies consistently applied to safeguard the organization from failures to enforce its rights and counterparty claims;

2.6.2 whether the design of the contracts (fit for purpose); is appropriate with regard to contract terms;

2.6.3 whether there is a defined modification approval and monitoring process which is adequate and effective. Further, to also establish reasons as to why contract modifications often result in increased costs and delays; and

2.6.4 whether there exists a contract performance monitoring system, in the maintenance of the Generation fleet.

2.7 Security failures and accountability at Eskom as a National Key Point

2.7.1 Eskom's strategies/plans with regard to safeguarding of Key National Points; and

2.7.2 Whether there is any reason why the persistent information leaks are not being arrested? If they are or have been dealt with, whether there has been a sanction imposed upon the responsible people.

3. Methodology

Eskom's Terms of Reference prescribed the following methodology for the Enquiry:

3.1 conducting interviews with employees and any other party/ies or person/s who may have information regarding the Enquiry; and

3.2 obtaining and analysing, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by employees or any other persons interviewed in accordance with the above.

Shortly following commencement of the Enquiry, the Dentons team will engage with the Audit and Risk Committee ("ARC") to discuss the details of the Scope of Work and methodology and to discuss the logistical arrangements for collection of data, review of documents, points of interface with Eskom, engagement with Eskom staff, reporting, etc. Dentons will thereafter prepare a preliminary list of documents and other data/information as well as a list of meetings/interviews that are required for the Enquiry. It is expected that the data required will comprise, inter alia, minutes of Board and EXCO meetings including supporting information, reports, letters, emails. Interviews will be conducted with Eskom staff and, where deemed necessary for the purposes of the Enquiry, non-Eskom staff. The investigation will be conducted in two phases:

Phase 1: Review of available information

In this phase, the Dentons team will conduct reviews of the available documentary information and interviews to obtain an understanding of the information that has been provided to the Board on the key issues identified under the Scope of Work. This phase will entail review of a large volume of information, a key intent would be to distil and extract from these documents those aspects that are most pertinent to addressing the Scope of Work and will be used for the more detailed assessment to be conducted in Phase 2.

Phase 2: Detailed Assessment

In this phase, the Dentons team will conduct assessment of the credibility and completeness of the information that has been provided to the Board on the key issues identified under the Scope of Work. This may require review of additional information such as more detailed reports as well as further interviews to fully address the issues identified under the Scope of Work.

The review of available information and the detailed assessment will be at a level which can be reasonably expected to be conducted within the time frame of Task Order 1. Although, specialist studies will not be conducted under Task Order 1, the verification of certain matters may require additional studies of a specialist nature that may fall outside the methodology set out in Eskom's Terms of Reference. Any such studies will be discussed and agreed between Eskom and Dentons as part of new task orders.

It is recorded that notwithstanding the date of signature of this Task Order, the Dentons team commenced work on 20 April 2015, pending finalisation of this Task Order No 1, and the items listed under the Scope of Work are at various stages of completion as at the signature of this Task Order No 1.

4. Deliverables

The Dentons team shall submit the following deliverables:

(1) Progress reports to be issued fortnightly. The progress reports will focus on recording the progress that has been made in the execution of the Scope of Work in respect of documents reviewed, people interviewed but will not provide details of findings;

(2) Draft Enquiry Report detailing the independent findings of the Enquiry;

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(3) Final Enquiry Report detailing the independent findings after due consideration by the Dentons team of any comments provided by Eskom following Eskom's review of the Draft Enquiry Report; and

(4) Presentations to ARC and the Board as may be required.

5. Project Schedule

Commencement Date: 20 April 2015

Substantial completion of Phase 1: 15 June 2015

Substantial completion of Phase 2: 13 July 2015

Submission of Draft Enquiry Report: 20 July 2015

Receipt of comments from Eskom on Draft Enquiry Report: 24 July 2015

Submission of Final Enquiry Report: 31 July 2015

6. Remuneration

Remuneration for the execution of Task Order 1 and reimbursement of expenses and disbursements will be in accordance with the Notification of Acceptance executed by the parties on 20 April 2015, read with the Contract Data executed by Dentons on 7 May 2015 and delivered by Dentons to Eskom on 7 May 2015 and the proposal submitted by Dentons to Eskom.

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Schedule 3

Email Request

CONFIDENTIAL

**ESKOM FORENSIC & ANTI-CORRUPTION
INFORMATION MANAGEMENT (EMPLOYEE E-MAIL RECORDS)
REQUEST (Project Reference N0: 460057152)**

This document is a pre-requisite for ALL requests to draw employee(s) e-mail records for investigation purposes.

DIVISION/BUSINESS AREA	Denton Investigation Team
DESCRIPTION OF REQUEST	All emails sent and received, and any attachments, from the period 1.1.2013 to current day for the following employees:
	<ol style="list-style-type: none">1. Zola A Tsotsi2. Tshediso Matona3. Tsholofelo Molefe4. Matshela Koko5. Dan Marokane6. Mongezi Ntsokolo7. Kiran Maharaj8. Suzanne Daniels9. Colin Matjila10. Edwin Mabelane11. Mark Palénski12. Malesela Sekhasembe13. Mandla Gobingca14. Leo Dlamini15. Neo Tsholanku16. Paul O'Flaherty17. Brian Dames18. Caroline Henry19. Thava Govender20. A Noah21. Steve Lennon

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CONFIDENTIAL

- 
22. Kannan Lakmeharan
 23. B Bulunga
 24. E Pule
 25. Erica Johnson
 26. B Mbomvu
 27. A van der Merwe
 28. M Phukubje

BACKGROUND

Eskom appointed Dentons to conduct a Forensic Fact Finding Enquiry (the "Enquiry") into the status of the business and challenges experienced by Eskom in the areas identified by the board (the "Board") of Eskom Holdings (SOC) Ltd. A contract for the execution of the Enquiry was entered into between Dentons and Eskom Holdings (SOC) ("Eskom") on 17 April 2015 (the "Contract"). The Contract defines the key objectives of the Enquiry and the broad areas that are to be considered in the Enquiry.

Purpose of obtaining required records

Eskom's Terms of Reference prescribed a methodology for the Enquiry which included *inter alia*: Obtaining and analysing, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by employees or any other persons interviewed in accordance with the above.

TIMING (commencement date, duration and when are the results expected)

Commencement date 28 May 2005.

Duration of investigation is 2 months.

Results to be expected as soon as is practicable

Use, Confidentiality and Storage


The investigator acknowledges that the records requested could contain other unrelated confidential information, and undertakes to respect the employee's privacy, and only focus on information related to the investigation. The records drawn would be saved on an access right controlled Forensic secured drive for review by the requesting investigator. Subsequent to the review, evidence would be printed for filing and continued use to support the investigation, and the investigator would thereafter delete the entire record from the drive.

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REQUESTED BY (Forensic Investigator)	
Name: Kevin Shergold	Signed: 
Position: Dentons Specialist Consultant	Date: 28 May 2015

APPROVAL (Response Manager)	
Request approved (mark with x) <input type="checkbox"/>	Request not approved (mark with x) <input type="checkbox"/>
Name: _____	Signed: _____
Capacity: _____	Date: _____

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	Procedure	
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Title: **Eskom's Procurement and Supply Chain Management Procedure**

Unique Identifier: **32-1034**

Alternative Reference Number: **N/A**

Area of Applicability: **Eskom**



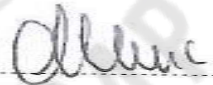
Functional Area: **Group Technology & Commercial**

Revision: **2**

Total Pages: **156**

Next Review Date: **April 2017**

Disclosure Classification: **CONTROLLED DISCLOSURE**

Compiled by	Functional Responsibility	Authorized by
		
V Panday	PG Le Roux	M Koko
Middle Manager	Senior Manager (Acting)	Group Executive (Acting)
Group Technology and Commercial - Risk & Governance	Group Technology and Commercial -Risk & Governance	Technology and Commercial
Date: 16-05-2014	Date: 16/5/2014	Date: 19/5/14

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All invoices must be submitted by the supplier at the address mentioned in the order/contract for invoice submission.

3.6.9 Contract Termination

A contract may be terminated for many reasons, including a breach of contract, a legal dispute, supplier reconsideration, change of a supplier, etc. A contract may only be terminated strictly in accordance with the termination clauses and reasons for termination as contained in the contract.

Before a contract is terminated, all risks need to be assessed in terms of the supply of the assets, goods or services, including legal risks, operational risks and financial risks. The Eskom Legal Department must get involved to determine the risk to Eskom in terminating the contract, and how Eskom's legal risk position will change, as a result of giving effect to a termination. The termination process and associated conditions thereof are described in the contract conditions (NEC and FIDIC). The payment to be settled between the parties differs depending on whether Eskom terminates the contract, or the supplier terminates the contract. It is of utmost importance that Eskom Treasury Department is informed of any terminations in cases where there is FOREX involved with forward cover taken out. The contract file must be updated with all correspondence between Eskom and the Supplier for audit purposes and/or in the event of legal issues.

3.6.10 Document Retention

All original commercial documentation is to be retained as per the Eskom Procedure *"Periods for Retention of Accounting and Other Records 32-202"*. If no time period for retention is mentioned, a minimum retention period of 5 years after the contract has been completed, will apply. Hard copy documents classified as "confidential", "secret" and "top secret" that are beyond their retention period must be shredded and electronic copies permanently deleted. "Public domain" hard copy documents must be disposed of for recycling and electronic copies shall be deleted. The Procurement Practitioner must arrange for archiving of all the original contract documents at an off-site facility once the contract has been completed.

3.7 Special Categories of Procurement

3.7.1 Consultants

The process for procuring consultants is essentially the same process as for the procurement of assets, goods or services. However, the following specific considerations must be included as part of the procurement strategy, recommendation and approval, in order for Eskom to:

- Reduce the overall costs of consulting services, without compromising the quality of consultant's service, where needed;
- Commit to a skills transfer plan in order to prevent an on-going dependence on external consultants;
- Reduce Eskom's reliance on consultants, in order to achieve economy and efficiency;
- Achieve transparency in the process for selection and appointment of consultants; and
- Guarantee that all deliverables received from consultants will be measured against an SLA and will result in tangible improvements within the Eskom environment.

The services of a consultant goes beyond that of a general service provider of non-core services, and is generally required on specific technical and strategic issues that are core to Eskom's approved strategic direction (as set out in the shareholder's compact), or where the services of an independent registered professional are required (e.g. attorneys, auditors, engineers, etc.). The use of a consultant must be

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supported by documentary evidence of an approved business case, and an approved budget. A consultant may not be contracted via the commercial (procurement) process in order to bypass the HR recruitment process, where the resource / skill is required in the medium to long-term (more than 12 months), in which case, the HR process must be followed in order to secure the resource / skill.

A dedicated centralised commodity team managed by a Category Manager operates as part of the Commodity Sourcing department within Group Technology and Commercial in order to manage the procurement of consultants across Eskom.

Consulting services may not be procured without the express written consent of the Group / Divisional Executive of the procuring Group / Division and the Internal Consulting Department (Group Finance), who must be satisfied that there are no suitable resources within Eskom who have the capability and capacity to carry out the required work. Should the cumulative value of the consultant's engagement exceed R5 million, the further written approval of the Group Executive: Technology and Commercial, and the Finance Director are required.

The approval to award a contract to a strategic / management / professional consultant can only be obtained by a delegated PTC, irrespective of the value of the procurement.

When employing the services of a consultant, the Procurement Practitioner should further ensure that the consultant has a confidentiality clause in his/her contract and signs a Non-Disclosure Agreement as part of the contract.

A formal "Declaration of Other Work" and a formal signed declaration of interests must be submitted by the consultant at the time of competitive tendering / mandated negotiations and before contracting, to ensure that there are no conflict of interests.

Where it is foreseen that the particular consulting services will be followed by further assignments, phases or related services, such as an implementation phase, the relevant Procurement Practitioner and PTC involved in appointing the consultant/s must apply their minds to the following issues:

- Would it be in Eskom's best interests to permit the appointed consultant to tender on related projects, such as an implementation phase, following on the initial consultation regarding scoping;
- How should Eskom formulate the contract to avoid limiting Eskom's options for related projects / services and to avoid giving unfair advantage to the consultant in tendering for related projects / services following on the initial consultation.


Where it is not the intent to permit the consultant to participate in future phases of a project or related supply / services, then such limitations must be notified to the consultant upfront via the conditions of tender and contract, when initially contracting with the consultant. Such provisions must seek to prohibit the consultant and its related parties from participating in future phases or related procurement.

Where the consultant that provided the original consultation is permitted to tender for subsequent consultation or services then the Procurement Practitioner must obtain the approval of the PTC that approved the initial contract (for the initial consultation) or the appropriate higher PTC. The members of the PTC must again apply their minds to ensure that the procurement process for future phases will remain fair, equitable, cost-effective, competitive and transparent, and in Eskom's best interests. However, it must be noted that where a consultant has been specifically appointed (either directly or indirectly) to design a particular scope of work for Eskom, such a consultant is not permitted to participate in at least the first tender for the supply of the designed assets, goods or services concerned, unless a specific strategy supporting the appointment of the supplier for the supply phase has been approved by the relevant Delegated Approval Authority within an approved strategy.

The Procurement Practitioners responsible for the strategic procurement of consultants within Group Technology and Commercial must liaise with a nominated SD&L functionary and HR in order to establish skills development programmes, and monitor skills transfer as a contractual obligation.

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	MEMORANDUM OF INCORPORATION	Document Identifier	240-65347859
		Rev	0
		Authorisation Date	12.09.2014

This Memorandum of Incorporation was submitted to and adopted by Special Resolution passed by the Shareholder of the Company on 11 July 2014 and initialled by the chairperson for the purpose of identification.

MEMORANDUM OF INCORPORATION OF

ESKOM HOLDINGS SOC LTD

(Registration No. 2002/015527/30)

which is referred to in the rest of this Memorandum of Incorporation as the "Company"

This Memorandum of Incorporation was adopted by Special Resolution passed on 11 July 2014 in substitution for the existing memorandum of incorporation of the Company.

Preamble

The Company is a pre-existing company as contemplated in Item 2 of Schedule 5 of the Companies Act and was incorporated in accordance with the Enabling Legislation to carry on the business of providing energy/electricity and related services, including the generation, transmission, distribution and retail thereof, it being recorded that the Company is also subject to the provisions of the PFMA.

The Government is the sole Shareholder of the Shares in the Company and the rights attached to those Shares are Exercised by the Minister. The Company now wishes to adopt this Memorandum of Incorporation in order to bring its constitution in line with the Companies Act.



MEMORANDUM OF INCORPORATION	Document Identifier	240-65347859	Rev	0
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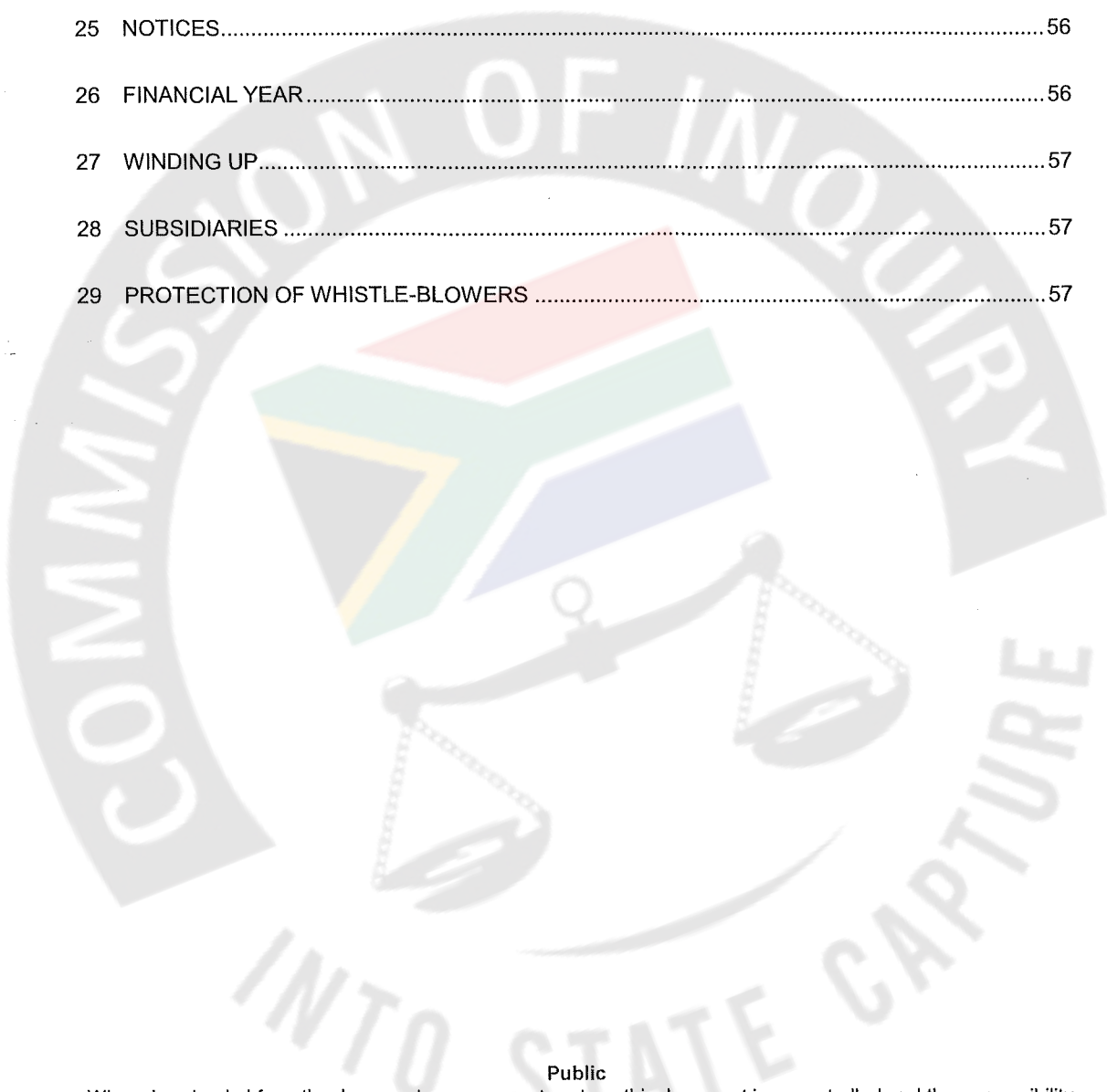
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1. INTERPRETATION

In this Memorandum of Incorporation-

1.1. Capitalised words that are not defined in this MOI will bear the same meaning in the Companies Act or the PFMA, unless the context provides otherwise.

1.2. Unless the context provides or requires otherwise –

1.2.1. **"Auditing Profession Act"** means the Auditing Profession Act, No. 26 of 2005;

1.2.2. **"Board"** means the "board" of the Company from time to time, as defined in the Companies Act, which is also the accounting authority for purposes of the PFMA;

1.2.3. **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in the Republic;

1.2.4. **"CE"** or **"CEO"** means the Chief Executive or Chief Executive Officer of the Company;

1.2.5. **"Companies Act"** means the Companies Act, No. 71 of 2008 as amended, consolidated or re-enacted from time to time and includes all schedules thereto and the Regulations;

1.2.6. **"Company"** means Eskom Holdings SOC Ltd, Registration no. 2002/015527/30 or whatever other name it may be known by from time to time;

1.2.7. **"Company in general meeting"** means a formal meeting of, or a resolution passed by, the Shareholder;

1.2.8. **"Corporate Plan"** means the three year plan of the Company as contemplated in the PFMA read with the Treasury Regulations, which plan must include (but is not limited to) –

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- 1.2.8.1. strategic objectives and outcomes identified and agreed on by the Shareholder in the Shareholder's Compact;
- 1.2.8.2. strategic and business initiatives as embodied in business function strategies;
- 1.2.8.3. key performance measures and indicators for assessing the Company's performance in delivering the desired outcomes and objectives;
- 1.2.8.4. a risk management plan;
- 1.2.8.5. a fraud prevention plan;
- 1.2.8.6. the SMF;
- 1.2.8.7. a financial plan addressing –
- 1.2.8.7.1. quarterly projections (for the first year) of revenue, expenditure and borrowings against annual targets;
- 1.2.8.7.2. asset and liability management;
- 1.2.8.7.3. cash flow projections;
- 1.2.8.7.4. capital expenditure programmes; and
- 1.2.8.7.5. dividend policies;
- 1.2.8.8. such other issues as may be required in terms of the PFMA from time to time;
- 1.2.9. **"Deliver"** means in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 25 of this MOI and the Companies Act, including Table CR3 of the Regulations, and **"Delivered"** and **"Delivering"** shall have the corresponding meaning as the context may indicate;

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- 1.2.10. **"Directors"** means the "directors" of the Company from time to time, as defined in the Companies Act;
- 1.2.11. **"Distribution"** means a "distribution" as defined in the Companies Act and **"Distribute"** and **"Distributed"** shall have the corresponding meaning as the context may indicate;
- 1.2.12. **"DoA"** means the Delegation of Authority Framework approved by the Board from time to time;
- 1.2.13. **"Effective Date"** with reference to any particular provision of the Companies Act, means the date on which that provision came into operation in terms of section 225 of the Companies Act;
- 1.2.14. **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Shareholder;
- 1.2.15. **"Electronic Communication"** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.2.16. **"Enabling Legislation"** means the Eskom Conversion Act, No. 13 of 2001 as amended or any legislation that replaces it;
- 1.2.17. **"Exco"** means the members of the Executive Management Committee of the Company from time to time;
- 1.2.18. **"FD"** or **"CFO"** means the Finance Director or the Chief Financial Officer of the Company;
- 1.2.19. **"Financial Assistance"** has the meaning set out in section 45(1) of the Companies Act;
- 1.2.20. **"Financial Year"** has the meaning set out in clause 26 of this MOI;
- 1.2.21. **"Gazette"** means the Government Gazette of the Republic;
- 1.2.22. **"Government"** means the Government of the Republic;

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- 1.2.23. **"Guidelines"** means the 'guidelines for the appointment of a Chief Executive for a State Owned Enterprise' as issued by the Minister from time to time;
- 1.2.24. **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act or as contemplated in clause 13.12 of this MOI which shall apply not only to Directors but also to members of Board committees and Prescribed Officers;
- 1.2.25. **"Material"** means "material" as defined in the Companies Act;
- 1.2.26. **"Memorandum of Incorporation" or "MOI"** means this Memorandum of Incorporation of the Company, as amended from time to time;
- 1.2.27. **"Minister"** means the Minister of Public Enterprises in her/him capacity as the representative of the Government and the executive authority (as defined in the PFMA) of the Company, or if any other Minister is designated as being the representative of the Government or the executive authority, then that Minister acting in such capacity;
- 1.2.28. **"Month"** means a calendar month;
- 1.2.29. **"Office"** means the registered office of the Company;
- 1.2.30. **"Ordinary Resolution"** means a resolution adopted with the support of more than 50% (fifty per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting, or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;
- 1.2.31. **"Person"** includes a Juristic Person;
- 1.2.32. **"PFMA"** means the Public Finance Management Act, No. 1 of 1999, as amended;
- 1.2.33. **"Prescribed Officers"** means a person who, within a company, performs any function that has been designated by the Minister of Trade

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and Industry in terms of section 66(10) of the Companies Act which, for the avoidance of doubt, includes Exco;

1.2.34. "**Present**" shall have the meaning ascribed to the term "present at a meeting" in the Companies Act;

1.2.35. "**Public Audit Act**" means the Public Audit Act, No. 25 of 2004;

1.2.36. "**Regulations**" means the regulations published pursuant to the Companies Act from time to time;

1.2.37. "**Remuneration Policy**" means the Remuneration Policy of the Company which will incorporate any "Remuneration Guidelines" and/or "Standards" published by the Minister from time to time which will be confirmed by the Company on an annual or biennial basis as contemplated in clause 12.1.1.3 of this MOI;

1.2.38. "**Republic**" means the Republic of South Africa;

1.2.39. "**Revenue Fund**" has the meaning set out in section 1 of the PFMA;

1.2.40. "**Round Robin Resolution**" means a resolution passed other than at a –

1.2.40.1. Shareholder's Meeting, which –

1.2.40.1.1. was submitted for consideration to the Shareholder; and

1.2.40.1.2. was voted on in Writing by the Shareholder or by a duly authorised representative on behalf of the Shareholder, within 20 (twenty) Business Days after the resolution was submitted to her/him/it;

1.2.40.2. meeting of Directors, in respect of which 75% (seventy five per cent) of the Directors voted on in Writing by signing a resolution, within 10 (ten) Business Days after the resolution was submitted to them;

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- 1.2.41. "**Securities**" means "securities" as defined in the Companies Act;
- 1.2.42. "**Shareholder**" means the Government represented by the Minister;
- 1.2.43. "**Shareholder's Compact**" means the agreement, entered into pursuant to the Treasury Regulations, between the Shareholder and the Board annually;
- 1.2.44. "**Shareholder's Meeting**" means with respect to any particular matter concerning the Company, a meeting of the Shareholder who is entitled to Exercise Voting Rights in relation to that matter;
- 1.2.45. "**Shares**" means any shares issued, or to be issued, by the Company;
- 1.2.46. "**Sign**" and "**Signature**" include, respectively, lithography, printing, electronic signature or signing by a mechanical or electronic process or means;
- 1.2.47. "**SMF**" means the Significance and Materiality Framework applicable to the Company, developed under the Treasury Regulations;
- 1.2.48. "**Special Resolution**" means a resolution adopted with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting or by the Shareholder acting other than at a meeting, as contemplated in section 60 of the Companies Act;
- 1.2.49. "**Standing Committee**" means a permanent committee of the Board with a continued existence established by the Board or Statute to deal with a specified set of duties. It does not include *ad hoc* committees established by the Board for a specific task or objective and dissolved after the completion of the task or the achievement of the objective;
- 1.2.50. "**Statutes**" means any and every other statute, regulation, directive, guideline, framework, policy or ordinance not specifically mentioned, from time to time in force concerning companies and necessarily affecting the Company or its Subsidiaries and "**Statute**" shall mean any one of them as the context may indicate;

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1.2.51. **"Strategic Intent Statement"** means the primary tool used by the Shareholder to communicate its expectations of the Company strategy and which contains the Company's strategic purpose, scope of business, core business, consultation thresholds or investment strategy developed by the Shareholder in consultation with sector departments, National Treasury and the Presidency of the Republic and taking into account an assessment of the interaction between the policy and regulatory environment with the financial and operational goals of the Company to ensure shareholder value optimisation and achievement of wider socio-economic objectives;

1.2.52. **"Subsidiary"** means a "subsidiary" of the Company, as such term is defined in the Companies Act;

1.2.53. **"Treasury Regulations"** means the regulations made by the National Treasury of the Republic in terms of section 76 of the PFMA and any amendment thereof or substitution therefor from time to time;

1.2.54. **"Voting Rights"**, with respect to any matter to be decided by the Company, means the rights of the Shareholder to vote in connection with that matter; and

1.2.55. **"Writing"** includes Electronic Communication.

1.3. Words importing the singular number shall include the plural number and vice versa.

1.4. Words importing any one gender shall include the other two genders.

1.5. Words importing natural persons shall include Juristic Persons (whether corporate or not and including partnerships and trusts) and vice versa.

1.6. References to the Shareholder entitled to vote Present at a meeting or acting in person shall include the Shareholder represented by duly authorised representative/s (which duly authorised representatives may be natural or Juristic Persons) or acting in the manner prescribed in the Companies Act.

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- 1.7. Reference to a section by number in this MOI shall be a reference to the corresponding section in the Companies Act, unless otherwise stated.
- 1.8. Reference to any provision of any Statute shall include such provision as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such Statute. Any reference to a particular section in a Statute is to that section as at the date of adoption of this MOI, and as amended or re-enacted from time to time and/or an equivalent measure in a Statute, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment.
- 1.9. Reference to a Shareholder represented by a proxy shall include a Shareholder represented by (i) an agent appointed under a general or special power of attorney; or (ii) the Minister.
- 1.10. Subject to the preceding clause, any words or expressions defined in any Statute shall, unless the context otherwise requires, bear the same meaning in this MOI as in the Statute in which they are defined. If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision.
- 1.11. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.
- 1.12. Headings to this MOI are intended for reference purposes only and shall not be taken into account in the interpretation thereof.
- 1.13. The words **"include"**, **"including"** and **"in particular"** shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.

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1.14. Any reference in this MOI to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.

1.15. The words "**other**" and "**otherwise**" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

2. INCORPORATION AND NATURE OF THE COMPANY AND GOVERNING PROVISIONS

2.1. The Company is a pre-existing Profit Company incorporated as from 1 July 2002. As such, the Company continues to exist as a State-Owned Company as defined in the Companies Act as if it had been incorporated and registered in terms of the Companies Act, as contemplated in Item 2 of Schedule 5 of the Companies Act, and the Companies Act has modified application to the Company, as set out in section 9 of the Companies Act.

2.2. The Company is incorporated in accordance with the Enabling Legislation and governed by:-

2.2.1. the Enabling Legislation;

2.2.2. the PFMA;

2.2.3. relevant Unalterable Provisions of the Companies Act (subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this MOI in accordance with section 15(2)(a)(iii) of the Companies Act);

2.2.4. relevant Alterable Provisions of the Companies Act (subject to any negation, restriction, limitation, qualification, extension or other alteration set out in this MOI in accordance with section 1 read with section 15(2)(a)(ii) of the Companies Act);

2.2.5. the provisions of this MOI (subject to and in accordance with section 15(2) of the Companies Act); and

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2.2.6. applicable provisions of the Statutes.

2.3. Subject to section 5(4) of the Companies Act:-

2.3.1. if any provision of this MOI is in any way inconsistent with any provisions of the Companies Act and/or the PFMA, as the case may be, the said provision of the Companies Act and/or the PFMA shall prevail and this MOI shall be read in all respects subject to the Companies Act and/or the PFMA, as the case may be; and

2.3.2. if there is any inconsistency between any provision of the PFMA (including the Treasury Regulations), and any provision of the Companies Act, then to the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the other, the PFMA provision will prevail.

3. PURPOSE, POWERS AND CAPACITY OF THE COMPANY

3.1. The objective of the Company is to provide energy/electricity and related services, including the generation, transmission, distribution and retail thereof. In doing so it has all the powers to implement this mandate subject to any limitations set out herein, the Shareholder's Compact and any other limitations imposed by the Shareholder. In fulfilling its obligations it is specifically acknowledged that the Company has a developmental role and will through its activities promote transformation, economic development, broad based black economic empowerment and may support relevant national initiatives.

3.2. In addition to the Strategic Intent Statement which shall be issued by the Shareholder by 30 April each year, the Shareholder may, after consultation with the Board, request changes to the mandate and objectives of the Company if-

3.2.1. it is reasonably necessary to do so; or

3.2.2. it is in the best interest of the Company.

3.3. The Company is not subject to any provisions contemplated in section 15(2)(b) or (c) of the Companies Act.

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- 3.4. The purposes and powers of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii) of the Companies Act.
- 3.5. Notwithstanding anything to the contrary contained herein or any omissions from this MOI of any provisions to that effect, the Company may do anything that the Companies Act and/or the PFMA and the Enabling Legislation empower it to do if not so prohibited by this MOI and/or by any provision of the Companies Act and/or the PFMA and/or the Enabling Legislation as the case may be.
- 3.6. The Company shall not, without the prior Written approval of the Shareholder:--
- 3.6.1. enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the SMF;
 - 3.6.2. establish or participate in –
 - 3.6.2.1. the establishment of a company; or
 - 3.6.2.2. a significant partnership, trust, unincorporated joint venture or similar arrangement;
 - 3.6.3. acquire or dispose of a significant shareholding in a company or a significant asset;
 - 3.6.4. commence or cease a significant business activity;
 - 3.6.5. commit the Company or its Subsidiaries to borrowings which confer rights to a lender to convert debt into Shares of any kind;
 - 3.6.6. undertake or agree to a significant change in the nature or extent of the Company's interest in a significant partnership, trust, unincorporated joint venture or similar arrangement;
 - 3.6.7. appoint the CE and approve the candidate nominated by Board for the position of the FD;
 - 3.6.8. issue, or approve the transfer of, any Shares in the Company; and

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3.6.9. subject to clauses 4.1 and 4.2 below, amend the provisions of this MOI.

3.7. In addition to the limitations and restrictions set out in clause 3.6 above, the Board shall ensure that –

3.7.1. the proposed Shareholder's Compact for the following Financial Year be submitted in draft form to the Shareholder by 30 September of each year;

3.7.2. the annual budget, the Corporate Plan and the Shareholder's Compact of the Company shall be presented and/or submitted to the Shareholder prior to 28 February of each year; and

3.7.3. the Company discloses to the Shareholder all changes to terms and conditions of trade which may have a Material impact on the Company.

3.8. Subject at all times to the PFMA, the Shareholder may, in exceptional circumstances specify any limitations regarding the general authority of the Company to raise or borrow funds from time to time for the purposes of the Company, or secure the payment of such sums provided that the borrowing programme in terms of the Shareholder's Compact is not affected.

4. AMENDMENTS TO MEMORANDUM OF INCORPORATION

4.1. Save for correcting patent errors in spelling, punctuation, reference, grammar or similar defects on the face of the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with section 16(1) of the Companies Act and the provisions of this MOI.

4.2. The Board shall publish a notice of any alteration of the MOI correcting a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the MOI on the Company's website, furnish a copy of the alteration to the Shareholder, and file the notice of such alteration as contemplated in section 17(1) of the Companies Act.

5. THE MAKING OF RULES

The Board shall not have the power to make Rules in terms of the Companies Act.

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6. AUTHORISED SHARES, ALLOTMENT AND ISSUE

6.1. Authorised Classes of Shares

6.1.1 Subject to the Enabling Legislation, the Company is authorised to issue no more than 1000 (one thousand) ordinary Shares of the same class, which shall rank *pari passu* in all respects and each such ordinary Share entitles the Shareholder to:--

6.1.1.1 attend, participate in, speak at and vote on any matter to be considered at any meeting of the Shareholder;

6.1.1.2 vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share;

6.1.1.3 participate proportionally in any Distribution made by the Company to the Shareholder;

6.1.1.4 participate in Distributions to the Shareholder;

6.1.1.5 receive proportionally the net assets of the Company upon its liquidation/dissolution; and

6.1.1.6 Exercise any other rights attaching to the ordinary Shares in terms of the Companies Act or any other law.

6.2 At the date of this MOI, there is 1 (one) ordinary Share, with a par value of R1.00 (one rand), in issue. The issued ordinary Share is held by the Shareholder.

6.3 The Board shall not have the power to amend the authorisation (including increasing or decreasing the number) and classification of Shares (including determining rights and preferences) as contemplated in section 36(2)(b) read with section 36(3) of the Companies Act.

6.4 Subject to provisions of the Companies Act and the Enabling Legislation, the Company may from time to time by Special Resolution passed by the Shareholder:-

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- 6.4.1 increase or decrease the number of its authorised Shares;
- 6.4.2 reclassify any Shares that have been authorised but not issued;
- 6.4.3 classify any unclassified Shares;
- 6.4.4 create any class of Shares and establish any preferences, rights, limitation or other terms in respect of any class of Shares so created, in terms of section 37 of the Companies Act;
- 6.4.5 alter the provisions of this MOI with respect to the objects and powers of the Company;
- 6.4.6 convert any Shares in the Company to Shares of a different class, whether issued or not, and in particular (but without derogating from the generality of the foregoing) convert ordinary Shares or preference Shares to redeemable preference Shares, provided that moneys other than dividends due to the Shareholder or the amount payable on the redemption of any preference Shares shall be held in trust by the Company indefinitely until lawfully claimed by the Shareholder; and
- 6.4.7 to the extent that the Company immediately before the Effective Date has authorised but unissued par value Shares in its capital of a class of which there are issued Shares, issue the unissued Shares of that class at par or at a premium or at a discount.
- 6.5 The Board shall not have the power to issue:-
 - 6.5.1 authorised Shares as contemplated in section 38 of the Companies Act; or
 - 6.5.2 options relating to the allotment or subscription of authorised Shares or other Securities and secured and unsecured debt instruments as contemplated in sections 42 and 43 of the Companies Act; or
 - 6.5.3 capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share in accordance with section 47 of the Companies Act,

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without an Ordinary Resolution of the Shareholder.

6.6 Certificates of Securities

The Securities issued by the Company shall be evidenced by certificates, which shall contain the information specified in section 51(1) of the Companies Act, and which shall be issued in the manner prescribed in section 51 of the Companies Act.

6.7 Register of Securities

The Company shall establish and keep a register of its issued Securities at its Office in the manner specified in section 50 of the Companies Act and the Regulations.

7 **PRE-EMPTION ON ISSUE OF ORDINARY SHARES**

7.1 Save if –

- 7.1.1 ordinary Shares are to be issued for the acquisition of any asset or for an Amalgamation or Merger;
- 7.1.2 the Shareholder by Ordinary Resolution approves the issue of ordinary Shares for any other purpose without this clause applying;
- 7.1.3 a capitalisation issue of ordinary Shares is to be undertaken;
- 7.1.4 ordinary Shares are to be issued in terms of option or conversion rights;
- 7.1.5 ordinary Shares are to be issued for a subscription price which is not a cash amount payable in full on subscription,

the Shareholder has a right, before any other Person to be offered and within a reasonable time, to subscribe for all the ordinary Shares to be issued. The offer to the Shareholder shall be Delivered in Writing specifying the number of ordinary Shares offered, and specifying a time (which shall not be less than 14 (fourteen) Business Days after the date of the offer) by which the offer must be accepted and the requisite portion of the subscription price paid, failing which it

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shall be deemed to be rejected. After the expiration of the time within which an offer may be accepted, or on the receipt of a response from the Shareholder that it declines to accept the ordinary Shares offered, the Board may, subject to the foregoing provisions and clause 3.6.8 of this MOI, issue such ordinary Shares.

8 PROHIBITION REGARDING BENEFICIAL INTERESTS

The Company shall not permit its Shares to be held by, and registered in the name of, one Person for the Beneficial Interest of another Person, as set out in section 56(1) of the Companies Act.

9 RESTRICTION ON THE TRANSFER OF SHARES

In addition to any other prescribed obligations which the Shareholder may agree to, no Shares shall be transferred without the prior Written consent of the Shareholder.

10 SHAREHOLDER'S AND DIRECTORS' RIGHT TO INFORMATION

10.1 The Shareholder shall have the rights to all such information relating to the Company as contemplated in this MOI, the Companies Act, the PFMA, the Enabling Legislation and the Statutes.

10.2 The Board shall procure that detailed management accounts of the Company and its Subsidiaries shall be prepared on a quarterly basis and submitted to the Shareholder within the Month after the end of the quarter or such other period as may be agreed by the Shareholder and the Company in Writing in respect of which such accounts are being prepared. Any Director or the Shareholder shall be entitled to request from time to time such accounting and other information as may be reasonably required by such Director or the Shareholder.

11 RECORD DATE

If, at any time, the Board fails to determine a Record Date as contemplated in section 59(1) of the Companies Act, the Record Date for the relevant action or event is as determined in accordance with section 59(3) of the Companies Act.

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12 SHAREHOLDER'S MEETINGS AND ROUND-ROBIN RESOLUTIONS

12.1 Convening of Shareholder's Meetings and Annual General Meetings

12.1.1 Subject to any exemption which may be granted to the Company in terms of the Companies Act, the Board shall convene an Annual General Meeting at least once a year but no later than 15 (fifteen) Months after the date of the previous Annual General Meeting or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –

12.1.1.1 presentation of the integrated report, comprising –

12.1.1.1.1 the Directors' report;

12.1.1.1.2 report of the external auditors;

12.1.1.1.3 audited Financial Statements for the immediately preceding Financial Year, subject to the provisions of section 84(3) of the Companies Act;

12.1.1.1.4 an audit committee report; and

12.1.1.1.5 the social and ethics committee report;

12.1.1.2 appointment of Directors, to the extent required by the Companies Act or this MOI;

12.1.1.3 consideration of the Remuneration Policy of the Company and confirmation that such Remuneration Policy is in accordance with any "Remuneration Guidelines" and/or "Standards" published by the Minister from time to time;

12.1.1.4 approval of the remuneration payable to non-executive Directors by Special Resolution (except where such remuneration has been approved by the Shareholder by

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Special Resolution within the previous two years, although this may be considered on an annual basis if so required by the Shareholder);

12.1.1.5 approval of the remuneration payable to executive Directors and members of Exco by Ordinary Resolution;

12.1.1.6 appointment of an Auditor for the current Financial Year, subject to the provisions of section 84(3) of the Companies Act;

12.1.1.7 noting of the audit fees for the previous Financial Year under review;

12.1.1.8 authorising the Board to fix the audit fees for the current Financial Year;

12.1.1.9 appointment of an audit committee, subject to clause 18 below;

12.1.1.10 approval of the Distribution to the Shareholder, if any, which shall have been approved by the Board prior to the Annual General Meeting in accordance with any Distribution policies applicable to the Company, from time to time and the provisions of clause 23 of this MOI;

12.1.1.11 noting of the Shareholder's Compact for the current Financial Year;

12.1.1.12 consideration and/or approval of the SMF;

12.1.1.13 consideration of the performance of the Board, through the Board performance appraisal report for the previous Financial Year; and

12.1.1.14 any matters raised by the Shareholder, with or without advance notice to the Company.

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- 12.1.2 The Shareholder or Directors may, subject to the provisions of section 61 of the Companies Act, convene a Shareholder's Meeting at any time.
- 12.1.3 The Company authorises the Minister to call a Shareholder's Meeting for the purposes of section 61(11) of the Companies Act.
- 12.1.4 The Shareholder's Meetings referred to in clauses 12.1.1, 12.1.2 and 12.1.3 above shall be held in Johannesburg, Pretoria or Cape Town, provided however, that in exceptional circumstances, such meetings shall be held at any other place as the Shareholder deems fit.
- 12.1.5 The Company shall, as determined by the Board, either –
- 12.1.5.1 hold a Shareholder's Meeting in order to consider one or more resolutions; or
- 12.1.5.2 as regards such resolution/s that could be voted on at a Shareholder's Meeting, other than an Annual General Meeting, instead require such resolutions to be dealt with by Round Robin Resolution of the Shareholder.
- 12.1.6 Within 10 (ten) Business Days after the Shareholder adopts a Round Robin Resolution, the Company must Deliver a statement describing the results of the vote, consent process, or appointment to the Shareholder.
- 12.1.7 A Company must hold a Shareholder's Meeting or put the proposed resolution to the Shareholder by way of a Round Robin Resolution:--
- 12.1.7.1 at any time that the Board is required by the Companies Act or the MOI to refer a matter to the Shareholder for decision; or
- 12.1.7.2 whenever required to fill a vacancy on the Board; and
- 12.1.7.3 when otherwise required in terms of section 61(3) of the Companies Act or by this MOI.

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12.2 Notice of meetings of the Shareholder

12.2.1 Subject to compliance with section 62 of the Companies Act, an Annual General Meeting and a general meeting of the Shareholder shall be convened by giving notice of at least 15 (fifteen) Business Days to the Shareholder.

12.2.2 A notice of a Shareholder's Meeting must be in Writing, in plain language and must include:-

12.2.2.1 the date, time and place for the meeting, and the Record Date for the meeting;

12.2.2.2 the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a) of the Companies Act if applicable;

12.2.2.3 in the case of the Annual General Meeting, the complete Financial Statements to be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding Financial Year;

12.2.2.4 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholder's Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

12.2.2.5 a reasonably prominent statement that:-

12.2.2.5.1 a Shareholder shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholder's Meeting in the place of the Shareholder or give or withhold Written consent on behalf of the Shareholder to a decision by Round Robin Resolution of the relevant Shareholder;

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12.2.2.5.2 a proxy need not be a Shareholder;

12.2.2.5.3 a Shareholder may appoint more than 1 (one) proxy to Exercise Voting Rights attached to different Securities held by that Shareholder in respect of any Shareholder's Meeting;

12.2.2.5.4 the proxy may delegate the authority granted to her/him as proxy, subject to any restriction in the instrument appointing the proxy her/himself;

12.2.2.5.5 participants in a Shareholder's Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Shareholder's Meeting that the right of that person to participate and vote, either as the Shareholder, or as a proxy for the Shareholder, has been reasonably verified; and

12.2.2.5.6 participation in the Shareholder's Meeting by Electronic Communication is available, and provide any necessary information to enable the Shareholder or its proxy to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Shareholder or proxy, except to the extent that the Company determines otherwise.

12.2.3 A Shareholder's Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 12.2.4 below, only if every Person who is entitled to Exercise Voting Rights in respect of each item on the agenda of the Shareholder's Meeting is Present at the Shareholder's Meeting and votes to approve the ratification of the defective notice.

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12.2.4 If a Material defect in the form or manner of giving notice of a Shareholder's Meeting relates only to one or more particular matters on the agenda for the Shareholder's Meeting:-

12.2.4.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and

12.2.4.2 the Shareholder's Meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of clause 12.2.3 above.

12.2.5 A non-Material defect in the form or manner of Delivering notice of a Shareholder's Meeting, or an accidental or inadvertent failure in the Delivery of the notice to the Shareholder to whom it was addressed if the Company elects to do so, does not invalidate any action taken at the Shareholder's Meeting.

12.2.6 The Shareholder or its proxy, who is Present at a Shareholder's Meeting:-

12.2.6.1 is regarded as having received or waived notice of the Shareholder's Meeting if at least the required minimum notice was given;

12.2.6.2 has a right to:-

12.2.6.2.1 allege a Material defect in the form of notice for a particular item on the agenda for the Shareholder's Meeting; and

12.2.6.2.2 participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and

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12.2.6.3 except to the extent set out in clause 12.2.6.2 above, is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholder's Meeting.

12.3 Proceedings at meetings of the Shareholder

- 12.3.1 The Annual General Meeting shall deal with and dispose of all matters prescribed by the Companies Act and the provisions of this MOI and may deal with any other business raised by the Shareholder or any other business laid before it.
- 12.3.2 The quorum necessary for the commencement of a Shareholder's Meeting or for a matter to be considered at a Shareholder's Meeting shall be the Shareholder Present in person or represented by proxy. Business at any Shareholder's Meeting may only be conducted while a quorum is Present.
- 12.3.3 The appointment of a proxy to represent the Shareholder in any Shareholder's Meeting or Annual General Meeting of the Company shall be in accordance with the provisions of the Companies Act and this MOI.
- 12.3.4 A Shareholder's Meeting may be conducted by way of Electronic Communication or by any one or more persons participating in the Shareholder's Meeting by Electronic Communication.
- 12.3.5 Any Shareholder's Meeting may be postponed or adjourned as provided for in the Companies Act.
- 12.3.6 If within 1 (one) hour from the time appointed for the Shareholder's Meeting, a quorum is not Present,
- 12.3.6.1 for the meeting to begin, the Shareholder's Meeting shall be postponed, without motion or vote or further notice to the date, time and place, as agreed to by the Shareholder as

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soon as reasonably practicable after the date of such postponed or adjourned meeting;

12.3.6.2 for consideration of a particular matter to begin, if there is no other business on the agenda of the meeting, consideration of the matter may be postponed without motion or vote or further notice to the date, time and place, as agreed to by the Shareholder as soon as reasonably practicable after the date of such postponed or adjourned meeting.

12.3.7 No further notice is required to be Delivered by the Company of a Shareholder's Meeting that is postponed or adjourned as contemplated in clause 12.3.6 above, unless the location or time for the Shareholder's Meeting is different from a location or time announced at the time of postponement or adjournment, in the case of a postponed or adjourned Shareholder's Meeting.

12.3.8 The chairperson of the Board shall preside as chairperson at every Shareholder's Meeting of the Company. If the chairperson is not Present at the Shareholder's Meeting, or if s/he is not Present within 30 (thirty) minutes after the time appointed for holding the Shareholder's Meeting, the Shareholder shall choose any non-executive Director Present to be chairperson of the Shareholder's Meeting. If no such Director is Present or if none of the non-executive Directors Present are willing to chair the meeting, then the Shareholder (or a duly authorised representative thereof) shall be entitled to chair the Shareholder's meeting.

12.3.9 The chairperson may, in accordance with section 64(10) of the Companies Act, with the consent of any Shareholder's Meeting at which a quorum is Present (and shall if so directed by the Shareholder's Meeting), adjourn the Shareholder's Meeting from time to time and from place to place, but no business shall be transacted at any adjourned Shareholder's Meeting other than the business left unfinished at the Shareholder's Meeting from which the adjournment took place.

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12.3.10 When a Shareholder's Meeting is adjourned as a result of a direction given in terms of any applicable provision in the Companies Act, notice of the adjourned Shareholder's Meeting shall be given in the manner prescribed by such provision but, save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned Shareholder's Meeting. No Shareholder's Meeting may be adjourned beyond a period of 60 (sixty) Business Days from the date on which the adjournment occurred.

12.3.11 Every resolution of the Shareholder is either an Ordinary Resolution or a Special Resolution.

12.3.12 A Round Robin Resolution signed by the Shareholder or by a duly authorised representative on behalf of the Shareholder, within 20 (twenty) Business Days after it has been submitted to the Shareholder in terms of section 60 of the Companies Act, shall be as valid and effective as if it had been passed at a Shareholder's Meeting of the Company duly convened and held.

13 DIRECTORS

13.1 General

13.1.1 The Board shall consist of a minimum of 3 (three) Directors and a maximum of 15 (fifteen) Directors, the majority of which shall be non-executive Directors and at least 2 (two) of which shall be *ex officio* Directors, being the CE and FD.

13.1.2 No Director shall be entitled to appoint an Alternate Director.

13.1.3 The Shareholder shall endeavour to ensure that the Board shall:-

13.1.3.1 be appropriately balanced in terms of executive and non-executive Directors;

13.1.3.2 be representative of the gender and race demographics of the Republic;

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13.1.3.3 be appointed on the grounds of their knowledge and experience which, when considered collectively, should enable the Board to attain the objects of the Company;

13.1.3.4 when viewed collectively, possess appropriate skills and experience relevant to the business of the Company; and

13.1.3.5 not include persons who are Ineligible or Disqualified, as set out in section 69 of the Companies Act.

13.1.4 The Shareholder shall have the right to appoint a Director to the Board, who may be a Government official, whenever the Shareholder deems it necessary, subject always to the provisions of the Companies Act and this MOI.

13.2 Appointment of non-executive Directors

The non-executive Directors shall be appointed for a period of 3 (three) years at a time ("a term"), which appointment is reviewable annually, provided that no non-executive Director is appointed for longer than 3 (three) consecutive terms.

13.3 Process of appointment of the CE and FD

13.3.1 The Board shall identify, nominate and evaluate potential candidates for appointment as the CE in accordance with the Guidelines.

13.3.2 The Shareholder shall appoint the CE from the shortlist of candidates provided by the Board, in accordance with the Guidelines.

13.3.3 The Board shall identify, nominate, evaluate and appoint a candidate for the position of FD, provided that the Shareholder shall, in Writing, approve such candidate prior to the appointment by the Board.

13.3.4 If the Shareholder does not approve the candidate nominated by the Board for the position of the FD, the Shareholder shall be required to provide a Written substantive motivation to the Board as to why the Shareholder does not approve the candidate nominated by the Board. Provided the Shareholder provides such Written substantive motivation

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to the Board, such candidate shall not be appointed as the FD and the Board shall identify and nominate an alternative candidate for appointment as the FD and the process contemplated in clause 13.3.3 above and this clause 13.3.4 shall apply.

13.4 Chairperson of the Board

13.4.1 The chairperson of the Board shall be appointed by the Shareholder.

13.4.2 The Company in general meeting shall be entitled to designate an acting chairperson (from any of the non-executive Directors) and determine the period for which such acting chairperson is to hold office and any other terms and conditions applicable to such appointment until the Shareholder appoints the chairperson.

13.4.3 The chairperson of the Board shall chair all the meetings of the Board. If the chairperson is not Present at any such meeting or if s/he is not Present within 30 (thirty) minutes after the time appointed for holding the meeting, the Directors Present shall choose any non-executive Director to be chairperson of the meeting.

13.4.4 The Director appointed as chairperson of the meeting in terms of clause 13.4.3 above shall act as chairperson:-

13.4.4.1 for the duration of the meeting until the meeting is adjourned;
or

13.4.4.2 for such a period of time after the adjournment of the meeting at which such Director was appointed as chairperson until the chairperson of the Board becomes available.

13.4.5 The chairperson of the Board shall not be appointed or serve as the chairperson of a Standing Committee (save for the People and Governance Committee) or as the chairperson of a Subsidiary board.

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13.5 Appointment of Directors to the boards of the wholly-owned Subsidiaries of the Company

13.5.1 For so long as the Government is the sole Shareholder, it is recorded that the board of a wholly-owned Subsidiary of the Company should, subject to clause 13.5.2 below and any other law applicable to the Subsidiary, comprise employees of such Subsidiary or the Company.

13.5.2 It is recorded that, should any wholly-owned Subsidiary of the Company wish to appoint directors who are not employees of the Subsidiary or the Company, such appointments shall be approved by the Shareholder in Writing.

13.6 Remuneration of Directors

13.6.1 The Board or the committee of the Board responsible for remuneration matters of the Company shall determine the remuneration of the individual Directors and Exco within the framework of the Remuneration Policy and which remuneration shall be approved by Special Resolution or Ordinary Resolution as contemplated in clauses 12.1.1.4 and 12.1.1.5 respectively of this MOI.

13.6.2 All Directors may be paid all travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as Directors, including, those expenses incurred in attending and travelling to and from meetings of the Directors or any committee of the Directors or at any Shareholder's Meeting.

13.7 Powers of Directors

13.7.1 The management and control of the Company shall be vested in the Board which, in addition to the powers and authorities expressly conferred upon it by this MOI and the Enabling Legislation, may Exercise all such powers, and do all such acts and things, as may be Exercised or done by the Company and are not, in terms of this MOI or by the Enabling Legislation, expressly directed or required to be

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Exercised or done by the Company in general meeting or with the prior Written consent of the Shareholder.

13.7.2 The Board may delegate any of its powers or functions to any Directors, employee(s) and/or to committees. The delegation shall be Exercised lawfully, within prescribed powers and authorisation levels and in terms of the Company's policies, directives and procedures.

13.7.3 The delegation:-

13.7.3.1 may be made on and subject to any conditions determined by the Board;

13.7.3.2 may be given together with the power to sub-delegate subject to the provisions of the PFMA and the Companies Act and further subject to any conditions so determined (if any);

13.7.3.3 shall be communicated to the delegatee in Writing and such Written communication must contain full particulars of the matters being delegated and of the conditions determined under clauses 13.7.3.1 and 13.7.3.2 above, if any, and where the power of sub-delegation is also conferred, must state that fact, as well as any conditions determined under this clause 13.7.3.3 if any; and

13.7.3.4 shall be reviewed on a regular basis.

13.7.4 The Board may, without requiring the consent of the Shareholder, and in accordance with clause 13.7.3 above from time to time revoke, withdraw or vary such powers contemplated in this clause 13.7.

13.8 Recognition of the DoA

It is recorded that the DoA records (but does not create) certain limitations on the powers of the Directors, which limitations arise as a result of this MOI, the Companies Act and the PFMA. It is further recorded that it is the intention of the Board that it shall delegate certain of its powers and functions to Directors,

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employees and/or committees as contemplated in the DoA by passing a resolution of the Board adopting the DoA in accordance with the principles set out in clause 13.7 above.

13.9 Proceedings at Meetings of Directors

13.9.1 The Directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.

13.9.2 The company secretary or a Director may at any time:-

13.9.2.1 when authorised by the Board; or

13.9.2.2 if requested by at least 1 (one) Director which request shall also be approved by the chairperson of the Board; or

13.9.2.3 if requested by at least 2 (two) Directors of the Company convene a meeting of the Board.

13.9.3 The Board shall determine the period of notice which shall be given for meetings of Directors and/or for Round Robin Resolutions and may determine the form or medium of giving such notice, which may include Electronic Communication. It shall be necessary to give notice of a meeting of Directors and/or for Round Robin Resolutions to all Directors even those for the time being absent from the Republic.

13.9.4 A meeting of Directors shall proceed even if the Company has not given the required notice of such meeting in accordance with clause 13.9.3 above or if there was a defect in the giving of the notice, provided that all Directors:-

13.9.4.1 acknowledge actual receipt of the notice of the meeting concerned; and

13.9.4.2 are Present at the meeting; or

13.9.4.3 waive notice of the meeting.

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- 13.9.5 A meeting of Directors may be conducted by one or more Directors participating in the meeting by Electronic Communication.
- 13.9.6 The quorum for a meeting of Directors shall be not less than a majority of Directors.
- 13.9.7 Subject to exclusions in the Companies Act, each Director shall have 1 (one) vote on a matter before a meeting of Directors.
- 13.9.8 Resolutions of the Directors in a meeting shall be decided by a majority of votes. In case of an equality of votes, the chairperson shall not have a casting vote (in addition to her/his vote as a member of the Board or a Board committee) and the matter being voted on fails.
- 13.9.9 Subject to the Companies Act and this MOI, a Round Robin Resolution, signed and approved by not less than 75% (seventy five per cent) of the Directors shall be as valid and effective as if it had been passed at a Board or Board committee meeting, duly called and constituted.
- 13.9.10 Resolutions adopted by the Directors –
- 13.9.10.1 must be dated and sequentially numbered; and
- 13.9.10.2 are effective as of the date of the resolution, unless the resolution states otherwise.
- 13.9.11 The company secretary shall attend meetings and record the minutes of the meetings. Where it is not at all possible for the company secretary to attend any such meeting, the Board or Board committee, as the case may be, shall ensure that minutes are recorded, kept and prepared for that meeting. The Director or any other person elected by the Board or Board committee to record and keep minutes of a meeting held by making use of Electronic Communication shall, as soon as is reasonably possible after such meeting has been held, provide the company secretary with a copy of the minutes of the meeting.

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13.10 Removal of Directors

13.10.1 Despite anything to the contrary in this MOI, or any agreement between the Company and a Director, or between any Shareholder and a Director, the Shareholder shall be entitled to remove any Director of the Company by an Ordinary Resolution adopted at a Shareholder's Meeting.

13.10.2 The Shareholder shall, prior to considering the Ordinary Resolution for the removal of any Director:-

13.10.2.1 provide the Director concerned with a notice of a meeting and the resolution proposed to be passed at such meeting at least equivalent to that which a Shareholder is entitled to receive, irrespective of whether or not the Director is a Shareholder of the Company; and

13.10.2.2 afford the Director concerned reasonable opportunity to make a presentation, in person or through a representative, at the meeting prior to the resolution being put to the vote.

13.10.3 The Board shall, after consultation with the Shareholder, be entitled, by a resolution of the Board, to remove a Director whom the Board has determined to have:-

13.10.3.1 become Ineligible or Disqualified to be a Director of the Company in terms of the Companies Act; or

13.10.3.2 become incapacitated to the extent that such Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time; or

13.10.3.3 neglected or been derelict in the performance of, the functions of a Director.

13.10.4 The Board shall, prior to approving the resolution for the removal of a Director in terms of clause 13.10.3 above:-

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13.10.4.1 provide the Director concerned with a notice of a meeting and the resolution proposed to be passed at such meeting and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the Director to prepare and present a response; and

13.10.4.2 afford the Director concerned reasonable opportunity to make a presentation, in person or through a representative, at the meeting prior to the resolution being put to the vote.

13.11 Rotation of Directors and filling of vacancies

13.11.1 If a Director ceases to hold office or a term of office of any Director is due to expire, the Shareholder shall, in compliance with the provisions of section 70 of the Companies Act, ensure that necessary steps are taken to appoint the requisite number of eligible persons as Directors in the place of the retiring Director/s as soon as possible. In this regard the Board shall, where possible, advise the Shareholder within a reasonable time of such impending vacancy.

13.11.2 The Shareholder shall fill in any vacancy that arose on the Board by a new appointment as contemplated in terms of section 70(3)(a) of the Companies Act.

13.11.3 A person shall cease to be a Director and a vacancy on the Board shall arise:-

13.11.3.1 when the Director's term of office expires as contemplated in clause 13.11.3.3 below;

13.11.3.2 if any of the circumstances referred to in section 70(1)(b) of the Companies Act occur, which include the following, if the Director:-

13.11.3.2.1 resigns (provided that such resignation is given by Written notice to the Shareholder and the Company);

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13.11.3.2.2 dies;

13.11.3.2.3 in the case of an *ex officio* director, ceases to hold the office, title, designation or similar status that entitled the person to be an *ex officio* Director of the Company;

13.11.3.2.4 becomes incapacitated to the extent that the person is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable period, subject to section 71(3) of the Companies Act;

13.11.3.2.5 is declared delinquent by the court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company, in terms of section 162 of the Companies Act;

13.11.3.2.6 becomes Ineligible or Disqualified in terms of section 69, subject to section 71(3) of the Companies Act; or

13.11.3.2.7 is removed as a Director by:-

13.11.3.2.7.1 resolution of the Shareholder in terms of section 71(1) of the Companies Act; or

13.11.3.2.7.2 resolution of the Board in terms of section 71(3) of the Companies Act (subject always to the consent of the Shareholder); or

13.11.3.2.7.3 an order of the court in terms of section 71(5) or (6) of the Companies Act; or

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13.11.3.2.7.4 if s/he is absent from Board meetings for 3 (three) consecutive meetings without leave of the Directors and the Shareholder resolves that the office be vacated;

13.11.3.3 in the case of non-executive Directors:-

13.11.3.3.1 a Director's appointment is reviewed and her/his term is terminated prematurely to the 3 (three) year term;

13.11.3.3.2 a Director has served for a 3 (three) year term, and fails to be re-appointed as Director for a 2nd (second) term; or

13.11.3.3.3 a Director has served for 2 (two) consecutive 3 (three) year terms, and fails to be re-appointed as a Director for a 3rd (third) term;

13.11.3.3.4 a Director has served for 3 (three) consecutive 3 (three) year terms, which 3rd (third) term has now expired.

13.11.4 Unless the Shareholder resolves otherwise, a Director shall also cease to hold office if:-

13.11.4.1 s/he is Knowingly interested in any contract or proposed contract with the Company and fails to declare her/his interest and its nature in the manner required by the Companies Act and the PFMA; or

13.11.4.2 s/he assigns her/his estate for the benefit of her/his creditors, or suspends payment or files a petition for the liquidation of her/his affairs, or compounds generally with her/his creditors; or

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13.11.4.3 s/he ceases to be an employee of the Company or is suspended as an employee of the Company.

13.11.5 In addition, if the CE or FD ceases to hold office as a Director for any reason whatsoever, her/his appointment as CE or FD (as the case may be) shall *ipso facto* terminate without prejudice to any claims for damages which may accrue to her/him as a result of such termination in accordance with applicable employment laws; provided however, that s/he shall not be precluded from being employed in any other position of the Company by virtue of the fact that s/he is no longer a Director.

13.12 Ineligibility or Disqualification of Directors

13.12.1 A person is Ineligible to be a Director of the Company if the person-

13.12.1.1 is a Juristic Person;

13.12.1.2 is an unemancipated minor, or is under a similar legal disability; or

13.12.1.3 does not satisfy any qualification set out in the MOI.

13.12.2 A person is Disqualified to be a Director of the Company if-

13.12.2.1 a court has prohibited that person to be a Director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 69 of 1984; or

13.12.2.2 save under authority of the court, the person -

13.12.2.2.1 is an unrehabilitated insolvent;

13.12.2.2.2 is prohibited in terms of any public regulation to be a Director of the Company;

13.12.2.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty;

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13.12.2.2.4 has been convicted, in the Republic or elsewhere and imprisoned without the option of a fine, or fined more than the prescribed amount for theft, fraud, forgery, perjury or an offence:-

13.12.2.2.4.1 involving fraud, misrepresentation or dishonesty;

13.12.2.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or 69(5) of the Companies Act; or

13.12.2.2.4.3 under the Companies Act, Insolvency Act, 1936; Close Corporation Act, 1984; Competition Act, 1998; Financial Intelligence Centre Act, 2001; Securities Services Act, 2004; or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004.

14 FINANCIAL ASSISTANCE AND BORROWING POWERS OF THE COMPANY AND COMPANY'S SUBSIDIARIES

14.1 Financial Assistance

14.1.1. The Company is prohibited from and shall not have the power to –

14.1.1.1 authorise the provision by the Company of Financial Assistance to any person for the purpose of, or in connection with, the subscription of any option, or any Shares, issued or to be issued by the Company or a Related Person or Inter-

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Related company, or for the purchase of any Shares of the Company or a Related or Inter-Related company;

14.1.1.2 provide any direct or indirect Financial Assistance to a Related or Inter-Related company, or to a Related or Inter-Related company or corporation, or to a member of a Related or Inter-Related corporation or to a person Related to any such company, corporation, or member,

except, in each case, where –

14.1.1.2.1 the Shareholder has approved such Financial Assistance, either for the specific recipient or generally for a category of potential recipients (and the specific recipient falls within that category), by Special Resolution adopted within the previous two years; provided that where the Shareholder is requested to approve the provision of specific Financial Assistance, the Board shall, at the request of the Shareholder, provide such information to the Shareholder as the Shareholder may require, to satisfy the Shareholder that the conditions set out in clauses 14.1.1.2.2, 14.1.1.2.3 and 14.1.1.2.4 below have been met, or will be met; and

14.1.1.2.2 the provisions of the PFMA have been met; and

14.1.1.2.3 the provisions of section 44 and/or 45 (as the case may be) of the Companies Act have been met; and

14.1.1.2.4 the Board is satisfied that –

14.1.1.2.4.1 immediately after providing the Financial Assistance, the Company would satisfy the

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solvency and liquidity test prescribed in section 4 of the Companies Act; and

14.1.1.2.4.2 the terms under which the Financial Assistance is proposed to be given are fair and reasonable to the Company.

14.1.2 The Company shall be prohibited from providing any direct or indirect Financial Assistance to any Director or Prescribed Officer of the Company or to a person Related or Inter-Related to any such Director or Prescribed Officer save in respect of any Financial Assistance which has been approved in terms of section 45 of the Companies Act and in terms of clause 14.1.1.2 above and contemplated in accordance with the terms of employment applicable to Prescribed Officers, subject always to the provisions of section 45 of the Companies Act.

14.2 Board's power to effect borrowing

Subject to the provisions of the PFMA (and, in particular, section 66 of the PFMA), the Board may raise or borrow funds from time to time for the purposes of the Company, or secure the payment, of such sums as is in accordance with its Corporate Plan and the borrowing programme submitted to the Shareholder, unless otherwise determined by the Shareholder subject to clause 3.8 of this MOI.

14.3 Company's power to issue guarantees, indemnities, security or to enter into other transactions that bind the Company to any future financial commitment

The Company may not –

14.3.1 issue a guarantee, indemnity or security; or

14.3.2 enter into any other transactions that bind, or may bind, the Company or the Revenue Fund to any future financial commitment,

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unless the provisions of the PFMA, in particular, section 66 thereof, are complied with.

14.4 Financing and funding structures

The Board shall, in accordance with the PFMA and the Enabling Legislation, consider and determine the funding structures of the Company having regard to the funding requirements of the Company from time to time.

15 **PERSONAL FINANCIAL INTEREST AND DECLARATION BY DIRECTORS**

15.1 For purposes of this clause 15, "Director" includes a Prescribed Officer and a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board.

15.2 The Company shall establish a policy that will deal with Personal Financial Interests and conflicts of interest of Directors and employees of the Company, which shall be consistent with the provisions of the Companies Act and the PFMA.

15.3 If a Director has a Personal Financial Interest or Knows that a Person Related to the Director, as described in section 2 of the Companies Act, has a Personal Financial Interest in respect of any matter to be considered by the Board, the Director:-

15.3.1 must disclose the interest and its general nature in Writing before the matter is considered at the meeting;

15.3.2 must disclose to the meeting any Material information relating to the matter, and that is Known to the Director;

15.3.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

15.3.4 if Present at the meeting of the Board, must leave the meeting immediately after making any disclosure contemplated in clause 15.3.2 or 15.3.3 above;

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15.3.5 must not take part in the consideration of the matter, except to the extent of the disclosures contemplated in clauses 15.3.2 or 15.3.3 above;

15.3.6 while absent from the meeting as provided in clause 15.3.4 above:-

15.3.6.1 shall be regarded as being Present at the meeting for the purpose of determining whether sufficient Directors are Present to constitute a quorum of the meeting;

15.3.6.2 shall not be regarded as being Present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

15.3.7 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

15.4 If a Director of the Company acquires, or Knows that a Related Person has acquired, a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, after the agreement or other matter has been approved by the Company, the Director shall promptly disclose to the Board, the nature and extent of that interest, and the Material circumstances relating to the Director or Related Person's acquisition of that interest, as the case may be.

15.5 If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director, has a Material interest in the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

15.6 A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person related to the Director, only if:-

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15.6.1 it was approved following disclosure of that interest in the manner contemplated in section 75 of the Companies Act; or

15.6.2 despite having been approved without disclosure of that Personal Financial Interest, it

15.6.2.1 has subsequently been ratified by an Ordinary Resolution of the Shareholder following disclosure of that Personal Financial Interest; or

15.6.2.2 has been declared to be valid by the court in terms of section 75(8) of the Companies Act.

15.7 A Director may at any time disclose any general Personal Financial Interest in advance by delivering a Written notice to the Board setting out the nature and extent of that interest for the purposes of this clause 15 until changed or withdrawn by such Director in Writing.

15.8 A court, on application by any interested Person, may declare valid a transaction or agreement that had been approved by the Board, or Shareholder as the case may be, despite the failure of the Director to satisfy the requirements of this clause 15 and section 75 of the Companies Act.

15.9 The provisions of this clause 15 do not derogate from those Directors' duties prescribed by the PFMA and the Directors shall be required to comply both with the provisions of this clause 15 and the provisions of the PFMA.

16 INDEMNIFICATION AND DIRECTORS' INSURANCE

16.1 For the purposes of this clause 16, "Director" includes a former Director, a Prescribed Officer, a person who is a member of a committee of the Board or of the audit committee of the Company, irrespective of whether or not the person is also a member of the Board.

16.2 Subject to the provisions of the PFMA, the Company may –

16.2.1 not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that

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Director having been convicted of an offence in terms of any national legislation unless the conviction is based on strict liability;

16.2.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company. For purposes of this clause 16, "service to the Company" includes services which are directly linked to the activities of the Company, and services which the Company consents to or acknowledges; and

16.2.3 directly or indirectly indemnify a Director for –

16.2.3.1 any liability, other than in respect of –

16.2.3.1.1 any liability arising in terms of section 77(3)(a), (b) or (c) of the Companies Act or sections 86(2) or (3) of the PFMA, or from wilful misconduct or wilful breach of trust on the part of the Director; or

16.2.3.1.2 any fine contemplated in clause 16.2.1 above;

16.2.3.2 any expenses contemplated in clause 16.2.2 above, irrespective of whether it has advanced those expenses, if the proceedings –

16.2.3.2.1 are abandoned or exculpate the Director; or

16.2.3.2.2 arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 16.2.3.1 above.

16.3 Subject to the provisions of the PFMA, the Company may purchase insurance to protect –

16.3.1 a Director against any liability or expenses contemplated in clause 16.2.2 or 16.2.3 above; or

16.3.2 the Company against any contingency including but not limited to –

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16.3.2.1 any expenses –

16.3.2.1.1 that the Company is permitted to advance in accordance with clause 16.2.2 above; or

16.3.2.1.2 for which the Company is permitted to indemnify a Director in accordance with clause 16.2.3.2 above ;or

16.3.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with clause 16.2.3.1 above.

16.4 The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78 of the Companies Act.

17 AUDITORS

17.1 Subject to clause 17.2 of this MOI, Auditors shall be appointed, and their duties regulated in accordance with the provisions of sections 90, 91, 92 and 93 of the Companies Act, the Auditing Profession Act and applicable provisions of the Public Audit Act.

17.2 The Company shall not be required to appoint an Auditor for any Financial Year in respect of which the Auditor-General has elected, in terms of the Public Audit Act, to conduct an Audit of the Company.

17.3 Subject to the provisions of the Companies Act, the Auditing Profession Act and the Public Audit Act, all acts done by any Person acting as Auditor, shall, as regard to all Persons dealing in good faith with the Company, be valid notwithstanding that there was some defect in that appointment.

17.4 Nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the audit committee referred to in clause 18 below, but if such an Auditor is elected, the appointment is valid only if the

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audit committee is satisfied that the proposed Auditor is independent of the Company.

17.5 In considering whether, for the purposes of the Companies Act, a Registered Auditor is independent of the Company, the audit committee must –

17.5.1 ascertain that the Auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –

17.5.1.1 as Auditor; or

17.5.1.2 for rendering other services to the Company, to the extent permitted in terms of the Companies Act;

17.5.2 consider whether the Auditor's independence may have been prejudiced –

17.5.2.1 as a result of any previous appointment as Auditor; or

17.5.2.2 having regard to the extent of any consultancy, advisory or other work undertaken by the Auditor for the Company; and

17.5.3 consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act,

in relation to the Company, and if the Company is a member of a Group of Companies, any other company within that Group of Companies.

18 AUDIT COMMITTEE

18.1 The Board shall propose, and the Shareholder shall appoint, an audit committee. In the event that the Shareholder elects not to appoint any person proposed by the Board to the audit committee, the Board shall propose an alternate person for appointment by the Shareholder.

18.2 The audit committee shall comprise at least 3 (three) members, all of whom shall, subject to clauses 18.5 and 18.6 below, be non-executive Directors of the

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Company and whose appointment shall comply with (i) section 77 of the PFMA read with the Treasury Regulations; and (ii) to the extent that the provisions of section 94(5) of the Companies Act and Regulation 42 do not conflict with section 77 of the PFMA read with the Treasury Regulations, section 94(5) of the Companies Act and Regulation 42.

18.3 The audit committee shall meet at least 4 (four) times in a year to execute its duties.

18.4 The Board shall, subject to clause 18.5 below, propose a chairperson for the audit committee, for approval by the Shareholder at the Annual General Meeting.

18.5 In accordance with the Treasury Regulations the chairperson of the audit committee shall be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the chairperson of the Board or a person who fulfils an executive function in the Company.

18.6 Each member of the audit committee must –

18.6.1 satisfy any applicable requirements prescribed by the Minister of Trade and Industry from time to time in terms of section 94(5) of the Companies Act.

18.6.2 not be –

18.6.2.1 involved in the day-to-day management of the Company's business or have been so involved at any time during the previous Financial Year;

18.6.2.2 a Prescribed Officer, or full-time employee, of the Company or another Related or Inter-Related Person, or have been such an Officer or employee at any time during the previous 3 (three) Financial Years; or

18.6.2.3 a Material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the

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circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and

18.6.3 not be a Related Person to any person who falls within the criteria in clauses 18.6.2.1 to 18.6.2.3 above.

18.7 The Board must appoint a person to fill any vacancy on the audit committee within 40 (forty) Business Days after the vacancy arises.

18.8 The audit committee shall execute all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA (as read with the Treasury Regulations).

18.9 The Company may determine that its audit committee will perform the functions required by section 94 of the Companies Act on behalf its Subsidiaries.

18.10 The Company must pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions.

18.11 No person shall be elected as a member of the audit committee, if s/he is Ineligible or Disqualified and any such election shall be a nullity. A person who is Ineligible or Disqualified must not consent to be elected as a member of the audit committee nor act as a member of the audit committee. A person placed under probation by a court must not serve as a member of the audit committee unless the order of court so permits.

19 SOCIAL AND ETHICS COMMITTEE

19.1 The Board must appoint a social and ethics committee unless it has been exempted in terms of the Companies Act from having to have a social and ethics committee.

19.2 The Company may determine that its social and ethics committee will perform the functions required by Regulation 43 on behalf of its Subsidiaries.

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19.3 The social and ethics committee shall comprise at least 3 (three) members, all of whom shall be Directors of the Company, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) Financial Years and whose appointment shall be in compliance with the Companies Act and any regulations published thereunder.

19.4 The social and ethics committee shall meet at least once a year to deal with and attend to all functions and matters that are required to be dealt with by the committee in terms of the Companies Act and any regulations published thereunder.

19.5 The social and ethics committee shall execute all the functions as may be prescribed from time to time by the Companies Act (as read with the Regulations) and the PFMA (as read with the Treasury Regulations).

19.6 The social and ethics committee of the Company is entitled to –

19.6.1 require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;

19.6.2 request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;

19.6.3 attend any Shareholder's Meeting;

19.6.4 receive all notices of and other communications relating to any Shareholder's Meeting; and

19.6.5 be heard at any Shareholder's Meeting on any part of the business of the meeting that concerns the committee's functions.

19.7 The Company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

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20 BOARD COMMITTEES

20.1 The Minister takes cognisance of the Standing Committees established by the Board as set out in clause 20.3 below, however should the Board wish to establish new Standing Committees, such committees may only be established with the prior Written consent of the Minister.

20.2 Furthermore, in the application by the Board to the Minister of a new Standing Committee, the Board must submit Written terms of reference including *inter alia* the need for such a committee, the functions of the committee and any other information required by the Minister. The number of Directors appointed to serve on the committee will be at the discretion of the Minister.

20.3 Standing Committees at date of this MOI (in addition to those required by the Companies Act) include:-

20.3.1 People & Governance committee;

20.3.2 Tender committee; and

20.3.3 Investment and Finance committee.

20.4 No person shall be appointed as a member of a Board committee, if s/he is Ineligible or Disqualified and any such appointment shall be a nullity. A person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

20.5 Meetings of a committee of the Board shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

21 PRESCRIBED OFFICERS

21.1 No person shall hold office as a Prescribed Officer, if s/he is Ineligible or Disqualified. A person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such

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functions. A person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

21.2 A Prescribed Officer shall cease to hold office as such immediately s/he becomes Ineligible or Disqualified in terms of the Companies Act.

22 COMPANY SECRETARY

22.1 The Board must appoint the company secretary from time to time, who –

22.1.1 shall be a permanent resident of the Republic and remain so while serving as company secretary; and

22.1.2 shall have the requisite knowledge of, or experience in, relevant laws; and

22.1.3 may be a Juristic Person subject to the following:-

22.1.3.1 every employee of that Juristic Person who provides company secretary services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;

22.1.3.2 at least 1 (one) employee of that Juristic Person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 22.1.1 and 22.1.2 above.

22.2 The company secretary shall not be a Director.

22.3 Within 60 (sixty) Business Days after a vacancy arises in the office of company secretary, the Board must fill the vacancy by appointing a Person whom the Board considers to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as company secretary does not constitute a vacancy in the office of company secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 22.1.3 above.

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22.4 If at any time a Juristic Person or partnership holds office as company secretary of the Company –

22.4.1 the Juristic Person or partnership must immediately notify the Board if the Juristic Person or partnership no longer satisfies the requirements of clause 22.1.3 above, and is regarded to have resigned as company secretary upon giving that notice to the Company;

22.4.2 the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 22.1.3 above, until the Company has received a notice contemplated in clause 22.4.1 above; and

22.4.3 any action taken by the Juristic Person or partnership in performance of its functions as company secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 22.1.3 above at the time of that action.

22.5 The company secretary may resign from office by giving the Company 1 (one) month's Written notice or less than that with the prior Written approval of the Board.

22.6 If the company secretary is removed from office by the Board, the company secretary may, by giving Written notice to that effect to the Company by not later than the end of the Financial Year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that Financial Year, not exceeding a reasonable length, setting out the company secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

23 DISTRIBUTIONS TO THE SHAREHOLDER

23.1 The Board may make Distributions to the Shareholder from time to time in accordance with the Enabling Legislation and the Distributions or similar policy of the Company from time to time, subject to the provisions of clauses 12.1.1.10 and 23 of this MOI and the provisions of section 46 of the Companies Act.

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23.2 The Board, after consultation with the Shareholder, shall develop an appropriate Distribution or similar policy and framework for the Company taking into account, *inter alia*, the Corporate Plan and strategic objectives which shall be reviewed on a regular basis. In addition, the Company shall be entitled to invest sufficient funds of the Company for the adequate capitalisation and on-going investment in Subsidiaries deemed appropriate. Such capitalisation or investment, and expenditure incurred in respect of industry restructuring, delivery of universal services or any other socio-economic activities carried out by the Company upon the request of the Shareholder shall be taken into account in calculating any Distribution and other payments payable to the Shareholder.

23.3 Without derogating from the provisions of clause 23.1 above and subject to the requirements of the Companies Act and clause 12.1.1.10 of this MOI, the Board may resolve to Distribute or deal with, in any way authorised by the Companies Act, all or any part of the amount for the time being standing to the credit of any of the Company's reserves or any share capital of the Company.

24 ACCOUNTS

24.1 The Board shall cause to be kept such Accounting Records and books of account as are prescribed by the Companies Act and the PFMA.

24.2 The Financial Statements, books of account and other books and documents of the Company shall be kept at, or be accessible from, the Office of the Company or (subject to the provisions of section 25 of the Companies Act, and the PFMA) at such other place as the Board thinks fit, and shall be open to inspection by the Shareholder and the Board during normal business hours.

24.3 The Board shall, in accordance with sections 30 and 31 of the Companies Act and section 55 of the PFMA, cause to be prepared and presented at the Company's Annual General Meeting such reports as are referred to in those sections and required in terms of this MOI.

24.4 Subject to the provisions of the Companies Act, a copy of the documents referred to in clause 24.3 above shall be Delivered or sent by post to the registered address of the Shareholder at least 15 (fifteen) Business Days before

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the Annual General Meeting, so that such period shall not include the day on which such documents are Delivered or sent, or deemed to be Delivered or sent, or the day on which the meeting is to be held. Alternatively, the Shareholder may give the Company an Electronic Address in which case a copy of the said documents may be Delivered to the Shareholder at that address.

25 NOTICES

25.1 Notices and documents required to be published as contemplated in sections 15(3)(a) or 17(1)(a) of the Companies Act shall be Delivered by the Company to the Shareholder by hand delivery to the registered address of the Shareholder or by transmission through the post in a prepaid letter, by telefax or any Electronic Communication addressed to the Shareholder at its registered address or Electronic Address (as the case may be).

25.2 The Shareholder chooses the address of the permanent office of the Shareholder in Pretoria as its registered address or such other address (including an Electronic Address) as the Shareholder shall upon Written notice be entitled to change.

25.3 The Shareholder after having furnished an Electronic Address to the Company, by doing so-

25.3.1 authorises the Company to use Electronic Communication to give notices, documents, Records or statements or notices of availability of the foregoing to it; and

25.3.2 confirms that same can conveniently be printed by the Shareholder within a reasonable time and at a reasonable cost.

25.4 Every notice calling any general meeting shall comply with the provisions of the Companies Act unless otherwise determined by the Board.

26 FINANCIAL YEAR

The Financial Year of the Company is the 12 (twelve) Month period ending on 31 March of each year. The Financial Year may not be changed by the Board without the

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prior Written consent or approval of the Shareholder and subject to the PFMA and the requirements of section 27(4) of the Companies Act.

27 WINDING UP

Subject to the provisions of the Companies Act, the Company shall not be wound up or be placed into "business rescue" as contemplated in the Companies Act without the prior Written consent of the Shareholder.

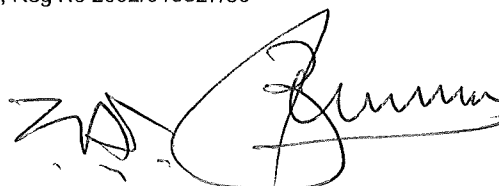
28 SUBSIDIARIES

The Company may, from time to time, form or acquire further Subsidiaries, subject to the provisions of this MOI, the PFMA and the Enabling Legislation.

29 PROTECTION OF WHISTLE-BLOWERS

The Company shall establish and maintain a system to receive disclosures contemplated in section 159 of the Companies Act.

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REPUBLIC OF SOUTH AFRICA

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Received by Gugu
03/07/2015
Office of Chairman

Dr Ben Ngubane
Acting Chairperson
Eskom Holdings SOC Ltd
P.O. Box 1091
Johannesburg
2000

Tel: 011 800 2030
Fax: 011 800 5803

Dear Dr Ngubane

Finalisation of 2015/16 Eskom's Shareholder Compact

The above matter refers.

I hereby grant approval of the inclusion of the Key Performance Indicators of the Business Productivity Programme (BPP) savings and first synchronisation of Ingula Unit 3 in the final version of the 2015/16 Shareholder Compact due to significance of the programme in improving Eskom's operations and fostering energy security. A signed copy of the Shareholder Compact is attached for your approval and signature, following which a copy should be returned to the Department.

The Department will be engaging with Eskom to negotiate the 2016/17 Shareholder Compact to reflect the Company's current situation.

I trust that you will find the above in order.

Yours sincerely


MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 01/07/2015

Cc: Mr Brian Molefe
Acting Eskom CEO



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA



**SHAREHOLDER COMPACT
("PERFORMANCE AGREEMENT")**

Entered into by and between
THE MINISTER OF PUBLIC ENTERPRISES
AND
ESKOM HOLDINGS SOC LTD

2015/16 FINANCIAL YEAR

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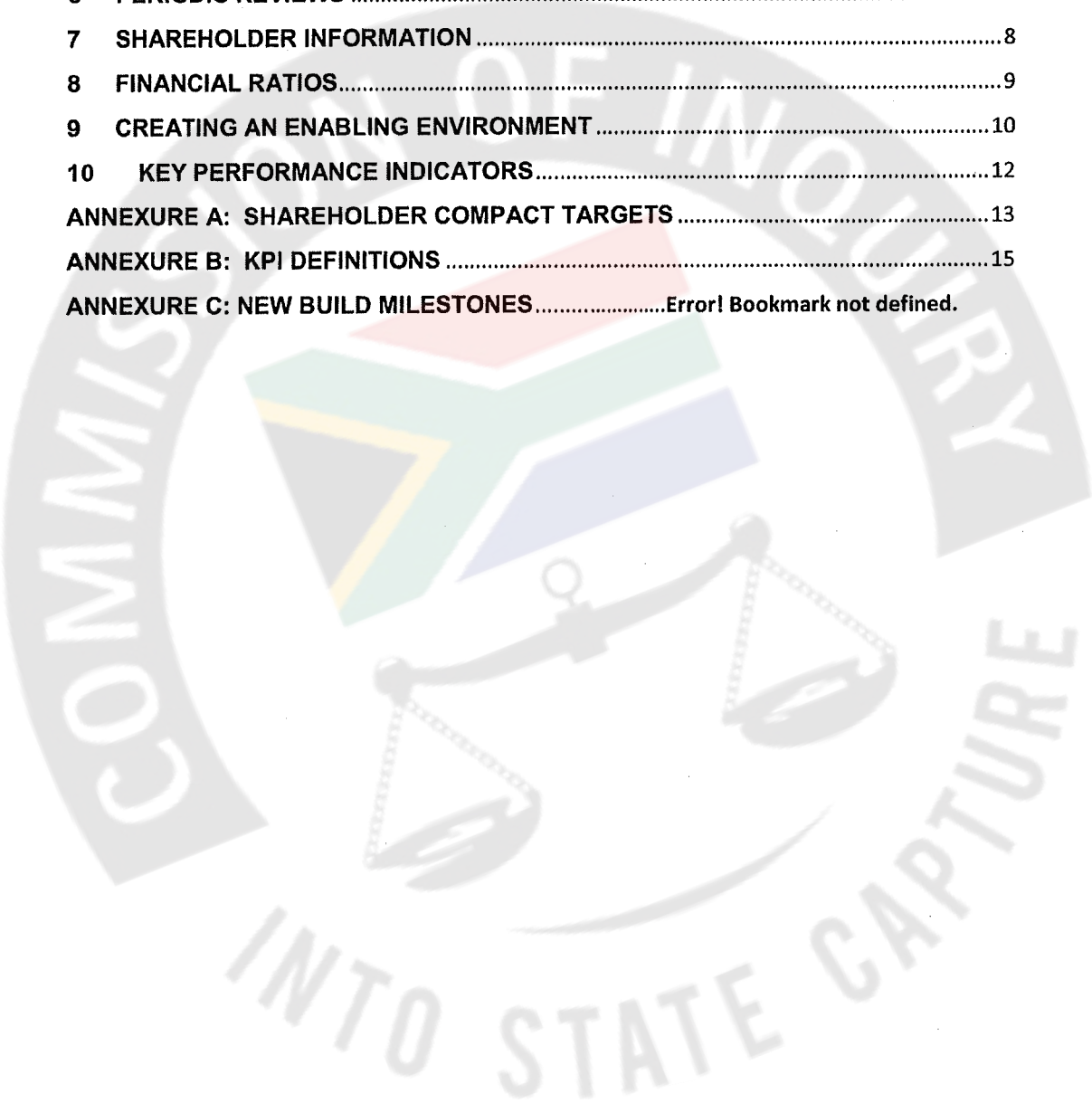
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SHAREHOLDER COMPACT

1 INTRODUCTION

- 1.1 The Shareholder Compact is an agreement entered into by the Minister of Public Enterprises and the Eskom Board of Directors, herein jointly referred to as "parties".
- 1.2 Government (and, thus, the Minister: Department of Public Enterprises, as representative of government) cannot function as a passive shareholder, especially in wholly owned state-owned companies ("SOCs") such as Eskom, which, in addition to their commercial imperatives, also pursue a public mandate and policy objectives. It is recognised that failure by the state to define clear objectives for performance measures and targets would leave SOCs open to various challenges, resulting in difficulties for the minister in measuring, monitoring, and evaluating the financial and operational performance of the SOCs.
- 1.3 It is, therefore, important that an effective leadership and governance framework be in place to ensure clarity of roles between the minister and the SOC, alignment of strategy, a clear mandate and performance targets for Eskom, and an effective monitoring process.

2 LEADERSHIP AND GOVERNANCE FRAMEWORK

- 2.1 The governance framework that regulates the relationship between the minister and Eskom includes the following:
- 2.1.1 The Strategic Intent Statement, which sets out the shareholder's expectation of Eskom for the reporting period 2014/15 to 2016/17 and confirms Eskom's mandate and strategic objectives. The strategic objectives with which this shareholder compact aligns are:
- achieving and ensuring security and reliability of electricity supply;
 - achieving and ensuring business and financial sustainability;
 - reducing Eskom's carbon footprint;
 - supporting and aligning with government's strategic initiatives; and
 - driving industrialisation and transformation of the economy and procurement landscape.



Key focus areas:

- Delivery of the build programme
- Improving performance of electricity generation plant
- Financial sustainability
- Management of assets in accordance with industry acceptable frameworks
- Management of the electricity system so that supply and demand are balanced
- Focusing on the customer
- Improvement of operations and significantly reducing costs, that is, efficiency and productivity
- Development of a compliance roadmap, including compliance with air emission licences
- Implementing road to rail
- Building strong skills

2.1.2 This shareholder compact, which sets out annual key performance indicators and key performance measures in support of the strategic intent and, to the extent necessary, seeks to clarify the objectives of Eskom in the context of the Strategic Intent Statement.

2.1.3 The Corporate Plan, which gives effect to the Strategic Intent Statement and Shareholder Compact

2.1.4 The Memorandum of Incorporation (MOI), formerly the Memorandum and Articles of Association, which sets out certain powers of the shareholder, the Board, and Eskom

2.1.5 The legislative and policy framework, including the Companies Act, 2008 and the Public Finance Management Act, 1999 (PFMA), and codes of good practice such as the King Code and Report on Corporate Governance in South Africa and the Protocol on Corporate Governance for the Public Sector

2.2 If there is any conflict or inconsistency among the provisions of the above, the parties shall take whatever steps may be necessary to amend the governance documents to remove the conflict or inconsistency. For so long as the conflict exists on governance documents, the MOI shall take precedence and, thereafter, the Strategic Intent Statement.



3 PURPOSE OF THE SHAREHOLDER COMPACT

3.1 The purpose of this shareholder compact is:

- 3.1.1 to clarify and confirm the strategic objectives to be achieved by Eskom during the reporting period; and
- 3.1.2 to confirm the key performance areas ("KPAs") and key performance indicators ("KPIs") that measure Eskom's performance during the period of the Shareholder Compact.

3.2 The essence of the Shareholder Compact is, among other things, aimed at developing means by which to make trade-offs between Eskom's financial and operational objectives, while fulfilling the policy/statutory mandate. In addition, it is intended by both parties that the Shareholder Compact should be used to clarify Eskom's objectives in order to adhere to its mandate as contained in the Strategic Intent Statement and governance framework.

4 THE SCOPE OF PERFORMANCE MONITORING

The parties acknowledge that there will be a corporate plan in support of this shareholder compact and that the quarterly shareholder reports will include feedback regarding progress on the implementation of the plan. The Corporate Plan will include targets that are agreed to by both Eskom and the Department of Public Enterprises. Not all the targets will necessarily be reflected in the KPI table of the Shareholder Compact as depicted in Annexure A: Shareholder Compact KPI table.

It is recognised that the KPI table will be used for performance reporting in the annual financial statements (AFS). Notwithstanding the aforementioned, the parties agree that the following performance areas are important:

4.1 Policy, regulatory, legal, and governance targets

Eskom must ensure that it aligns with all policy, regulatory, legal, and governance targets. These include, but are not limited to, the following:

4.1.1 Creating an environment for the participation of IPPs



- 4.1.2 Compliance with all government policies and regulatory and licence requirements with regard to all operations, including, but not limited to, the achievement of Nersa targets, environmental compliance, for example, water usage, a gas emissions strategy, and compliance with nuclear licensing requirements
- 4.1.3 Compliance with all relevant governance legislation
- 4.1.4 Achieving B-BBEE contributor status of equal to, or better than, Level 4
- 4.1.5 Compliance with provisions/conditions of the loan agreements

4.2 Financial targets

- 4.2.1 Achievement of agreed financial covenants
- 4.2.2 Completion of capital expenditure programme roll-out within approved project budgets
- 4.2.3 Achievement of cost savings agreed to in line with increased efficiency opportunities
- 4.2.4 Utilisation of the capital expenditure budget as agreed
- 4.2.5 Achievement of predetermined investment return from all subsidiaries as per business plans of subsidiaries
- 4.2.6 Eskom must ensure consistent adherence to, and application of, debtors' collection and creditors' payment targets (policies) across all its customer segments.

4.3 Operational targets

Eskom shall ensure effective and efficient operations, including but not limited to, the achievement of the following:

- 4.3.1 Achievement of the operations and maintenance programme targets
- 4.3.2 Achievement of the capital expenditure programme milestones within the approved schedules
- 4.3.3 Achievement of minimum contracted primary energy supplies of the requisite grading (qualities) to be agreed
- 4.3.4 Achievement and maintenance of minimum safety targets



- 4.3.5 The DPE and Eskom to agree on the implementation of the monitoring and reporting process of all PFMA section 54 applications, including approved and pipeline projects.

4.4 Strategic targets

- 4.4.1 Achievement of human capital development, economic impact, and universal access to electricity
- 4.4.2 Ensuring the alignment of Eskom's SADC Strategy with that of the government
- 4.4.3 Development of a strategy for reducing the environmental footprint and pursuing low-carbon growth opportunities
- 4.4.4 Implementation of the Road-to-rail Migration Plan within the agreed timelines
- 4.4.5 Implementation of provincial flagship projects to be agreed between Eskom and the DPE
- 4.4.6 Building and maintaining satisfactory levels of stakeholder relationships

All of the above will be measured in terms of the achievement of the Shareholder Compact table targets and the implementation of the Corporate Plan.

5 DURATION AND ENFORCEABILITY

- 5.1 The Shareholder Compact shall remain in full force and effect until renegotiated, provided that the parties shall, at least once per annum, consider the renegotiation of the Shareholder Compact. The renegotiation of the Shareholder Compact may be initiated by any one of the parties by giving written notice, including the reasons for such renegotiation. On receipt of such notice by the other party, the minister and the Eskom Board shall commence negotiations.
- 5.2 **Subsidiaries:** as required by the PFMA and the Companies Act, Eskom must ensure the following with regard to its subsidiaries:
- 5.2.1 That control of the affairs of any subsidiary is exercised by a majority of the directors of that subsidiary.



5.2.2 That the majority of the directors of every subsidiary of Eskom are also directors or employees of Eskom who have been approved by the Eskom Board for appointment as directors of the subsidiary.

6 PERIODIC REVIEWS

- 6.1 The Shareholder Compact will be reviewed on an as-and-when-required basis on the back of certain assumptions regarding the performance of Eskom and funding. The Shareholder Compact is being developed in an environment of significant uncertainty that ranges from security of supply to a funding shortfall.
- 6.2 Shareholder Compact targets shall be reviewed annually, such that the Corporate Business Plan is developed to achieve the objectives of the Shareholder Compact.
- 6.3 The same principle shall apply to Eskom's subsidiaries, and to this end, the Board shall ensure that Eskom:
- 6.3.1 reviews the mandate of all its subsidiaries; and
 - 6.3.2 concludes performance agreements with all its subsidiaries, which agreements are comprehensively and consistently compliant with the spirit, rights, obligations, and undertakings stipulated in this shareholder compact.

7 SHAREHOLDER INFORMATION

- 7.1 Eskom will provide any information required by the minister and/or the DPE to enable the minister to assess the investment value in Eskom.
- 7.2 In addition, the following information will be submitted to the minister:
- 7.2.1 The financial statements in accordance with section 55 of the PFMA, read with Regulation 28.1 of the Treasury Regulations. This report will include a report by the Board on the disclosure of remuneration of all Board members, the Chief Executive Officer, and the Chief Financial Officer as detailed in Treasury Regulation 18.1.
 - 7.2.2 The annual report in accordance with section 55 of the PFMA, read with Regulation 28.2 of the Treasury Regulations. This report will include any material losses through conduct, omission, and any irregular, fruitless, and wasteful expenditure.
 - 7.2.3 Eskom's strategic objectives and outcomes as agreed on between the parties



- 7.2.4 Statements of financial performance, financial position, and cash flows, as well as details such as are necessary to allow an informed assessment of Eskom's performance during the reporting period
- 7.2.5 Quarterly reports comprising summarised financial statements, together with a brief commentary on key events for the previous quarter and prospective highlights for the succeeding quarter
- 7.2.6 Any major transaction(s) requiring the minister's approval in accordance with section 54 of the PFMA and the thresholds stated in the Significance and Materiality Framework as revised between Eskom and the department
- 7.2.7 A draft shareholder compact, together with a summary of Eskom's Corporate Plan, for discussion prior to the start of the financial year to which these documents relate

8 FINANCIAL RATIOS

Consideration must be given to the following:

- 8.1 Eskom's goal of a sustainable financial structure, having regard to the risks from predicted short- and medium-term economic, market, and tariff conditions and projected financial structure, performance, and position
- 8.2 Foreign currency
 - 8.2.1 The financing of the capacity expansion programme (up to Kusile) will come from three sources – shareholder equity and loans, external debt (both local and foreign institutions), and revenue. Eskom will, therefore, approach various debt markets such as international bonds, export credit agencies, and multilateral loan financiers to maximise debt capacity.
 - 8.2.2 In line with the PFMA, as well as the Reserve Bank regulations, foreign borrowing shall be subject to shareholder, National Treasury, and Reserve Bank approval requirements. Transactions denominated in a foreign currency shall be converted at the exchange rate at the date of the transaction. Foreign currency monetary assets and liabilities at the reporting date shall also be translated at the exchange rate prevailing at the reporting date. (IFRS will be applied to the financial statements.)



9 CREATING AN ENABLING ENVIRONMENT

The parties acknowledge that Eskom will not be able to achieve its objectives without the support of the minister. In particular, the minister will need to assist in ensuring that the policy and regulatory framework for the electricity supply industry enables Eskom to pursue its strategic objectives as set out in this.

It is also crucial that the developments in the electricity industry are aligned with economic development and mining, water, land, and transport infrastructure. In terms of national infrastructure, it is crucial that adequate rail and road networks should be established and maintained in a manner that would reduce the logistical burden on Eskom and allow the company to focus on its core operations. Furthermore, the timely establishment of water supply infrastructure and its maintenance, combined with national water management programmes, are required for the commissioning and operation of new and existing generation plant.

In this regard, the assistance of the minister is required regarding the following key issues:

- 9.1 Security of supply is still a key concern, and managing a tight system calls for a collaborative effort from all stakeholders to keep the lights on. Support will be required from the minister and the department to get decisions on supply and demand levers to ensure security of supply.
- 9.2 Timeous approval of PFMA applications to ensure smooth business performance and continuity
- 9.3 South Africa needs a vision for the industry, which should underpin the Integrated Resource Plan (IRP) and be integrated with strategies for economic, industrial, and infrastructure development.
- 9.4 There is a need to finalise the allocation of projects and the funding model for the IRP as soon as possible and to ensure its effective integration.
- 9.5 Given the capacity challenges, the restructuring of the industry should be addressed in a manner that would not compromise security of supply. There is a need for coherence on the long-term end state of the industry and the migration path to achieve that end state, so as to ensure a sustainable restructuring process.
- 9.6 Electricity prices will have to migrate to cost-reflective levels. There is a need to migrate to appropriate levels of pricing, and the only issue is how best to achieve a migration path that would take into account the economy, climate change imperatives, protection of the poor, and the sustainability of the industry. It is crucial



that a clear, stable, and predictable price path should be provided for electricity to ensure confidence in the economy and to attract investment.

9.7 Although Eskom has a developmental role to play, there is a need for alignment with all stakeholders regarding Eskom's role.

9.8 Facilitation of private sector participation:

The introduction of IPPs remains a priority for government and is seen as critical for the sustainability of the energy industry. Government has indicated the need for mechanisms to allow IPPs to participate in the electricity supply sector, and Eskom is committed to supporting government in this regard.

9.9 Classification of coal and uranium as strategic resources:

The parties shall work together to ensure that appropriate coal and uranium resources are made available to ensure that security of supply of electricity is not compromised into the future.

9.10 Adequate water resources for electricity power generation:

The parties shall collaborate to ensure that adequate water resources are available for electricity power generation.

9.11 Engagement on expropriation and acquisition of land (servitudes):

The parties shall work together to ensure that the legislation for spatial planning and land use shall not onerously impact planning and land use for electricity-related infrastructure in order to enable Eskom's mandate to be carried out effectively and efficiently. (Engagement on a spatial planning land use management bill has already commenced.)

9.12 Furthermore, the parties agree on the following approach to enable effective delivery of the intent of this shareholder compact:

9.12.1 Transformation

- The parties will work together to find solutions for government to meet universal access targets.
- Eskom shall continue to ensure that its capacity expansion programme benefits local infrastructure development in areas around its sites. Eskom shall use its procurement processes to promote investment in South African industry through sourcing from local suppliers and insisting on significant local content inputs for its projects.
- The parties recognise national challenges, including unemployment, a need for skills development, poverty, inequality, and a need for deeper transformation within the company. In response, Eskom has initiated the Transformation Initiative



to facilitate a step-change in the developmental and transformative role played by the organisation. The programme leverages the infrastructure programme and the company's procurement spend and builds on other existing initiatives to deepen transformation within the company and contribute towards national objectives. To this end, the Eskom's transformation drive focuses on the following areas:

- Realignment of corporate social responsibility
- Internal transformation and skills development
- Supplier development and localisation
- Organisational culture

9.12.2 Eskom's build programme

Eskom shall ensure renewed focus on delivering on capacity expansion projects – on time, within the budget, and of the right quality.

10 KEY PERFORMANCE INDICATORS

In pursuing its mandate as set out in the Strategic Intent Statement and the governance framework referred to above, the parties agree on the key performance indicators and measures set out in Annexure A hereto for the period specified in it.

Eskom's performance will be evaluated against the Shareholder Compact as a whole, including these key performance indicators, and the minister will be provided with regular reports on the progress towards achieving these targets.

The table below sets out the key performance areas (KPAs) and key performance indicators (KPIs) to be monitored by Eskom. These KPIs will constitute the Shareholder Compact targets until a new compact has been signed.

These may change prior to the agreement of the following year's KPI package, if appropriate, given actual results achieved and any changes in business circumstances or strategy over the coming financial year.



ANNEXURE A: SHAREHOLDER COMPACT TARGETS

Key performance Areas	Key Performance Indicator	Unit	2015/16 Targets
Focus on Safety	Lost Time Injury Rate (Employee) (LTIR)	Index	0.31
Sustainable Asset Base while ensuring security of supply	Internal Energy Efficiency	GWh	1.2
Put Customer at the Centre	Eskom KeyCare	%	102
	Enhanced MaxiCare	%	93.7
Improve Operations	Unplanned Capability Loss Factor (UCLF)	%	15.4
	Energy Availability Factor (EAF)	%	74.1
	System Average Interruption Duration Index (SAIDI)	Hours	41
	System Average Interruption Frequency Index (SAIFI)	Number	21
	System Minutes <1	Minutes	3.8
Deliver capital expansion	Generation capacity installed and commissioned (Commercial Operation)	MW	794
	Ingula unit 3 synchronisation	-	3rd quarter 2015
	Transmission lines installed	Km	355.8
	Transmission transformers capacity installed and commissioned	MVA	1625
Reduce environmental footprint in existing fleet	Relative Particulate Emissions (Kg/MWh sent out)	Kg/MWh	0.35
	Water Usage – Litres per kWh sent out	L/kWh	1.39
Implementing coal haulage and the road-to-rail migration plan	Migration of Coal Delivery Volume from Road to Rail	Mt	13.6
Ensure Financial Sustainability	Operating Cost per MWh (excluding Depreciation)	R/MWh	651.32
	Interest Cover	Ratio	0.2
	Debt Equity Ratio	Ratio	2.97
	Free Funds From Operations As Percentage of Gross Debt	%	0.71
	BPP in saving	RM	13.4 billion
Human Capital	Training Spend as % of Gross Manpower Costs	%	5
	Learners Throughput or Qualifying	Number	1200
	Disability Equity in Total Workforce	%	2.5
	Racial Equity in Senior Management	%	63
	Gender Equity in Senior Management	%	32
	Racial Equity in Professional and Middle Management	%	73
	Gender Equity in Professional and Middle Management	%	38

Economic Impact	Percentage of Local Content Contracted in New Build		%	65
	Percentage of Local sourcing in procurement (Eskom wide)		%	65
	Percentage of B-BBEE attributable spend against TMPS		%	80
	Percentage of BO attributable spend against TMPS		%	40
	Percentage of BWO attributable spend against TMPS		%	12
	Percentage of BYO attributable spend against TMPS		%	2
	Percentage of BPLwD attributable spend against TMPS		%	1
	Percentage of QSE attributable spend against TMPS		%	15
	Percentage of EME attributable spend against TMPS		%	15
Technology Transfer	Acquisition of Intellectual Property		Rm	R40m
	Skills Development*		Number	20 people
	Job creation*		Number	30 people

* The skills development and job creation targets are linked only to the Technology Transfer KPI.



ANNEXURE B: KPI DEFINITIONS

The Shareholder Compact KPI definitions are as per process control manual (PCM) definitions used for monthly and quarterly business performance reporting.

Key performance Areas	Key Performance Indicator	Unit	Definition
Focus on Safety	Lost Time Injury Rate (Employee) (LTIR)	Index	The Employee Lost Time Injury Rate (LTIR) is a proportional representation of the occurrence of work-related Lost Time Injuries (LTI). It reflects a rough estimate of the percentage of the workforce that suffered an injury over a given period of time. The measure includes Occupational Diseases (OD) and work-related Fatalities (employee), but excludes all non-work-related injuries or incidents.
Put Customer at the Centre	Eskom KeyCare	%	EH KeyCare measures the perceptions of Eskom's national key customers regarding specific aspects of Eskom's service.
	Enhanced MaxiCare	%	The Enhanced MaxiCare/ PreCare Total Quality Index (TQI) measures the perceived satisfaction of Eskom Distribution customers. The TQI is a global indicator of quality of service delivery and is used as the single Key Performance Indicator
Improve Operations	Unplanned Capability Loss Factor (UCLF)	%	The purpose of this indicator is to monitor and reflect a unit's / station / industry's unplanned unavailability energy and consist of energy losses due to unplanned equipment failures or other conditions. This indicator reflects the effectiveness of plant programs and practices in maintaining and operating the availability of plant and systems for safe electricity generation. Unplanned capability loss factor (UCLF) is derived from the unplanned unavailable energy which is effectively energy that was not produced during the period due to unplanned plant unavailability (unplanned shutdowns, outage extensions, or load reductions due to causes under plant management control).
	Energy Availability Factor (EAF)	%	The purpose of this indicator is to monitor and reflect a unit's / station / industry's availability to produce energy but considers the plant as a total entity and includes all unit related ancillary plant and non-plant related matters affecting the availability to produce energy. This indicator reflects the effectiveness of plant and grid related practices to maximize plant availability, and provides an overall indication of how well plants and associated up and down stream logistical processes are operated and maintained. Energy Availability Factor (EAF) is the ratio of available energy over the nominal energy and refers to the energy that could have been produced at available capacity for the reference period over the nominal energy for the same period.
	System Average Interruption Duration Index (SAIDI)	Hours	The SAIDI of a network indicates the average duration of a sustained interruption the connected customer would experience per annum.
	System Average Interruption Frequency Index (SAIFI)	Number	SAIFI is the system average interruption frequency index which indicates how often the average customer experiences a sustained interruption during a 12 month period.
	System Minutes <1	Minutes	This measure is the sum of System Minutes lost for interruptions other than Major Incidents. Only Interruptions less than 1 System Minute and interruptions caused by Transmission are counted. Interruptions less than or equal to 22kV are not included.

Key performance Areas	Key Performance Indicator	Unit	Definition
	Generation capacity installed and commissioned	MW	Generation (Gx) capacity (measured in MW's) installed and commissioned on the Eskom network.
	Transmission lines installed	Km	The amount of transmission (Tx) lines (measured in Km) installed on the Eskom network.
	Transmission transformers capacity installed and commissioned	MVA	The amount of transmission transformer capacity (measured in MVA) installed and commissioned on the Eskom network.
Reduce environmental footprint in existing fleet	Relative Particulate Emissions (Kg/MWh sent out)	Kg/MWh	Mass of particulates (ash) emitted from the stacks of all Eskom's coal-fired power stations per unit of electricity generated, measured in kilograms per Megawatt hour sent out or kg/MWhSO (excluding power stations not in official operation).
	Water Usage – Litres per kWh sent out	L/kWh	The amount of water (litres) used per unit of power (kWh) sent out by power stations, measured in litres per kilowatt hour sent out or l/USO (excluding power stations not in commercial operation).
Implementing coal haulage and the road-to-rail migration plan	Migration of Coal Delivery Volume from Road to Rail	Mt	The road to rail migration calculates the number, in million tons, of coal that has been migrated from road transport to rail transport. Migrating coal transportation from road to rail, will improve safety, reduce environmental impact and scale back road damage.
Ensure Financial Sustainability	Operating Cost per MWh (excluding Depreciation)	R/MWh	Measuring the operating cost of each unit of electricity sold
	Interest Cover	Ratio	Ratio that is used to assess a company's financial durability by examining whether it is at least profitable enough to pay off its interest expenses.
	Debt Equity Ratio	Ratio	The proportion of equity and debt the company is using to finance its assets
	Free Funds From Operations As Percentage of Gross Debt	%	The performance measure refers to free cash generated from the operating activities of Eskom.
	Business Productivity Programme(BPP) Savings	RM	Eskom's programme that aims to deliver on business re-engineering opportunities and strategic decisions to contribute to closing the gap created by the 8% NERSA determination.
Human Capital	Training Spend as % of Gross Manpower Costs	%	Training and development expenditure within Eskom over a period of time. This is then turned into a Percentage of the gross employee benefit costs to illustrate what the proportion of spending is on training compared to work force salary expenditure.
	Learners Throughput or Qualifying	Number	Throughput is an Eskom qualified learner Engineers; Technicians and Artisans that have completed their final year of studies and are in possession of a Qualification from an academic institution, or confirmation from an academic institution that they have met the requirements to be awarded an academic qualification. This is measured through the total number of Learners that have successfully completed their final year at an academic institution.
	Disability Equity in Total Workforce	%	Disability refers to an employee within the permanent workforce with any long term or recurring mental or physical impairment that substantially limits entry into and advancement in employment. (As per DoL Employment Equity Act).
	Racial Equity in Senior Management	%	Reporting on Employment Equity as per the DoL Employment Equity Act, Act 55 of 1998, regulations published in Government Gazette No. 32393 as published on 14 July 2009.E-bands, males and females in the ACI race groups (excl Foreign Nationals)Actual ACI / Headcount (Excl FN) * 100


Key performance Areas	Key Performance Indicator	Unit	Definition
	Gender Equity in Senior Management	%	Reporting on Employment Equity as per the DoL Employment Equity Act, Act 55 of 1998, regulations published in Government Gazette No. 32393 as published on 14 July 2009.E-bands, all females in the African, Coloured, Indian and White race groups (excl Foreign Nationals).• Actual Females / Headcount (Excl FN) * 100
	Racial Equity in Professional and Middle Management	%	Reporting on Employment Equity as per the DoL Employment Equity Act, Act 55 of 1998, regulations published in Government Gazette No. 32393 as published on 14 July 2009.Task grades 14 – 18, males and Females in the ACI race groups (excl Foreign Nationals).• Actual ACI / Headcount (Excl FN) * 100
	Gender Equity in Professional and Middle Management	%	Reporting on Employment Equity as per the DoL Employment Equity Act, Act 55 of 1998, regulations published in Government Gazette No. 32393 as published on 14 July 2009.Task grades 14 – 18, all females in the African, Coloured, Indian and White race groups (excl Foreign Nationals).• Actual Females / Headcount (Excl FN) * 100
Economic Impact	Percentage of Local Content Contracted in New Build	%	Percentage of the total local content contracted against the total contract value in the new build projects
	Percentage of Local sourcing in procurement (Eskom wide)	%	Percentage of the total local content contracted against the total contract value across all projects
	Percentage of B-BBEE attributable spend against TMPS	%	Percentage of the attributable spend on Broad-Based Black Economic Empowerment companies, against the Total Measurable Procurement Spend
	Percentage of BYO attributable spend against TMPS	%	Percentage of the attributable spend on Black Youth Owned (BYO) companies, against the Total Measurable Procurement Spend
	Percentage of BO attributable spend against TMPS	%	Percentage of the attributable spend on Black Owned (BO) companies, against the Total Measurable Procurement Spend
	Percentage of BWO attributable spend against TMPS	%	Percentage of the attributable spend on Black Women Owned (BWO) companies, against the Total Measurable Procurement
	Percentage of BPLwD attributable spend against TMPS	%	Percentage of the attributable spend on companies owned by Black People Living with Disability (BPLwD), against the Total Measurable Procurement Spend
	Percentage of QSE attributable spend against TMPS	%	Percentage of the attributable spend on Qualifying Small Enterprises (QSE), against the Total Measurable Procurement Spend
	Technology transfer (acquisition of Intellectual Property)	Rm	Rand Value of technology transfer as a percentage of total procurement spend associated with acquisition of intellectual property.
	Technology transfer (skills development)	Number	Rand Value of technology transfer as a percentage of total procurement spend associated with skills transfer.
	Technology transfer (job creation)	Number	Rand Value of technology transfer as a percentage of total procurement spends. Associated with job creating

Table 3: NEW BUILD MILESTONES as at 01 September 2014

	NEW BUILD MILESTONES	Planned Finish Date
Medupi	Unit 6 Commissioning & Capability Test	3-May-15
	Unit 6 72 Hr Run at MCR 3	6-May-15
	Unit 6 30 Day Reliability Run	5-Jun-15
Ingula	Completion of the waterways to enable watering up to commence Tunnels 3 /4	30-Sep-15
	Unit 3 (First Unit) Ready for Hand Over	11-Jan-16
	Completion of the waterways to enable watering up to commence Tunnels 2 /1	8-Oct-15
	Unit 4 (2nd unit) ready for Hand over	10-Mar-16
	Unit 2 (3rd unit) ready for Hand over	19-May-16

Signed: _____
MINISTER
SHAREHOLDER REPRESENTATIVE

Signed: _____
CHAIRPERSON
ESKOM HOLDINGS SOC LTD

	Policy	
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1. Introduction

The Eskom Delegation of Authority Framework (Framework) is codified in two parts, namely the Eskom Delegation of Authority Policy (Principles) and Annexure A the Delegation of Authority (Delegation). The Policy sets out the principles and conditions upon which the Delegation is based, whereas the Delegation records the nature, extent and financial limits of the authorities delegated by the Eskom board of directors ("the Board") to Delegees. For ease of reference, the principles and specific conditions are also set out in the Delegation.

2. Policy Content

2.1 Policy Statement

This policy sets out the DOA powers and authorities delegated by the Board. It prescribes the scope, conditions and parameters within which the powers can be exercised by executives and all employees.

The powers of the Eskom Board shall be exercised subject to the provisions of –

- the Memorandum and Articles of Association ("Articles");
- the Shareholder Compact;
- the Companies Act No. 71 of 2008 ("Companies Act");
- the Public Finance Management Act No. 1 of 1999 (PFMA); and
- any other legislation applicable to Eskom.

The Board hereby delegates the powers and authorities as set out, subject to the principles and conditions set out herein, which may be amended from time to time and the policies and guidelines that may be applicable

2.2 Principles and Conditions of the Delegation of Authority

2.2.1 Shareholder approval, consultation and reporting

2.2.1.1 The Companies Act and PFMA set out the matters that require shareholder approval. Inter alia, the following matters shall require shareholder approval:

- a) Entering into any transaction or the purchasing or disposing of any asset other than in the ordinary, regular and normal course of business;
- b) making a decision falling beyond the scope of the mandate and authority of Eskom;
- c) the sale or alienation of the company or the whole or a substantial part of the assets of the company;
- d) the appointment of directors to the Board; appointment of the Chief Executive or Chairman;
- e) the policy and framework for the remuneration of executive and non-executive directors;
- f) the issuing or approval of the transfer of Eskom shares;
- g) an alteration of share capital, the allotment or issue of shares, or share buy-backs;
- h) certain aspects of the business plan, namely:
 - strategic intent, and
 - key performance indicators for the shareholder compact.

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- i) matters provided for in section 54(2) of the PFMA;
- j) the provision of financial assistance to any party as contemplated in sections 44 and 45 of the Companies Act.

2.2.1.2 In terms of the Public Auditors (Audit or Auditors) Act 25 of 2004, an auditor may not be discharged prior to the expiry of that auditor's term of appointment except with the consent of the executive authority (shareholder) and the Auditor-General.

2.2.1.3 The shareholder shall be consulted, inter alia, with regard to the following:

- a) the development of an appropriate dividend policy and framework; and
- b) the appointment of directors to the boards of Main Subsidiaries.

2.2.1.4 The shareholder shall be provided with reports on the following matters:

- a) a projection of revenue, expenditure and borrowings for the financial year in the prescribed format;
- b) a corporate plan, in the prescribed format, covering the affairs of Eskom for the following three financial years and, if it has subsidiaries, also the affairs of the subsidiaries; and
- c) quarterly reports on the performance of Eskom.

2.2.1.5 In terms of section 54(1) of the PFMA, the Board must submit to the relevant treasury or the Auditor-General such information, returns, documents, explanations and motivations as prescribed or as may be required.

2.2.1.6 In terms of section 55 of the PFMA, the Board must –

- a) submit financial statements within two months after the end of the financial year to the auditors for auditing;
- b) submit within five months of the end of the financial year to the shareholder, relevant treasury and the Auditor-General –
 - I. an annual report on its activities;
 - II. the financial statements for that financial year; and
 - III. the report of the auditors.

2.2.1.7 In terms of section 66 of the PFMA, Eskom as a public entity is authorised to borrow money and –

- a) must annually submit to the Minister of Finance a borrowing programme for the year;
- b) may not borrow money in a foreign currency above a prescribed limit, and
- c) may only exercise these powers through the board unless specifically authorised by the Minister of Finance to delegate such powers.

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2.2.2 Powers and authorities of the Board of Directors

2.2.2.1 The Board is empowered to exercise all powers and authorities to lead, control and ensure the effective management of Eskom and to delegate any or all of such powers to an official(s), employee(s), any other person and/or to a committee(s) of Eskom, subject to the provisions set out herein.

2.2.2.2 The approval of the Board shall be obtained for all matters that are beyond the authority delegated.

2.2.2.3 The Board shall comply with its obligations in terms of the company laws of the Republic of South Africa and the PFMA and in particular with the fiduciary duties and the general responsibilities of the Board as set out in the PFMA.

2.2.2.4 The following matters, inter alia, are specifically reserved for approval by the Board:

- a) the corporate/business plan (including the financial plan), and budgets.
- b) performance objectives and the strategic direction for Eskom.
- c) decisions regarding additional or new generation capacity, or the recommissioning of mothballed plants.
- d) annual reports, integrated reports and financial statements.
- e) key policies that are not delegated to a specific Board committee, and in particular the –
 - I. investment policy; and
 - II. risk management policy.
- f) appointment of auditors in the event that the Auditor-General does not perform the audit (Board Audit and Risk Committee function).
- g) financial lease transactions as contemplated in the PFMA.
- h) succession planning for executives.
- i) mechanisms to monitor the performance of executives.
- j) recommendations regarding matters requiring shareholder approval.
- k) the restructuring of Eskom (this refers to any restructuring that results or could result in a change in the ownership of significant assets or a significant business, the establishment of a new entity, the transfer of significant assets out of Eskom, or any internal planning or preparation that is initiated as a first step towards the implementation of initiatives in this regard).
- l) any other matter that the Board may from time to time reserve for decision/approval by the Board.

2.2.2.5 The powers and/or authorities delegated have to be exercised subject to the terms and conditions set out hereunder and the delegation of such authorities –

- a) does not divest the Board of its accountability relating to the exercising of the delegated authority or the performance of the assigned duty;
- b) may be given to a specific individual or to the holder of a specific position or to a committee;
- c) is subject to the statutory and legal limitations recorded herein, and such other lawful limitations as may be applicable to Eskom from time to time;
- d) is subject to any limitations, conditions, policies and/or directives that the Board, or executive management may from time to time prescribe; and
- e) may at any time be revoked or varied by the Board.

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2.2.2.6 The Board may confirm, vary or revoke any decision taken by a Delegee as a result of a delegation in terms hereof, subject to any rights that may have become vested as a consequence of the decision.

2.2.2.7 The Board shall ensure that notwithstanding the delegation of its powers, it reviews the key policies, including investment, procurement and risk management, and the control policies and systems on a regular basis.

2.2.3 General conditions

2.2.3.1 Unless otherwise specified, the Delegees referred to herein are hereby authorised, in writing –

- a) to delegate further any powers and authority delegated to such Delegee to an officer, employee, any person or committee and to allow the sub-delegation of such powers in exceptional cases only once and where necessary, in terms of the needs of the business; and
- b) to impose any limits or conditions in such Further Delegation to ensure good governance and controls with regard to the exercising of such powers.

2.2.3.2 The Chief Executive or EXCO may delegate such authorities to another person or committee in terms hereof, even if such powers were not delegated to such other Delegee by the Board in terms of the Delegation.

2.2.3.3 The Chief Executive and EXCO shall be responsible for the management of all delegations and authorisations granted in terms hereof to all Executives and other employees and shall ensure that Delegees act –

- lawfully;
- within the scope of their powers and authorisation, and in terms of the rules, policies directives and procedures

2.2.3.4 Any power not expressly delegated by the Board shall remain vested in the Board, unless such power can be regarded as necessary or incidental to a power that is delegated.

2.2.3.5 It is hereby recorded that the Chief Executive is, in general terms and subject to what is set out herein, delegated with the full authority to manage and run the Eskom's business; and

- a) The provisions hereof shall not be construed as in any way limiting the authority of the Chief Executive, subject to the overall limitations set out herein, to manage the day-to-day operations of the business in accordance with his/her performance compact.
- b) In particular, the Chief Executive is authorised to prescribe the manner in which authority is exercised by Delegees, and is entitled to act in any matter even where authority is delegated to another Delegee, and to revoke or amend any Delegation granted to any Delegee, provided that any such amendment shall not grant to any Delegee any higher authority than that granted by the Board for that level of Delegee. The authority of the Chief Executive as set out in this clause extends to EXCO subcommittees but does not extend to the Board Committees.
- c) The Chief Executive shall be entitled to implement or give effect to a Board mandate in the manner he deems most effective and efficient for Eskom, and he shall not require Board approval for each aspect of a transaction or the structuring of transactions, falling within a Board mandate.

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2.2.3.6 Where power is delegated to more than one Delegee, it shall be on the basis of a different functional responsibility and financial limits.

2.2.3.7 In keeping with the approval of the Minister of Finance in terms of section 66(6) of the PFMA, the Further Delegation regarding Eskom's Treasury activities, as set out in the Delegation, is hereby approved.

2.2.3.8 Absence of the Chief Executive, Finance Director, Group Executive/Divisional Executive or other Delegee.

- a) Should the Chief Executive, Finance Director, Group Executive/Divisional Executive or any other Delegee be absent from office he/she may, in writing, appoint a manager to act in his/her stead with full or limited delegated authority. Where such Delegee is the Chief Executive, the person appointed so to act shall be a member of EXCO and where the Delegee is the Finance Director or a Group Executive/Divisional Executive, the person appointed so to act shall not be lower than the level of a General Manager. Where there is no Senior General Manager or General Manager in a particular division, the appointment of an appropriate E Band employee will be acceptable. Where such absence or delegation is for a period longer than three working days (even if to different persons), the approval of the next level of authority shall be obtained. In the case of the Chief Executive the approval of the Chairman of the Board shall be obtained if required for more than one month, subject to a maximum of three months.

2.2.3.9 Allocation and reallocation of responsibilities:

- a) The Finance Director, Group Executives/Divisional Executives or any other person with delegated powers may only exercise those powers in respect of the responsibilities and functions allocated to them from time to time, in terms of a performance agreement (compact) or specific instructions or mandates. The Chief Executive is authorised to define the scope and functional area of responsibility of the Finance Director, Group Executives/Divisional Executives and Divisional Executive Committees and in this regard may revoke, amend or vary any delegation granted by the Board to any Delegee, provided that such amendment does not result in any higher authority than that granted to that level of Delegee by the Board.
- b) In the event of any reallocation of responsibilities to any other person, or the appointment of additional Group Executives/Divisional Executives, all powers delegated in terms hereof shall vest in such appointees in respect of the functions to be carried out by such appointees. The Chief Executive shall in such instance confirm in writing the particular functions to be carried out by such appointees and provide for any additional conditions that may be applicable to the exercising of such delegated authority, and shall be entitled to delegate any other powers to such appointees.
- c) The Chief Executive shall be entitled to appoint any executives, in addition to EXCO members, to report directly to him/her, and to allocate responsibilities to such executives, provided that the appointment of EXCO members and Group Executives/Divisional Executives shall be approved by the People and Governance Committee.

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2.2.3.10 Signing authorities

- a) All signing authorities are subject to the limitations and directives in respect of the specific delegation to which the signed agreement or document relates. A Delegee may sign all documents relating to a delegated authority exercised by the Delegee. A Delegee may also authorise any Eskom official or appointed agent to sign any documents, the principal terms of which have been approved by the Delegee.
- b) The delegation of signing authorities is subject to the proviso that any contract that is approved or within the authorisation limits of the EXCO Procurement Subcommittee, Board Tender Committee (BTC) or the Board itself shall only be delegated to the level of a Senior General Manager or General Manager and where such Senior General Manager or General Manager does not exist within a division, a delegation to an appropriate E Band employee will be acceptable.

2.2.3.11 In the absence of any Delegee within whose authority a matter falls, and if there is no

specific resolution in this regard, the Chief Executive is empowered to sign any document or agreement to give effect to any decision of the Board, any of its committees, or any other Delegee.

2.2.3.12 Where Board approval is required, the Board may authorise committees of the Board to

exercise such authority on its behalf, provided that such authority is set out in the terms of reference of the said committee or that a specific mandate is provided by the Board to such committee.

2.2.4 The Chairman of the Board

2.2.4.1 The Chairman of the Board is authorised to sign any document, memorandum of understanding or contract, which –

- a) is within the decision-making powers of the Board, and approved by the Board;
- b) is within the decision-making powers of the CE and approved by the CE; and
- c) is within the decision-making powers of a Group Executive/Divisional Executive or any other Delegee, and approved by the Group Executive/Divisional Executive or such Delegee.

2.2.4.2 Donations may also be made by the Chairman of the Board in terms of what is approved by the Board as part of the budget for the year.

2.2.4.3 The Chairman is authorised to approve any travel (domestic and overseas), training, conference and subsistence claims in respect of the Chief Executive and Non-Executive Directors.

- a) Approval of the Chairman's travel (domestic and overseas), training, conference and subsistence claims shall be subject to the policies approved by the Board's People and Governance Committee.

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2.2.4.4 The Chairman may appoint consultants, or purchase, or lease movable assets or approve contracts for any services up to the maximum financial amount approved as part of the annual budget for the Chairman. The financial limit applicable shall be R15 million per transaction and for a period of five years, subject to the procurement and other policies that are applicable to Eskom.

2.2.5 Board committees

2.2.5.1 The Board has various Board committees. The powers delegated to the Board committees are set out in the Delegation and must be read together with the terms of reference of such committees.

2.2.6 Urgent /Emergency powers

2.2.6.1 It is hereby recorded in case of an emergency or if there is an urgent matter, the Board authorises that it can be dealt with at a special meeting convened as follows:

2.2.6.1.1 The convening of the meeting must be approved by the Chairman, and in his absence the Chairman of the IFC and the Chief Executive.

2.2.6.1.2 The meeting may be convened at three hours' notice to all members.

2.2.6.1.3 All members shall be invited.

2.2.6.1.4 A quorum (urgent/emergency special meeting quorum) shall be met if the following members are present in person or otherwise:

- I. the Chairman or Chairman of the IFC,
- II. the Chief Executive or the Finance Director
- III. three additional members of the Board.

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2.2.7 Specific conditions and principles

2.2.7.1 Specific overall conditions

- 2.2.7.1.1 The following are specific additional conditions applicable to the entire delegation of authority:
- 2.2.7.1.2 Where no financial limit is specified, the authority is subject to the general financial limit set out herein. All delegated amounts exclude VAT.
- 2.2.7.1.3 All limits are per transaction unless otherwise stated. Any higher authority may exercise any power delegated to a lower level authority.
- 2.2.7.1.4 Except for procurement matters, an authorised Delegee is entitled at its discretion to make any decision without the need for a recommendation from any party.
- 2.2.7.1.5 Any submission to the Board or a Board committee must be authorised by the CE, EXCO or an EXCO subcommittee, where applicable.
- 2.2.7.1.6 In the event of any doubt regarding an authorised signatory, the Chief Executive is authorised to sign any document to give effect to a transaction authorised by the appropriate approval authority. The CE may also sign any document, notwithstanding a specific mandate given to any executive.
- 2.2.7.1.7 The powers delegated in terms hereof may be delegated further by the Delegee, including in terms of the standard group /divisional delegation.
- 2.2.7.1.8 Any power delegated to any EXCO subcommittee may be reallocated to any other subcommittee or other Delegee by the Chief Executive after consultation with EXCO.
- 2.2.7.1.9 Any power to be exercised in consultation with another party means by agreement with the party to be consulted and acting after consultation with another party means obtaining that party's input.
- 2.2.7.1.10 Where any power needs to be exercised in or after consultation with EXCO, the CE may delegate such power to any other Delegee or to a subcommittee of EXCO in consultation with EXCO or after consultation with EXCO, as required by the relevant condition.
- 2.2.7.1.11 The exercising of any powers delegated in terms hereof to the FD/GE/DE or management is subject to any additional limitations or also conditions that the CE may in writing prescribe. The exercising of the powers of DEs is subject to the conditions imposed by the GEs to whom they report. The authority delegated includes the power to sign any document or agreement to give effect to the authority, subject to any legal restrictions set out in the legal section of Part 2 of the DOA.

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2.2.8 Investment/Capex

- 2.2.8.1 In order to expedite decision making, the Financial/Business Plans, including all major investments and projects, should be tabled at IFC and the Board at the beginning of each financial year.
- 2.2.8.2 Where co-approval is applicable, any other disinterested EXCO member may approve in the absence of the CE or FD, provided that at least one of them (i.e. CE or FD) approves as well.
- 2.2.8.3 The CE (or EXCO or ICAS if delegated by him) is authorised to reallocate budgets or allow over-expenditure at Group/Divisional level, provided that under no circumstances will the Eskom Financial Plan/Budget be exceeded, without the approval of the IFC or Board, as applicable.
- 2.2.8.4 In any matter where FD approval is required and the FD is the proposing party, another disinterested EXCO member shall approve together with the CE.
- 2.2.8.5 Planned means that the project is included in the approved five-year Financial/Business Plan and the cash flows are within the cash flows for the approved three-year MYPD period as well as for the balance of the six years of the plan. Alternatively, the five-year plan and the annual budget at Group/Divisional/OU level and/or at Eskom level have been revised to include a project that was not originally included in the plan.
- 2.2.8.6 SMF means the Significance and Materiality Framework.
- 2.2.8.7 The Group/Divisional/Regional Committees shall include members with technical and financial skills.
- 2.2.8.8 Investments as referred to herein include authority in respect of disposals or divestitures, subject to any specific limitations set out.

2.2.9 Reallocation of investments

- 2.2.9.1 Approval is required for reprioritisation above the limits delegated.
- 2.2.9.2 Each Group/ Division is permitted to reprioritise its approved Plan every three months, subject to the approval limitations as stipulated, provided that the total value of both year one and the total five-year approved Plan is not exceeded. Once approved, the delegation will apply to this revised / reprioritised Plan for the remainder of that financial year.
- 2.2.9.3 The revised Plan must be reported to the IFC at its earliest meeting, if not approved by the IFC.
- 2.2.9.4 The reallocation or reprioritisation will not trigger an over-expenditure on a budget if it is within the approved total budget.

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2.2.10 Indemnities/Guarantees

2.2.10.1 With regard to an indemnity that forms part of a contract, the Delegee that has the transactional authority to conclude the contract is authorised to provide the indemnity, security or guarantee.

2.2.10.2 The additional conditions that will be applicable include the following:

2.2.10.2.1 No further delegation shall be permitted other than that specified herein.

2.2.10.2.2 All guarantees, indemnities and securities must be reported to the Eskom Treasury, Finance Director and Board.

2.2.10.2.3 The above authority is limited to guarantees, indemnities, securities or any other transactions that bind the company to any future financial commitment, in relation to the Eskom Group's ordinary course of business and within the functional accountability of Delegees.

2.2.10.2.4 Only the Eskom Treasury Department and CE/FD shall have the power to issue guarantees, indemnities and securities related to trading in financial markets.

2.2.10.2.5 The delegations herein regarding PFMA section 66 transactions are subject to the underlying transaction's being part of a pre-approved budget and approved Corporate Plan.

2.2.11 Leases

2.2.11.1 The entering into of leases and rental agreements is also subject to the procurement processes as prescribed.

2.2.11.2 The SGM Treasury must be notified of all leases and rental agreements, excluding property rental agreements above R1 million, to ascertain exposure to financial leases.

2.2.12 Procurement

2.2.12.1 The commercial processes should be fair, equitable, transparent, competitive and cost-effective. All authority set out herein can only be exercised after an appropriate procurement process has been executed by a Procurement Practitioner assigned by Group Commercial.

2.2.12.2 The Technology and Commercial Group is responsible for the procurement process and execution.

2.2.12.3 All Sole Source, Condonation, Ratification and Modifications exceeding 20% in terms of time/value must be approved by the appropriate Procurement Committees and reported to the EXCO Procurement Committee if within the group/divisions. All Sole Source Transactions must be reviewed by the Supplier Development and Localisation Department.

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- 2.2.12.4 Proof that the expenditure is budgeted for or approved must accompany the recommendation for approval.
- 2.2.12.5 All procurement is subject to alignment with the Corporate Plan targets, or any procurement framework developed by the GE Technology and Commercial.
- 2.2.12.6 All disposals must be executed via an authorised representative of the Investment Recovery Department and all disposals of fixed assets other than in the ordinary and normal course of business must be reported to EXCO and the Board.
- 2.2.12.7 With regard to the appointment of consultants, the Internal Consulting Department must be consulted prior to any appointment and ensure that empowerment and transformation are taken into account.
- 2.2.12.8 Regional or Site Tender Committee means a committee established for procurement within a Group/Division by the CE/FD/GE/DE, consisting of at least three members, collectively with technical, commercial and finance representatives/skills, to approve procurement for a site/BU (Site Committee) or across sites (Regional Committees) and must include a representative from the Commercial Department and take into account equity and transformation in its composition.
- 2.2.12.9 Corporate Opex or Capex Procurement Committee means a committee established at head office by the GE (Technology and Commercial) for procurement matters.
- 2.2.12.10 The Board IFC and BTC are authorised to delegate any higher authority to EXCO or management in this regard.
- 2.2.12.11 Auditor fees must be approved by the Audit and Risk Committee subject to the approved budget.
- 2.2.12.12 All transactions within Dual and Triple Adjudication –
- a) must be reported to the Committee authorised to deal with that level of decision for oversight.
 - b) Transactions trends must be analysed and investigated by Group Commercial Risk & Governance to identify and manage risks and compliance on transactions below R5 million (including SD&L).
- 2.2.12.13 All transactions to procurement committees below the EXCO subcommittee must be reported to the next level committee for oversight.
- 2.2.12.14 Project Sourcing and Commodity Sourcing Procurement Strategies must be submitted to the relevant committees as a whole for the project, not merely the individual packages.

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2.2.12.15 Procurement strategies for capital expenditure should be presented to the relevant committees before ERA (after DRA) approval to ensure proactive inputs by the relevant committees before the final investment decision is made.

2.2.12.16 All procurement decisions must be reported to the next level committee for information.

2.2.13 Disposal of land

2.2.13.1.1 With regard to all disposal of Land & Rights and Commercial Property –

- a) the GE Commercial and Technology and FD must be consulted before submission to the Board/Board IFC for approval.
- b) Disposal must be recommended by the Land and Rights Committee.

2.2.13.2 A Registered Valuer and Quantity Surveyor must be consulted for all Lands & Rights transactions.

2.2.13.3 All transactions within Dual and Triple Adjudication must be reported to the Lands & Rights Committee for oversight.

2.2.13.4 The CE must be consulted prior to the disposal of any immovable property.

2.2.13.5 Any overlap between Land & Rights & Properties will be addressed by the CE in terms of their mandates.

2.2.14 Electricity sales and purchases

2.2.14.1 The Shareholder must be notified of all International Transactions and must approve long-term sales or long term PPAs in terms of the Significance and Materiality Framework.

2.2.14.2 All transactions will be based on the Standard Terms & Conditions unless otherwise approved.

2.2.14.3 A long-term contract exceeds three years.

2.2.14.4 Entering into power purchase agreements is subject to the general investment and procurement delegation.

2.2.15 Human Resources

2.2.15.1 All terminations for performance or misconduct shall be subject to the applicable HR policies.

2.2.15.2 All appointments must adhere to the HR policies.

2.2.15.3 The appointment of the CE is a matter reserved for the Board and shareholder.

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2.2.15.4 All temporary/acting appointments must be made in writing and in respect of GEs, must be approved by the CE.

2.2.15.5 Any temporary/acting appointments in respect of the CE, FD, GE or DEs for longer than three months must be approved by the CE and the People & Governance Committee.

2.2.16 Finance

2.2.16.1 To prevent doubt, the CE and/or FD may in terms of the general principles set out in terms hereof delegate further the authority to open and operate bank accounts and to issue duplicate certificates as set out herein.

2.2.17 Treasury

2.2.17.1 The SGM (Eskom Treasury) and Treasury Officials may implement the borrowing programme and effect all transactions necessary or incidental thereto, subject to the delegation, conditions and limitations specified by the FD, and in accordance with the Board-approved borrowing programme and the approved Eskom Treasury Mandate.

2.2.17.2 The authority granted in terms hereof includes all necessary and incidental authority required to implement the borrowing programme, including the listing, issuing of bonds, making investments, withdrawal of funds and implementing hedges.

2.2.17.3 Any limits regarding this authority may be prescribed in the Treasury Mandate by the Board Audit and Risk Committee.

2.2.17.4 Contract Management: Legal

2.2.17.4.1 The entering into of any international MOU will be subject to the Significance and Materiality Framework.

2.2.17.4.2 Best practice requires the establishment of Variation and Claims Committees.

2.2.18 Operation

2.2.18.1 The delegation of operational and management authority is subject, inter alia, to adherence to the Corporate Plan, Group/ Divisional mandates, Eskom policies and the delegation of authority.

2.2.19 Corporate Social Investment

2.2.19.1 Donations made by Eskom shall be for education, schools or appropriate community projects, but shall exclude political party activities, grants to individuals and profit-making organisations/businesses.

2.2.19.2 Most Corporate Social Investment initiatives will be channelled through the Eskom Development Foundation.

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3. Supporting Clauses

3.1 Scope

3.1.1 Purpose

In striving to be a top performing company, Eskom has to ensure that it is a well-governed and ethical organisation. Good governance involves a broad range of conduct and processes. One aspect of good governance relates to an effective decision-making process; and a clear delegation of authority contributes to the applicability of an effective decision-making process.

The DOA in the main addresses the delegation from the Board to executives. It is to be supported by further delegations by the executives (CE/FD/GE/DE) to employees in the organisation in terms of a standard Group/Divisional Delegation.

3.1.2 Applicability

This policy shall apply throughout Eskom Holdings SOC Limited, including subsidiaries which have the maximum powers as per a Group/Division. This DOA Framework supersedes any prior DOA Frameworks, and is effective from 1 April 2013.

3.2 Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

3.2.1 Normative

- [1] The Memorandum and Articles of Association ("Articles")
- [2] Shareholder Compact
- [3] Companies Act No. 71 of 2008 ("Companies Act")
- [4] Public Finance Management Act No. 1 of 1999 (PFMA).

3.2.2 Informative

- [5] Significance and Materiality Framework.

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3.3 Definitions

- 3.3.1** Unless otherwise indicated by the context, the following words and phrases shall have the meanings assigned to them hereunder
- 3.3.2** Delegee shall mean any person or committee that is delegated authority in terms of this Delegation.
- 3.3.3** Delegate shall mean a person or committee that is delegated authority by a Delegee, or a person authorised by or acting on behalf of the Delegee.
- 3.3.4** Executive shall mean F Band employees.
- 3.3.5** Further delegation shall mean a delegation by a Delegee.
- 3.3.6** Sub-delegation shall mean a permitted delegation to another by a Delegate.
- 3.3.7** Official means an employee or Director of Eskom.

Title definitions:

- 3.3.8** Procurement Practitioner: an employee within Eskom's Group Commercial, appointed and accredited to manage or execute a procurement procedure or process.
- 3.3.9** Procurement Middle Manager (MPS Band): means the M/P/S Procurement Practitioner specifically responsible for managing the performance quality of the procurement disposal function.
- 3.3.10** Procurement Executive Manager (E Band): means the E Band Procurement Practitioner specifically accountable for managing the performance quality of the procurement /disposal function.
- 3.3.11** Commercial General Manager: An appointed executive manager with a direct reporting relationship to the GE: Technology & Commercial.
- 3.3.12** Disposal Officers means the Procurement Practitioners who by virtue of a written appointment are responsible for the disposal of moveable assets and goods.
- 3.3.13** Land & Rights Practitioner means an Eskom employee appointed to execute transactions relating to the sourcing and securing of land and associated land/property rights.
- 3.3.14** Land & Rights Development Manager means an Eskom employee appointed to manage transactions relating to the sourcing and securing of land and associated land/property rights

3.4 Abbreviations

CE/ FD: a sideways slash between any two words means OR

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Abbreviation	Explanation
AGM	Annual General Meeting
BTC	Board Tender Committee
CAPEX	Capital Expenditure
CE	Chief executive
CS (SHE)	Corporate Sustainability (Safety, Health and Environment)
CSI	Corporate Social Investment
CX	Group Customer Services
DE	Divisional Executive
DOA	Delegation of Authority
DPE	Department of Public Enterprises
DSM	Demand Side Management
Dx	Distribution Division
EE	Eskom Enterprises / Employment Equity
ERA	Execution Release Approval
ESDEF	Eskom Development Foundation
EXCO	Executive Management Committee
FAQ	Frequently Asked Questions
FBE	Free basic electricity
FD	Financial Director
GCS	Group Customer Services
GE	Group Executive
GHG	Greenhouse gas
Gx	Group Generation Division
HR	Group Human Resources Division
ICAS	Investment and Capital Assurance Subcommittee
IFC	Investment & Finance Committee
KPI	Key Performance Indicator
MOU	Memorandum of Understanding

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Abbreviation	Explanation
MW	Megawatt
MWh	Megawatt hour (1 000 kWh)
MYPD	Multi-Year Price Determination
OPEX	Operating Expenditure
PCM	Process Control Manual
PED	Primary Energy Department
PFMA	Public Finance Management Act
PPA	Power Purchase Agreement
PPI	Producer Price Index
PSA	Power Supply Agreement
R&D	Research and Development
SD&L	Supplier Development & Localisation
SDCT	South Dunes Coal Terminal
SGM	Senior General Manager
TASK	Tuned Assessment of Skills and Knowledge
TX	Group Transmission Division

3.5 Roles and Responsibilities

Roles and responsibilities for this policy are defined in the text.

3.6 Process for Monitoring

The application of this policy throughout Eskom and shall be audited at least once every three years by the Assurance and Forensic Department.

4. Acceptance

This document has been seen and accepted by:

Name	Designation
Mr Brian Dames	Chief Executive
Mr P O'Flaherty	Finance Director & Group Executive – Group Capital
Mr Bhabhalazi Bulunga	Group Executive Human Resources

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Name	Designation
Mr Thava Govender	Group Executive Generation
Ms Erica Johnson	Group Executive Enterprise Development
Dr Steve Lennon	Group Executive Sustainability
Mr Dan Marokane	Group Executive Technology & Commercial
Ms Tsholofelo Molefe	Group Executive Customer Services
Ms Ayanda Noah	Group Executive Distribution
Mr Mongezi Ntsokolo	Group Executive Transmission
Mr Mohamed Adam	Divisional Executive Regulation and Legal
Mr Kannan Lakmeharan	Divisional Executive Office of the Chief Executive
Mr Sal Laher	Chief Information Officer
Mr Chose Choeu	Divisional Executive Corporate Affairs
Mr Matshela Koko	Divisional Executive Technology
Ms Kiren Maharaj	Divisional Executive Primary Energy

5. Revisions

Date	Rev.	Remarks
March 2013	1	New document

6. Development Team

The following people were involved in the development of this document:

- Mohamed Adam
- Pindi Mabena
- Pieter le Roux
- Tshavhungwe Mamphiswa
- Ismail Mulla
- Kerseri Pather
- Jan Wiese

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- Charles Gradwell
- Christo van Niekerk
- Ohna Smit
- Suki Laher
- Neo Tsholanku

7. Acknowledgements

Not applicable.



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Annex A: Delegation of Authority Part II: Delegation

1 STRATEGY AND LEADERSHIP				
	Powers & Authority	Approval Authority	Recommendation	Conditions/Principles
1.1	Corporate Leadership			<p>The Board hereby delegates the powers and authorities set out herein to the delegates subject to:</p> <ul style="list-style-type: none">• The delegation principles & conditions as amended from time to time• Policies and guidelines that are applicable <p>Specific additional conditions applicable to the entire delegation of authority:</p> <ol style="list-style-type: none">1. Where no financial limit is specified, the authority is subject to the general financial limit set out herein. All delegated amounts exclude VAT.2. All limits are per transaction unless otherwise stated. Any higher authority may exercise any power delegated to a lower level authority.3. Except for procurement matters, an authorised delegatee is entitled at its discretion to make any decision without the need for a recommendation from any party.4. Any submission to the Board or a Board committee must be authorised by the CE, Exco or an Exco sub-committee, where applicable.5. In the event of any doubt regarding an authorised signatory the Chief Executive is authorised to sign any document to give effect to a transaction authorised by the appropriate approval authority. The CE may also sign any document, notwithstanding a specific mandate given to any executive.6. The powers delegated in terms hereof may be delegated further by the delegatee, including in terms of the standard group /divisional delegation.7. Any power delegated to any Exco sub-committee may be re-allocated to any other sub committee or other delegatee by the Chief Executive after consultation with Exco8. Any power to be exercised in consultation with another party means by agreement with the party to be consulted and acting after consultation with another party means obtaining that party's input.9. Where any power needs to be exercised in or after consultation with Exco, the CE may delegate such power to any other delegatee or to a sub-committee of Exco in consultation with Exco or after consultation with Exco, as required by the relevant
1.1.1	Eskom strategy, mandate, corporate plan and Shareholder Compact	Board (after agreement with shareholder)	CE after consultation with Exco	
1.1.2	Nuclear Strategy	Board	Social, Ethics and Sustainability Committee.	
1.1.3	Financial Plans budget and KPI's	Board	IFC	
1.1.4	Eskom restructuring	Board	CE after consultation with Exco	
1.2	Governance & Control Ensuring effective, efficient, & transparent systems of governance, financial & risk management & controls			
1.2.1	Investment process	IFC	CE after consultation with Exco	
1.2.2	Procurement process	Tender Committee	CE after consultation with Exco	
1.2.3	Risk, Control & other governance processes	Audit and Risk	CE after consultation with Exco	
1.2.4	Reporting to shareholder -quarterly reports -AGM	Audit and Risk Committee Audit and Risk and Social, Ethics and Sustainability Committees	CE after consultation with Exco	
1.2.5	Formation of companies, trusts, significant joint ventures or other entities	Board (subject to approval in terms of sec 54 of the PFMA)	CE after consultation with Exco	
1.2.6	Appointing directors, trustees or other representatives to boards of companies, including subsidiaries, trusts, employee benefit schemes or pension funds, or any other entity.	CE after consultation with the chairman of the Board	GE/DE	
1.2.7	PFMA reporting	IFC	CE	
1.2.8	Approving new generation capacity	Board (subject to approval in terms of the PFMA)	IFC	

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1.3	Group/ Divisional/ OU/Subsidiaries Leadership			<p>condition.</p> <p>10. The exercise of any powers delegated in terms hereof to the FD/GE/DE or management is subject to any additional limitations or also conditions that the CE may in writing prescribe. The exercise of the powers of DEs are subject to the conditions imposed by GEs to whom they report. The authority delegated includes the power to sign any document or agreement to give effect to the authority subject to any legal restrictions set out in the legal section. In the event of any matter that requires a Board decision and is deemed urgent by the CE and Chairman or Chairman of the IFC, a special meeting may be convened on three hours' notice to all Board members. Provided that information regarding the decision sought is submitted to all members, and the CE or FD, Chairman of the Board or Chairman of the IFC, and at least 3 other Board members are present (in person or by telephone) such meeting is authorised to take a decision on any such urgent matter.</p> <p>11. In the event of any matter that requires a Board decision and is deemed urgent by the CE and Chairman of Chairman of the IF, a special meeting may be convened on three hours' notice to all Board members. Provided that the information regarding the decision sought is submitted to all members, and the CE or FD, Chairman of the Board or Chairman of the IFC, and at least 3 other Board members are present (in person or by telephone) such meeting is authorised to take a decision on any such urgent matter.</p> <p>Shareholder Reserved Matters:</p> <p>12. The Companies Act and PFMA set out matters that require shareholder approval. Inter alia, the following matters shall require shareholder approval:</p> <ol style="list-style-type: none"> entering into any transaction or the purchasing or disposing of any asset other than in the ordinary, regular and normal course of business; making a decision falling outside the scope of the mandate and authority of Eskom; the sale or alienation of the company or the whole or substantial part of the assets of the company; appointment of directors to the Board; appointment of the CE and Chairman policy and framework for the remuneration of executives and
1.3.1	Group/Divisional / Subsidiary strategies, compacts, mandate, business plans, financial plans, budgets	CE after consultation with Exco	FD/GE/DE	
1.3.2	Group /Divisional/Subsidiary KPIs	CE	DE/GE/FD	
1.3.3	Divisional/ OU implementation plans	FD/GE/DE	OU Head/Relevant Manager	

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- f) non-executive directors; issue or approve the transfer of Eskom shares;
- g) alteration of share capital, the allotment or issue of shares, or share buy-backs;
- h) certain aspects of the business plan, namely:
 - Strategic intent, and
 - key performance indicators for the shareholder compact.
- i) matters provided for in section 54(2) of the PFMA.
- j) Financial assistance to any party as set out in Section 44 and 45 of the Companies Act.

13. In terms Public Auditors (Audit or Auditors) Act 25 of 2004, an auditor may not be discharged prior to the expiry of that auditor's term of appointment except with the consent of the executive authority (shareholder) and the Auditor-General.

14. The shareholder shall be consulted, inter alia, with regard to the following:

- a) development of an appropriate dividend policy and framework; and
- b) the appointment of directors to the Boards of Main Subsidiaries

15. The shareholder shall be provided reports on the following matters:

- a) projection of revenue, expenditure and borrowings for the financial year in the prescribed format;
- b) a corporate plan, in the prescribed format, covering the affairs of Eskom for the following three financial years and, if it has subsidiaries, also the affairs of the subsidiaries; and
- c) quarterly reports on the performance of Eskom.

16. In terms of section 54(1) of the PFMA, the Board must submit to the relevant treasury or the Auditor-General such information, returns, documents, explanations and motivations as prescribed or as may be required

17. In terms of section 55 of the PFMA, the Board must:

- submit financial statements within two months after the end of the financial year to the auditors for auditing;
- submit within five months of the end of the financial year to the shareholder, relevant treasury and the Auditor-General:
 - o an annual report on its activities;
 - o the financial statements for that financial year; and
 - o the report of the auditors.

18. In terms of section 66 of the PFMA,

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Eskom as a public entity authorised to borrow money:
must annually submit to the Minister of Finance a borrowing programme for the year;

- a) may not borrow money in a foreign currency above a prescribed limit, and
- b) may only exercise these powers through the Board unless specifically authorised by the Minister of Finance to delegate such powers.

7.

Board Reserved Matters

19. The approval of the Board shall be obtained for all matters that are beyond the authority delegated

The following matters, inter alia, are specifically reserved for approval by the Board or a duly delegated Board Committee:

- The Corporate/Business plan, (including the financial plan), budgets and corporate plan.
- Performance objectives and the strategic direction for Eskom.
- Decisions regarding additional or new generation capacity, or re-commissioning of mothballed plant.
- Annual reports and financial statements.
- Key policies that are not delegated to a specific Board committee, and in particular:
 - investment policy; and
 - risk management policy.
- Financial lease transactions as contemplated in the PFMA.
- Succession planning for executives.
- Mechanisms to monitor the performance of executives.
- Recommendations regarding matters requiring shareholder approval.
- The restructuring of Eskom (This refers to any restructuring that results or could result in a change in ownership of significant assets or a significant business, the establishment of a new entity, the transfer of significant assets out of Eskom, or any internal planning or preparation that is initiated as a first step towards implementation of initiatives in this regard).
- Any other matter that the Board may from time to time reserve for decision/approval by the Board.

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2 INVESTMENTS/CAPEX				
	Key Decisions	Approval Authority	Recommends	Conditions/ Principles
	Investments			<ol style="list-style-type: none"> 1. In order to expedite decision making, the Financial/Business plans including all major investments and projects should be tabled at IFC and the Board at the beginning of each financial year. 2. Where co-approval is applicable, any other disinterested Exco member may approve in the absence of the CE or FD provided at least one of them (i.e.: CE or FD) approves as well. 3. The CE (or Exco or ICAS if delegated by him) is authorised to re-allocate budgets or allow over-expenditure at Group/Divisional level provided that under no circumstances will the Eskom Financial Plan/Budget be exceeded, without approval of the IFC or Board, as applicable. 4. In any matter where FD approval is required and the FD is the proposing party, another disinterested Exco member shall approve together with the CE. 5. Planned means that the project is included in the approved 5 year Financial/Business plan and the cash flows are within the cash flows for the approved 3 year MYPD period as well as for the balance of the 6 years of the plan. Alternatively, the 5 year plan and the annual budget at Group/Divisional/OU level and or at Eskom level has been revised to include the project that was originally not included in the plan. 6. SMF means the Significance and Materiality Framework. 7. The Group/divisional/Regional Committees shall include technical and financial skills. 8. Investments as referred to herein include authority in respect of disposals or divestitures, subject to any specific limitations set out.
2.1	Investment strategy	Board	IFC and Social, Ethics & Sustainability Committee should be informed of any nuclear investment proposals	
2.2	Eskom budget over-expenditure	IFC (up to 5% over total Capex budget)	CE	
2.3	Investment decision for transactions up to budgeted amount in overall approved Eskom financial plan with authority to allow up to 5% over-expenditure on a project, subject to the maximum limit above. Provided the Eskom budget is not exceeded, for planned investments	IFC for matters where PFMA approval is required or any matter reserved for IFC approval from time to time (subject to the Significance and Materiality Framework (SMF))	CE after consultation with Exco	
	♦ Up to the maximum of approved budget, unless PFMA approval is required	CE in consultation with Exco	FD/GE/DE	
	♦ Up to R350m	Co-approval by CE, FD and one Exco member ONLY for priority matters deemed as such by the CE.	GE/DE	
	♦ Up to R300m	Group/Divisional/Regional Site	Relevant Manager	

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		Committee/s established by the relevant FD/GE/DE consisting of at least three members, and subject to approval by the CE for a specific committee or for committees generally.		
	♦ Up to R75m	CE	Relevant Manager	
	Up to R50 m	FD/GE/DE or committee established by FD/GE/DE)	Relevant Manager	
2.4	Reallocation of Investments/ Budgets			
	Key decision	Approval/Authority	Recommendations	Conditions/Principles
2.4.1	Reallocation of investments or amendment of Capex plans within the total budget			<ol style="list-style-type: none"> 1. Approval is required for reprioritization above the limits delegated. 2. Each Group/ Division is permitted to reprioritise its approved Plan every three months subject to approval limitations as stipulated, provided the total value of both year one and the total five year approved Plan is not exceeded. Once approved, the delegation will apply to this revised / reprioritised plan for the remainder of that financial year. 3. The revised Plan must be reported to the IFC at its earliest meeting, if not approved by the IFC. 4. The re-allocation or reprioritisation will not trigger an over-expenditure on a budget if within the approved total budget
	♦ Greater than R750m	IFC	CE after consultation with Exco	
	♦ Up to R750m	CE in consultation with Exco	GE/DE	
	♦ Up to R50m	CE/FD/GE/DE	Relevant manager	
2.4.2	Issue of guarantees, sureties, indemnities, securities or enter into any other transactions that binds the Company to any future financial commitment, as contemplated in terms of sect 66 of PFMA			<ol style="list-style-type: none"> 1. With regard to an indemnity that forms part of a contract, the Delegee that has the transactional authority to conclude the contract is authorised to provide the indemnity, security or guarantee. 2. The additional conditions that will be applicable include the following: <ol style="list-style-type: none"> 2.1 No further delegation shall be permitted other than specified herein. 2.2 All guarantees, indemnities and securities must be reported to the Eskom Treasury, Finance Director and Board.
	♦ Up to max R250m per transaction (ordinary transactions) including indemnities or bonds for purchasers or sale of electricity and R500m per transaction (capacity expansion programme, op refurbishment or maintenance)	IFC	CE in consultation with Exco	

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	♦ Up to max R250 m per transaction but restricted to performance guarantees, bid bonds & indemnities required in procurement of purchase/sale of electricity, fuel, equipment or services.	Tender Committee/IFC for matters within their respective mandates	CE in consultation with Exco	<p>2.3 The above authority is limited to guarantees, indemnities, securities or any other transactions that bind the company to any future financial commitment, in relation to the Eskom Group's ordinary course of business and within the functional accountability of Delegees.</p> <p>2.4 Only the Treasury department, and CE/FD shall have the power to issue guarantees, indemnities and securities related to trading in financial markets.</p> <p>3. The delegations herein regarding section 66 transactions are subject to the underlying transaction being part of a pre-approved budget and approved Corporate Plan.</p>
	♦ Up to R100m per transaction	CE in consultation with Exco.	Relevant Manager	
	♦ Up to a max of R1m per transaction to cumulative R10m pa.	Group/Divisional Exco/Procurement committees	Relevant Manager	
	♦ In accordance with limits of transactions that are incidental to or related to borrowing powers already delegated and up to max of R10m per transaction for other matters	CE/FD		
	♦ Up to a max R1m per transaction for legal matters relating to security or indemnities for legal costs, any higher amounts must be referred to Exco.	Legal/GM(Legal DE: Regulation & Legal		
2.5	Lease and rental agreements			
	Powers & Authority	Approval Authority	Recommends	Conditions/Principles
2.5.1	Up to overall Eskom plan or budget ≤15 years(including financial leases)	IFC	CE in consultation with Exco	<p>1. The entering into of leases and rental agreements is also subject to the procurement processes as prescribed.</p> <p>2. The SGM Treasury must be notified of all leases and rental agreements excluding property rental agreements above R1m to ascertain exposure to financial leases.</p>
	♦ Up to R100m & 10 years (including financial leases)	CE in consultation with Exco	FD/GE/DE	
	♦ Up to R50m & five years	Co-approval by CE& FD	FD/GE/DE	

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	♦ Up to R35m & five years	CE/FD/GE/DE	Relevant manager	
2.5.2	Eskom subsidiary investment decisions in excess of subsidiary financial limit			
	Up to subsidiary overall plan or budget	CE in consultation with Exco	Exco member responsible in respect of subsidiary	
3 PROCUREMENT				
	Powers/Authority	Approval Authority	Recommends	Conditions/ Principles
3.1.	General procurement strategy	Board Tender committee	CE after consultation with Exco	1. The commercial processes should be fair, equitable, competitive and cost effective. All authority set out must be exercised after an appropriate procurement/disposal process has been executed by an authorized and appointed Procurement and Disposal Officer.
3.2	Procurement policies and procedures	CE after consultation with Exco	GE Commercial and Technology	2. The Technology and Commercial Group is generally responsible for the execution of the procurement/disposal process, which is executed within Generation Delegation authority in compliance with the requirements of the Delegations as set out herein).
3.3	Procurement strategy for specific transactions from R750m up to R300m	Board Tender Committee	ICAS	3. All, Condonations (irrespective of value), Ratifications (irrespective of value) and Modifications exceeding 20% in terms of Time / value (where originally approved within delegation authority) must be approved by the appropriate Procurement and Disposal Officer reported to the next higher level of delegation.
3.4	Procurement strategy for specific transactions from R300m up to R750m	CE after consultation with Exco	Procuring Exco member in consultation with GM Commercial	4. Mandates to Negotiate (no prior tendering) which basis of a sole source supplier may be approved by the adjudication delegations of authority up to R5m, a maximum of five years. All mandates to negotiate (no prior tendering) sole source suppliers must be accompanied by a Justification Form that must be signed by the relevant manager prescribed by Procedure 32-1034, motivating the need for the supplier as a sole source. Transactions must be reviewed by the Development and Localisation department irrespective of value.

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3.6	Procurement strategy for specific transactions >R10m and up to R300m	Procurement Manager or Accredited Executive Manager	Procurement Practitioner and/or Procurement Manager	<p>4. Proof that the expenditure is budgeted for or approved must accompany the recommendation for approval.</p> <p>5. All procurement is subject to alignment within the CoC or any procurement framework developed by the GE Technology and Commercial.</p> <p>6. All disposals must be executed via an authorised representative of the Investment Recovery Department and all disposals</p>
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	Acquisition and disposal of movable and immovable property, operational expenditure and the provision and acquisition of services		
	Transactions up to R1m (maximum one year) – dual	Procurement Manager	Procurement Practitioner
3.6.1	Transactions up to R5m for max two years (triple adjudication)	Accredited Executive Manager	Procurement Practitioner and Procurement Manager
3.6.2	Transactions up to R50m for max three years (Exco dual adjudication)	Co-approval by 2 Exco members (excluding procuring Exco member) (where an OU has a second Manco member co-approval shall be by that Manco member).	Procurement Executive Manager / FD/GE/DE
3.6.3	Transactions up to R100m for a maximum period of three years (Exco triple adjudication)	Co-approval by CE or FD, GE Group Commercial and Technology and one other Exco Member.	Procurement Executive Manager
3.7	Tender Committees		
3.7.1	Transactions up to R100m for max five years	Regional or Site based procurement committees established by GE/DE/FD	Procurement Manager (minimum level)
3.7.2	Transactions up to R300m for max ten years	Corporate and Procurement Committees	Procurement Executive Manager (minimum level)

7. With regard to appointment of consultants, the Internal Co be consulted prior to any appointment and ensure that empowerment and transformation is taken into
8. Regional or Site Tender Committee means a committee procurement / disposals within a Group/Division by the relevant CE/FD/GE/DE, cor members, representing technical, commercial and finance (and as a minimum), to approve procurement within a site/BU (Site Committee) or Committees).
9. Corporate Opex or Capex Procurement Committee means a committee established at head office by Commercial) for procurement matters.
10. Title definitions:
- a. **Procurement Practitioner:** A Procurement Practitioner Eskom appointed, trained and accredited (based on rec senior management), to manage and/or execute a pr contained in this Procedure (32-1034), or within any relating to procure-to-pay processes forming part of the Framework.
 - b. **Procurement Manager:** The Procurement Practitioner a a minimum TASK grading of G14, specifically resp performance quality of procurement function.
 - c. **Accredited Executive Manager (E-Ban and accredited E-Band Manager that approve procurement/disposals adjudication.**
 - d. **Procurement Executive Manager (E- Band):** the Procur band specifically accountable for managing the performance quality of the procurement /d
 - e. **Commercial General Manager:** An appointed executive r reporting relationship to the GE: Technology & Commercial.
 - f. **Disposal Officers** are Procurement Practitioners who appointment are responsible for the disposal of moveable assets and goods.
 - g. **Land & Rights Practitioner:** An Eskom employee appointed to execute transactions relating to tl securing of land and associated land/property rights
 - h. **Land & Rights development manager:** An Eskom employee appointed to manage transactions rela securing of land and associated land/property rights.
11. The Board IFC and BTC are authorised to delegate any high management in this regard.

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3.7.3	Transactions up to CE in consultation	Commercial	
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	10 years	with Exco / EXCO Procurement Sub-Committee	General Manager (minimum level), in consultation with the relevant procurement executive manager.	12. Auditor fees must be approved by the Audit and Committee subject to the approved budget. 13. For all transactions within Dual and Triple Adjudication : a. Approvals must be reported to the Procurement Committee authorised to deal with that level of decision for oversight. b. Transactions trends must be analyzed and in Group Commercial Risk & Governance to identify manage risks and compliance for all transactions approved within dual and triple adjudication (
3.7.4	Transactions up to Investment Decision or budget (if no investment required)	Board tender committee	Exco Procurement Sub Committee or GE Commercial and Technology	14. All transactions approved at procurement committee below the Exco sub-committee must be reported next level of committee for oversight. 15. Project Sourcing and Commodity Sourcing Strategies must be submitted to the relevant committee whole for the project and not the individual packages 16. Procurement strategies for capital expenditure presented to relevant committees before ERA (approval to ensure pro-active inputs by the relevant committees before the final investment decision) 17. All procurement decisions must be reported to the level committee for information.
Lands & Rights, Commercial Property and Leasing of Property				
	Powers & Authority	Approval Authority	Recommends	Conditions/ Principles
3.8	Acquisition and disposal of Land & Rights related to the build programme and infrastructure development: subject to Condition 1b for disposals.			1. With regard to all disposal of Land & Rights and Commercial Property : a. The GE Commercial and Technology must be consulted before submission to the IFC for approval b. It must be recommended by the Land and Rights Committee. 2. For all Lands & Rights transactions a Registered Valuer and Quantity Surveyor must be consulted 3. All transactions within Dual and Triple Adjudication must be reported to the Lands & Rights Committee for oversight 4. The CE must be consulted prior to the disposal of immovable property. Any overlap between Land & Rights & Properties must be addressed by the CE in terms of their mandates.
	◆ Transactions up to R50k indefinite period (dual adjudication)	Land and Rights Development manager	Land and Rights Practitioner	
	◆ Transactions from R50k to R250k indefinite period (Triple adjudication)	Procurement Executive Manager	Land and Rights Practitioner and Land and Rights Development Manager	
	◆ Transactions up to R300m	Centralised Land & Rights Committee	FD/GE/DE	

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	♦ Transactions up to R750m	EXCO Procurement Sub Committee	Procurement Executive	
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4 ELECTRICITY SALES & PURCHASES				
	Powers & Authority	Approval Authority	Recommendations	Conditions/ Principles
4.1	Pricing			<ol style="list-style-type: none">1. The Shareholder must be notified of all International Transactions and must approve long-term sales or long term PPAs in terms of the Significance and Materiality Framework.2. All transactions will be based on Standard Terms & Conditions unless otherwise approved3. A long-term contract exceeds three years.4. Entering into of power purchase agreements is subject to the general investment and procurement delegation
4.1.1	Strategic pricing policies	IFC	CE after consultation with Exco	
4.1.2	MYPD Application	Board	IFC	
4.1.3	Standard tariff plans, structures and rates, including annual tariff rate adjustment based on MYPD decision,	IFC	CE after consultation with Exco	
4.1.4	Operational pricing policies	CE after consultation with Exco	Relevant Manager	
4.2	Electricity Sales Agreements			
4.2.1	Specific Conditions & prices for selling electricity in terms of long term agreements (> 3 y)	IFC after consultation with legal (subject to the SMF)	CE after consultation with Exco	
4.2.2	Specific Conditions & prices for selling electricity in terms of short term agreements (≤ 3 y)	CE after consultation with Exco and legal (subject to the SMF)	GE	
4.2.3	Electricity Supply Agreements in terms of standard agreements and pricing	CE/GE (GCS)/GE (Dx)	Relevant Manager	
4.3	Power Purchase Agreements			
4.3.1	Conditions and pricing of Power Purchase Agreements -longer than 3y -less than 3 y	IFC(subject to the SMF) CE after consultation with Exco	CE after consultation with Exco Relevant Manager	
4.4	Connection and Use of System Agreements			
4.4.1	Execution of connection and time-of-use agreements for connecting	CE/ GE (GCS)/GE (Dx)/GE (Tx)	Relevant Manager	

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	generators to the system in terms of standard agreements and pricing			<div>1. The DPE must be notified of all International Transactions and must approve long-term sales or PPAs in terms of the <u>Significance and Materiality</u> Framework.</div> <div>2. All transactions will be based on Standard Terms & Conditions unless otherwise approved</div> <div>3. A long-term contract exceeds three years</div>
4.5	International Agreements			
4.5.1	Selling of electricity excluding trading on short term basis	IFC (subject to the SMF)	CE after consultation with Exco	
4.5.2	Purchase of electricity excluding trading on short term basis	IFC (subject to the SMF)	CE after consultation with Exco	
4.6	Demand Management			
4.6.1	Demand Management and Demand Participation rates and conditions Execution of Demand Management and DMP.	General Thresholds- IFC Specific Transactions ICAS CE/GE (GCS)	CE after consultation with Exco SGM (IDM)	
4.7	Trading			
4.7.1	Trading of electricity in terms of buying and selling on a day to day basis, up to 3 months, including trading of electricity internationally in terms of the SAPP, subject to operating within approved budgets	CE/GE (GCS)/GE (TX)	Relevant Manager	
5.	HUMAN RESOURCES			
	Powers & Authority	Approval Authority	Recommendations	Conditions/ Principles
5.1	Strategic HR policies and strategies	Board	People and Governance Committee	
5.2	Policies and guidelines to give effect to strategy	CE after consultation with Exco	GE(HR)	
5.3	Structures			
5.3.1	Eskom organisational structure	Board	CE after consultation with Exco and People & Governance Committee	
5.3.2	Establish Divisional Executive committees & other divisional structures	CE/FD/GE/DE	N/A	
5.3.3	Staffing numbers and level of posts	CE/FD/GE/DE	FD/GE/DE	

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5.4	Remuneration , structures & conditions of services			
	Powers and Authority	Approval Authority	Recommend ds	Conditions/Principles 1. All terminations for performance or misconduct shall be subject to the applicable HR policies 2. All appointments must adhere to the HR policies. 3. The appointment of the CE is a matter reserved for the Board and shareholder. 4. All temporary/acting appointments must be in writing and in respect of GEs, must be approved by the CE. 5. Any temporary/acting appointments in respect of the CE, FD, GE or DEs for longer than three months must be approved by the CE and the People & Governance Committee
5.4.1	With regard to CE & top management (F Bands)	Board (for CE) After consultation with Shareholder;); Top management (People and Governance Committee	CE (For F bands)people and Governance Committee for CE	
5.4.2	General conditions of service and principles for managerial employees	CE after consultation with Exco	GE HR	
5.4.3	Principles for bargaining unit	CE after consultation with Exco	GE HR	
5.4.4	Specific remuneration packages	GE/ DE provided in accordance with HR policies/Parameters	HR Practitioner	
5.5	Appointments and Terminations of Employment			
5.5.1	With regard to appointing GE/ DE/SGM (excluding FD)	People and Governance Committee	CE	
5.5.2	With regard to appointing CE/FD	Board (after approval of shareholder i.ro CE)	People and Governance Committee	
5.5.1	With regard to appointing GMs	CE after consultation with Exco	People and Governance Committee	
	With regard to appointing S3, E Band & other employees	CE/FD/GE/DE subject to approved posts and notifying Exco in respect of E Bands.	Interview panel	
5.6	Temporary/Acting appointments for more than 3 working days			
	♦ In respect of CE	CE if one month or less and chairman if up to 3 months	N/A	
	♦ In respect of GE/DE	Next higher level of authority	N/A	
	♦ In respect of other employees	Next higher level of authority	N/A	
	♦			

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6	FINANCE			
	Approval Authority	Approval/Authority	Recommendations	Conditions/Principles
6.1	Risk finance ♦ Insurance Strategy ♦ Plan & Budget	Audit & Risk Committee	FD after consultation with CE/Exco	For the avoidance of doubt, the CE and or FD may in terms of the general principles set out in terms hereof delegate further the authority to open and operate of bank accounts and the issue of duplicate certificates as set out herein.
6.2	Insurance Placement Below R200m per placement	CE or FD (in consultation with Exco)		
	Above R200m	Audit & Risk Committee	FD after consultation with CE	
6.3	Lending of money by Eskom ♦ To any related party, including subsidiaries	CE or FD (in consultation with Exco)	CE/FD after consultation with CE	
	♦ Up to R1b to further the interests of Eskom	IFC	FD/CE	
	♦ To lend money to employees for housing acquiring transport and education, subject to HR policies and directives and limits	CE/FD/GE/DE	Relevant Manager	
	♦ To make bursaries available to employees and prospective employees	Relevant E Band Manager subject to HR policies	N/A	
6.4	Bank account:- To open, operate and close any form of bank account including electronic fund transfer systems whether foreign or local and/or the transacting in negotiable instruments	Co-approval by CE and FD to open account and approval by FD to operate an account.	FD after consultation with CE/Exco	
6.5	Eskom securities certificates: To authorise the issue of duplicate certificates or certified deeds in respect of Eskom securities	CE or FD	Relevant Manager	
6.6	Subsidiaries: Sales and purchases to/from wholly owned subsidiaries			
	♦ Up to 750m	GE/DE	Relevant Manager	
	♦ Up to R1bn	CE or FD	Relevant Manager	

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	Up to maximum of budget	CE in consultation with Exco	Relevant Manager	
6.7	Write off bad Debts ♦ Above R100m p/a	IFC	FD	
	Up to R100m p/a.	CE&FD (after consultation with Exco)	GE/DE	
	Up to R30m p/a	GE/DE after consultation with FD	Finance Business Partner	
	♦ Up to R10m p/a	Finance Business Partner (=<R00k per individual debt)	Relevant Manager	
6.8	Restructuring of debt owed ♦ Up to R75m	CE or FD after consultation with FD	GE/DE	
	♦ Up to R35m	CE/FD	GE/DE	
	♦ Up to R15m	GE	Relevant Manager	
7	GENERAL; TREASURY			
	Powers and Authority	Approval Authority	Recommendations	Conditions/Principles
7.1	Borrowing programme	Board	CE/FD after consultation with Exco	<ol style="list-style-type: none"> 1. The SGM (Treasury) and Treasury Officials may implement the borrowing programme and effect all transactions necessary or incidental thereto subject to the delegation, conditions and limitations specified by the FD, and in accordance with the Board approved borrowing programme and the approved Treasury Mandate. 2. The authority granted in terms hereof includes all necessary and incidental authority required to implement the borrowing programme, including the listing, issuing of bonds, making investments, withdrawal of funds and implementing hedges. <p>Any limits regarding this authority may be prescribed in the Treasury Mandate by the audit and risk</p>
7.2	Subject to section 66(6) of the PFMA, implement Borrowing Programme in line with the Board approved Corporate Plan			
7.2.1	Borrowing money and listing/ issuing of bonds Risk management and debt management including investment of surplus funds (Domestic markets)			

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	and foreign markets) ♦ Transactions greater than \$1000m (Foreign currency or equivalent in other currency or greater than R8000m (local currency) ♦ Transactions less than \$1000m (Foreign currency or equivalent in other currency or less than R8000m (local currency)	CE and FD CE/FD	SGM Treasury SGM Treasury	
7.2.2	♦ Signing of any document relating to loan agreements or anything related or incidental thereto, including listing or issue of bond notes or commercial paper.	CE/FD/SGM Treasury together with DE Regulation and Legal or GM Legal in respect of agreements.	N/A	
7.2.3	Signing of any document relating to Treasury activities, credit and trading agreements or anything related or incidental thereto, Treasury domestic market deposit accounts, bank accounts related to financing/ loan facilities, duplicate certificates, electronic signatures, Central Securities Depository requirements and/or deeds.	FD/SGM Treasury	N/A	
7.2.4	Treasury Mandate	Audit and Risk Committee	N/A	
8 GENERAL: LEGAL				
	Powers & Authority	Approval Authority	Recommendations	Conditions and Principles
8.1	To institute or defend legal proceedings, including arbitrations, and prove claims against any debtors	CE/DE (R&L)GM Legal or delegate	FD/GE/DE/Line Manager	
8.2	Settling legal claims by/or against Eskom	CE/FD/DE/GE/DE(R&L) GM LEGAL	Relevant manager in consultation with Legal Department	
8.3	Receiving or giving indemnities in respect of settlement agreements	CE/FD/GE/DE in consultation with DE (R&L)/ GM Legal or delegate	Relevant Manager	
8.4	Applying to relevant authorities for the award and amendment of permits, licences, consents and orders and also to oppose applications for such by others	CE/FD/GE/DE in consultation with DE (R&L)/ GM Legal	Line Manager in Consultation with legal Department	
8.5	Pleading guilty or not guilty to criminal charges or any other similar charges preferred against Eskom	CE/ FD/GE/DE in consultation with DE (R&L)/ GM Legal or	N/A	

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8.6	Appointment of external legal advisors, Attorneys and Advocates	CE/ DE (R&L), GM Legal or Delegate after consultation with relevant manager	N/A	
8.7	Expropriate immovable property	CE/DE (R&L)/ GM Legal or delegate after consultation with relevant manager.	Relevant Manager	
8.8	To register trademarks, patents, designs, copyrights or any license, concession or similar rights in respect thereof and the alienation thereof	CE/DE (R&L)/ GM Legal or delegate after consultation with relevant manager.	Line Manager in consultation with legal Department	
9. CONTRACT MANAGEMENT:LEGAL				
	Powers/Authority	Approval Authority	Recommends	Conditions/Principles
9.1	To approve standard conditions of contract for electricity sales and any other standard contracts required or used, including construction and sales of electricity contracts , and any deviations from standard contracts	DE R&L / GM Legal or delegate	Relevant Manager	1. The entering into of any international MOU will be subject to the Significance and Materiality Framework . 2. Best practice requires the establishment of Variation and Claims Committees
9.2	Specific contract conditions	Authorised delegee for trasantion in consultation with the DE Regulation and Legal or GM Lega/Delegate	Relevant Manager in consultation with Legal Department .	
9.3	Managing Contract on day to day basis	Relevant GE/DE/Appointed Project Manager	N/A	
9.4	Entering into any MOU, confidentiality agreement, or any other agreement in area of responsibility and provide any approvals required in terms of such contracts, and do what is necessary to execute/implement contracts	CE/FD/GE/DE within limits of delegation and Group/Divisional mandate (subject to the SMF for international MOUs and consultation wit DE R&L/GM Legal or delegate.	Relevant Manager	
9.5	Membership of International Organisations	CE/GE (Sustainability)	Relevant Manager	
9.6 Major Construction Projects (New Build)				
9.6.1	♦ Modification to contract within contract contingency	FD/Project Manager	Project Manager after consultation	

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9.6.2	♦ Modification to contract above the contract contingency but within the unallocated project contingency.	FD and GE Technology and Commercial provided the modification is reported at the next Tender Committee or appropriate lower level committee with delegated authority in consultation with Legal	with Project variation Project Manager after consultation with Project variation & claims committee & claims committee	
9.7	Approve and settle claim within the contract contingency	Project Manager in consultation with Legal		
9.8	Approve and settle claim above the contract contingency but within unallocated project contingency.	FD in consultation with Legal. Provided this is reported at the next Tender Committee	Project Manager after consultation with Project variation & claims committee	
9.9	Referral to adjudication, mediation or dispute adjudication Board	FD/Project Manager in consultation with GM Legal.	N/A	
10	General: Safety, Health, Environmental, Quality and Security (SHEQS)			
	Powers & Authority	Approval	Recommends	Conditions/Principles
10.1	Statutory appointments	CE/FD/GE/DE/ Divisional E Band or other responsible line managers	SHEQS officers	
10.2	Strategy, Policy, Procedures and Directives			
10.2.1	Eskom SHEQS Strategic Policies	Social, Ethics & Sustainability Committee	CE after consultation with Exco GE (Sustainability)	
10.2.2	Other Policies and procedures SHEQS Strategy & targets	CE after consultation with Exco		
10.2.3	Eskom SHEQ Strategy & Targets	Board	Social, Ethics & Sustainability Committee	
10.2.4	SHEQS Directives	GE (Sustainability)	Relevant Manager/SHEQ Officers	

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11. GENERAL: OPERATIONS				
	Powers/Authority	Approval Authority	Recommends	Condition/Principles
11.1	The running of the day to day operations of Eskom Divisions	FE/GE and DE subject to the direction & conditions required by CE	N/A	The delegation of operational and management authority is subject, inter alia, to adherence to the Corporate Plan, Group/ Divisional mandates, Eskom policies, and the FD/GE and DE subject to direction & conditions required by CE delegation of authority.
11.2	Effective delegation of operational matters by GEs, DEs, and other managers	CE/GE/DE	N/A	
12 GENERAL: CORPORATE SOCIAL INVESTMENT				
	Powers & Authority	Approval Authority	Recommends	Conditions/ Principles
12.1	Donations & CSI			1. Donations made by Eskom shall be for education, schools or appropriate community projects, but shall exclude political party activities, grants to individuals and profit making organisations/businesses 2. Most Corporate Social Investment initiatives will be channelled through the Eskom Development Foundation.
	Up to R5m p/a	Chairman/CE		
	Up to approved budget	FD/GE/DE		
12.2	Sponsorships			
	Up to R50k	CE/FE/GE/DE in consultation with Corporate Sponsorship Committee established by DE Corporate Affairs	Relevant Manager	
	Up to R3m	CE/Sponsorship Committee established by GE Corporate Affairs	Relevant Manager	
	Above R3m and subject to approved budget.	CE (in consultation with Exco) or he may delegate to ICAS.	Relevant manager	

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Hard copy printed on: 11 July 2013

From: Zola Tsotsi <ztsotsi@liquifire.biz>
Sent: Monday, 13 May 2013 22:01
To: mandla.gobingca@eskom.co.za
Subject: Fwd: Emailing 2013_04_23 - ESKOM PROPOSAL-4.pdf
Attachments: 2013_04_23 - ESKOM PROPOSAL-4.pdf; Untitled Attachment.htm

Mhlekez,

Please take a look at this submission and we will discuss.

Regards,

ZAT

Sent from my iPad

Begin forwarded message:

From: Rex Madida <rex.madida@gmail.com>
Date: 08 May 2013 3:57:13 PM SAST
To: ztsotsi@liquifire.biz
Subject: Emailing 2013_04_23 - ESKOM PROPOSAL-4.pdf

Dear Mr. Tsotsi,

Thank you for affording me the opportunity and time to interact with you and seeking your guidance.

Attached herewith please find the proposal as discussed for your perusal and guidance.

Your advice and guidance towards a succesfull conclusion of this proposal would be highly appreciated. Additionally a meeting whereby your advice and guidance can be scheduled at your earliest convenience.

Thanking you in anticipation

Rex Madida
Coordinator

**IKWEZI MINING (PTY) LTD
NTENDEKA COLLIERY**

ESKOM SUPPLY PROPOSAL



Date: March 2013

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EXECUTIVE SUMMARY

Ikwezi Mining (Pty) Ltd was started in 2006 following the change in the MPRDA and at inception was 50% BEE. The primary focus of the company was its prospecting right application in the Newcastle area. This was seen as the first of many expected projects in its efforts to become a junior miner in South Africa. Unfortunately serious delays in the approval process resulted in the company only being awarded its prospecting right in 2009. Upon receipt of its prospecting right the company progressed with exploration activities. On initial confirmation of the viability of the project the shareholders sought mechanisms to obtain funding to bring the project to its full potential. The decision was made to sell 70% of the project to the now ASX listed Ikwezi Mining Limited in exchange for the funding commitments to bring the project into fruition. Having now obtained a mining right and begun pre-production construction. Nzoli Group a 100% BEE company has acquired 26% of Ikwezi Mining (Pty) Ltd ensuring that the company is 51% BEE owned, keeping in line with the goals of the MPRDA.

Initially the company's focus was purely to operate an export mine, given the size, locality and quality of the deposit. Recent interaction with various stakeholders has resulted in the company becoming aware of Eskom's plight in terms of shortage of secure, long term coal supply. As a South African company, Ikwezi feels it has an obligation to the country to help alleviate this problem. Given that post further funding being received, Ikwezi will be able to bring the mine into production and produce product coal in three months, Ikwezi sees this as a perfect opportunity to work with Eskom at this critical moment.

The Ntendeka Colliery is a mining project spanning 16 farms covering 12,181 ha in the Newcastle and Dannhauser Magisterial Districts of the KwaZulu-Natal Province of South Africa. The farms StruisvogelKop 4275, Omdraai 3855, Kromdraai 8626, Goedehoop 3857, Kliprand 8627, A of Rooipoort 10745, B of Rooipoort 7545, portions of the farm Buhle Bomzinyathi B 17495, Kaalvlakte 7496, Cloneen 7591, Drangan 8844, Diepsluiten 4270, Doornsluiten 14366, Droogeplaats 7681, Annie 8798 and Alleen 2 4280 falls geologically within the Klipriver Coalfield of KwaZulu-Natal.

A mining right No. KZN30/5/1/2/2/297MR, was granted to Ikwezi Mining (Pty) Ltd effective from 11th June 2012 for a period of 30 years, ending 10th June 2042. In addition an Integrated Water Use License No 07N32C/ACGIJ/2139 in terms of Chapter 4 of the National Water Act, 1998 (Act 1\10.36 of 1998) was granted for the operation on the 8th March 2013 for a period of 20 years.

Previous exploration in the project area started in 1921 and continued intermittently until the late 1990s. The various farms were explored by companies including Ingwe Coal Corporation Ltd; Natal Navigation Collieries & Estate Co. Ltd; Iscor Ltd; Johannesburg Consolidated Investment Company Ltd; amongst others. Recent exploration by Ikwezi Mining (Pty) Ltd (Ikwezi) recommenced on the property in July 2009.

To date a total of 530 boreholes have been drilled on the property with a JORC compliant Resource totalling 294 Mt coal.

Following the granting of the Mining Right Ikwezi has begun development of the Colliery with the major infrastructure including the construction of the beneficiation plant being completed. On finalisation of the off take agreements and future funding requirements, Ikwezi will complete the construction programme and commence operations. Time frame to bring the mine into production at 170,000 tons ROM per month from putting the relevant funding of R200m in place is 3 months.

There are a few active coal mines in the region of which the Magdalena and Avimore Collieries owned by Forbes Manhattan (TSX: FMC) and the Springlake Colliery, belonging to Shanduka Coal, being the most prominent.

Resource areas were defined applying geological boundaries as defined by major dolerite activity, Mineral Rights ownership, Mining Right authorisation, limit of weathering restrictions and seam thickness cut-offs of + XXm.

The resource modelling was done by Siyaphambili, using the MINEX 1.6.0.2 software (published by ECS Mining Software Systems (ECS). The reserve modelling and mine design was done by Stefanutti Stocks Mining Services for opencast areas and Mindset (Pty) Ltd for underground areas.

Ikwezi is seeking to enter into a five year coal supply agreement with Eskom from its Ntendeka Colliery to begin in the second half of 2013. The coal that can be supplied is generally of a higher sulphur content and lower volatile content with a CV value greater than 25MJ/kg. the coal intended for this supply proposal is a washed product and as such there remains flexibility to monitor and control the quality requirements.

1. Purpose of Proposal

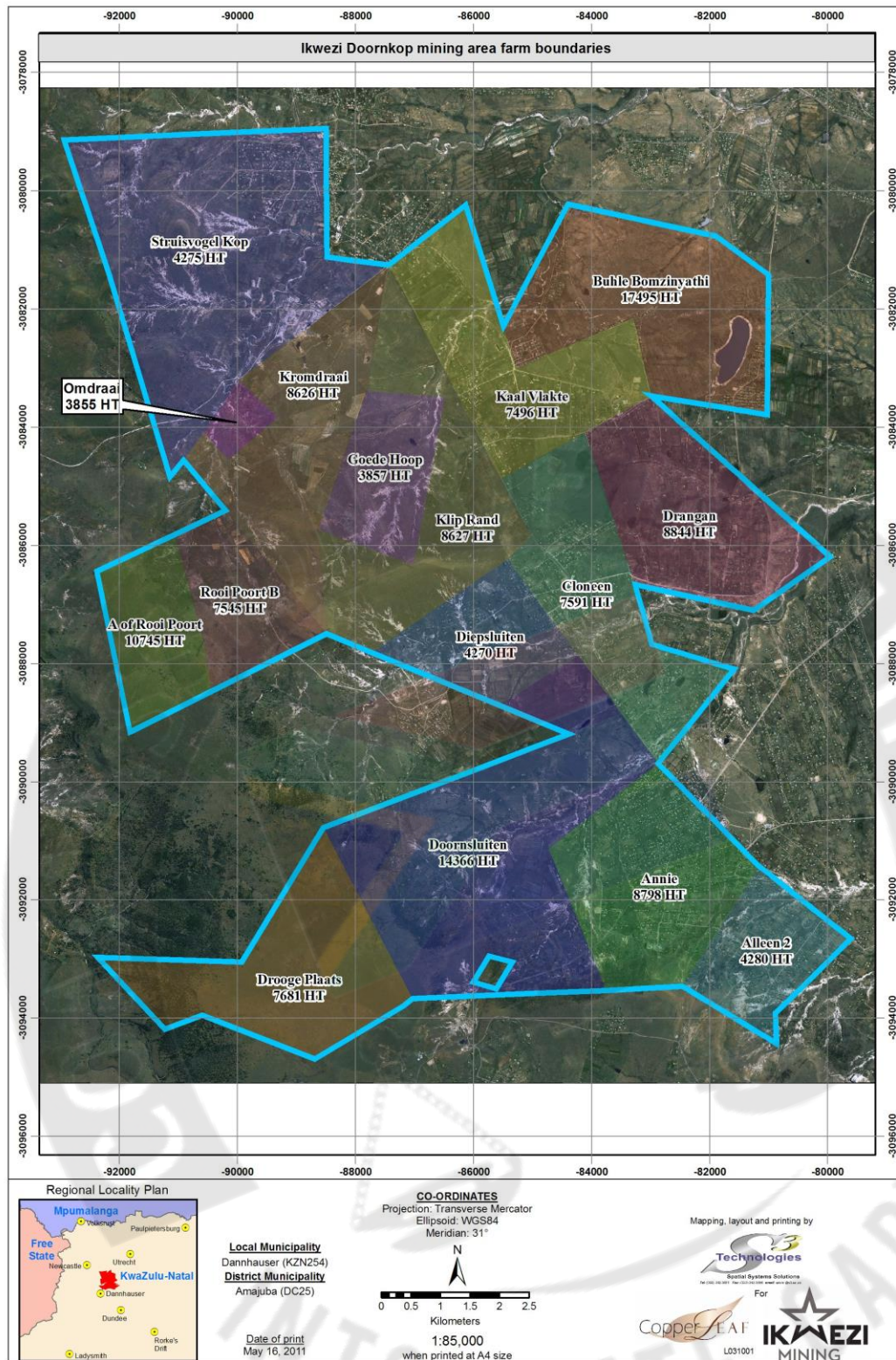
The purpose of this proposal is to determine interest from ESKOM with regards to a 5 year coal supply agreement. This proposal hopes to ascertain the feasibility of Ikwezi's product qualities being acceptable to ESKOM as well as the funding and pricing requirements by Ikwezi.

2. Surface Properties

The Newcastle Project spans 16 farms, totalling 12,181.2 hectares, in the Newcastle and Dannhauser Magisterial Districts of the KwaZulu-Natal Province of South Africa. Geologically the area falls within the Klipriver Coalfield of KwaZulu Natal.

Table showing the properties that form the Newcastle Project

StruisvogelKop 4275	Omdraai 3855
Kromdraai 8626	Goedehoop 3857
Kliprand 8627	A of Rooipoort 10745
B of Rooipoort 7545	Portions of the farm Buhle Bomzinyathi 17495
Kaalvlakte 7496	Cloneen 7591
Drangan 8844	Diepsluiten 4270
Doornsluiten 14366	Droogeplaats 7681
Annie 8798	Alleen 2 4280



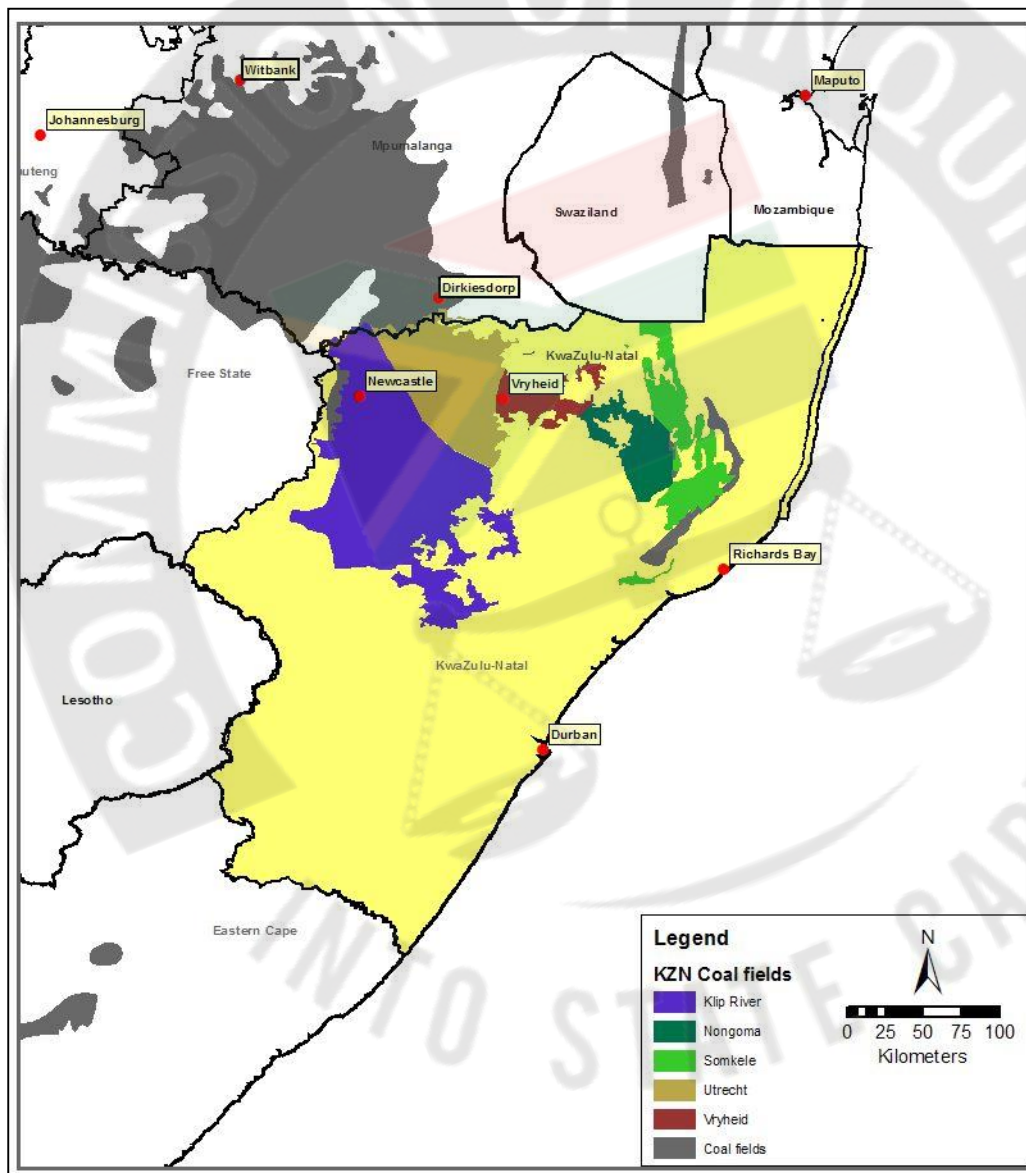
Map showing the various properties that form the Newcastle Project

3. General Geology

The project area is located in the Klipriver Coalfield of KwaZulu-Natal (Figure 1.2.3_1.). In this coalfield the Ecca Group of sediments overlies the Karoo Basin and where it is characterised by shelf shales and coal it is named the Vryheid Formation. The Vryheid Formation lies unconformably on the Dwyka Formation. The Newcastle Project falls within the central parts of the Klipriver Coalfield which comprises of carboniferous sediments of the Ecca Formation and Beaufort Groups of the Karoo Supergroup. There are no pre-Karoo outcrops in the area. The Ecca Group has been subdivided into three groups namely Lower, Middle and Upper stages based on lithological divisions.

In general there are two coal seams, the Top Seam and Bottom Seam, which are separated by coarse grained sandstone, pebbly, cross-bedded and fining upwards to shale at the top. The Top Seam appears to be the only seam that has reasonable prospects for eventual economic extraction. The spacing between the Top Seam and Bottom Seam ranges from less than a metre to 25 metres in places. Various dolerite intrusions cut through the area vertically as dykes and horizontally as sills. The sills displace the overlying sediments by distances equal to their thickness while dykes cause some burning and devolatilisation of the coal.

Within the project area, both the Top and Bottom Seam occur with the first to be the economic seam while the Ex-Bottom Seam was intersected in one borehole only and thus not included as a resource. The depth to the roof of the seams changes drastically due to the influence of the dolerite sill position relative to the coal seams and helped to define the resource areas based on seam elevations.



Map showing the various coalfields in Kwa-Zulu Natal

Project : Newcastle Project

Sub Project : IKWEZI

[]

[]

Drilled On : 2011/02/07

[]

**Borehole Name : DK013**

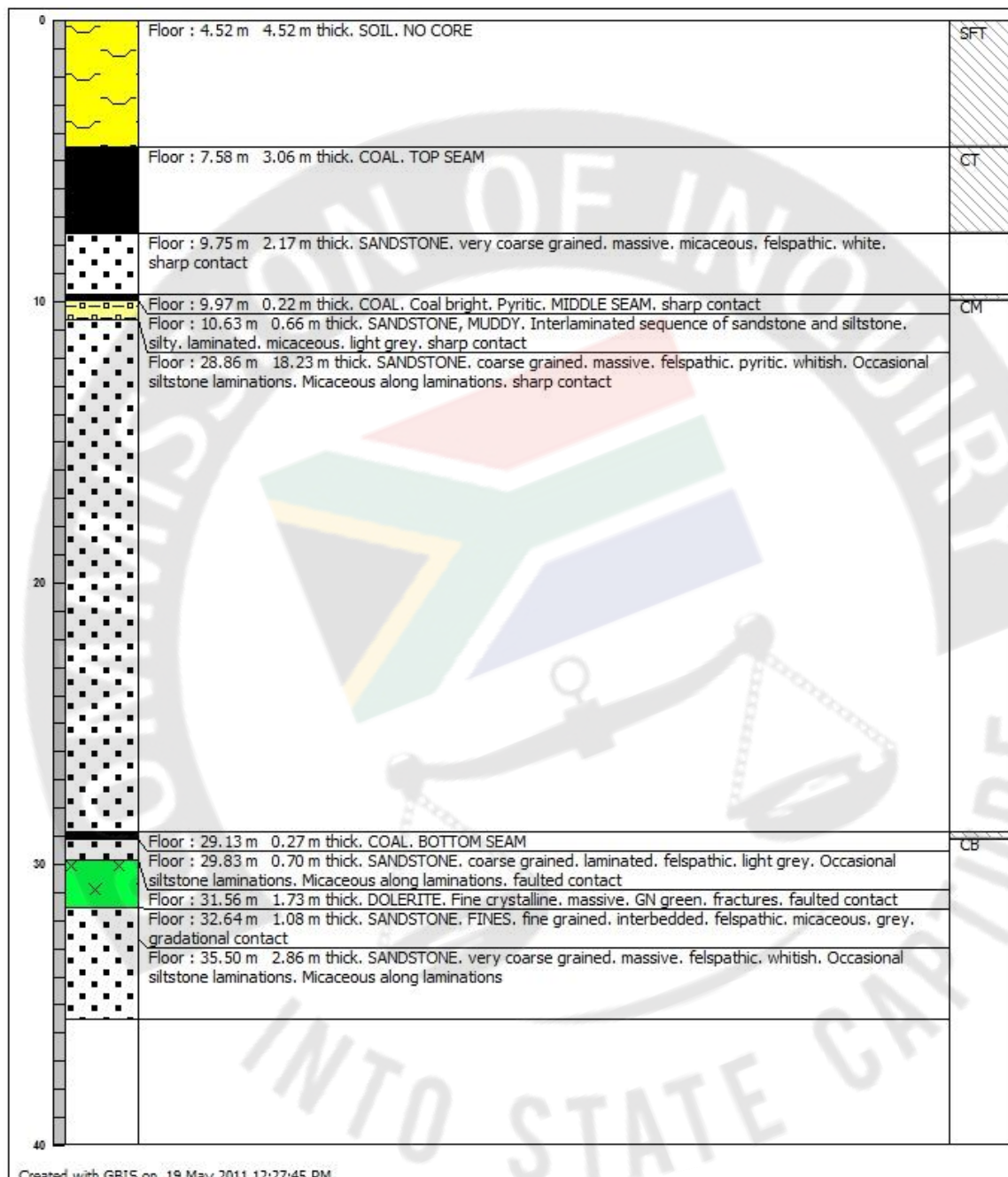
Y Coord : 81758.50 m

X Coord : 3081315.80 m

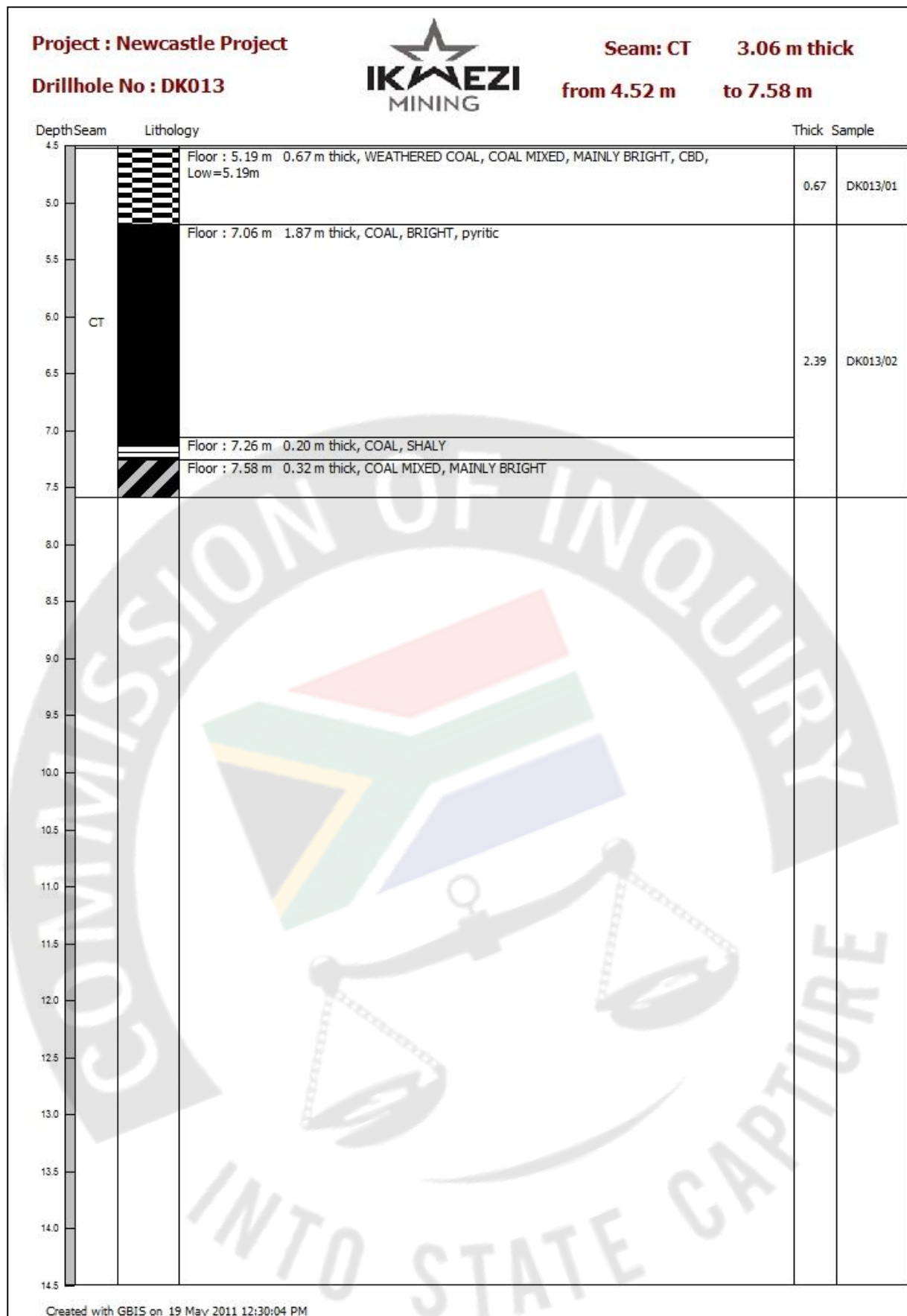
Elevation : 1228.36 m

Coordinate System : LO31_WGS84

Final Depth : 35.50 m



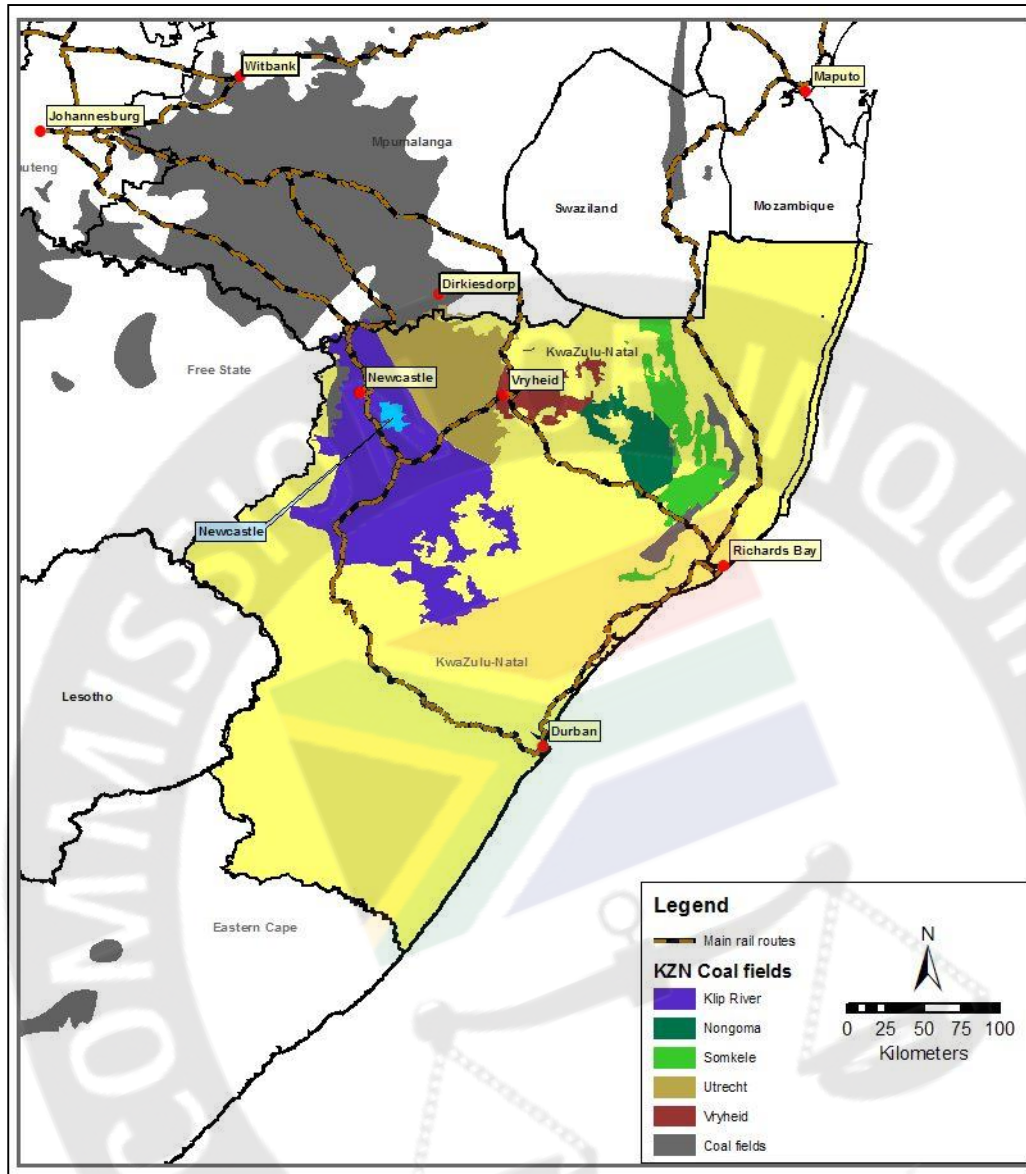
An example of the lithological graphical log produced for the Newcastle Project.



An example of the coal graphical log produced for the Newcastle Project.

4. Project location

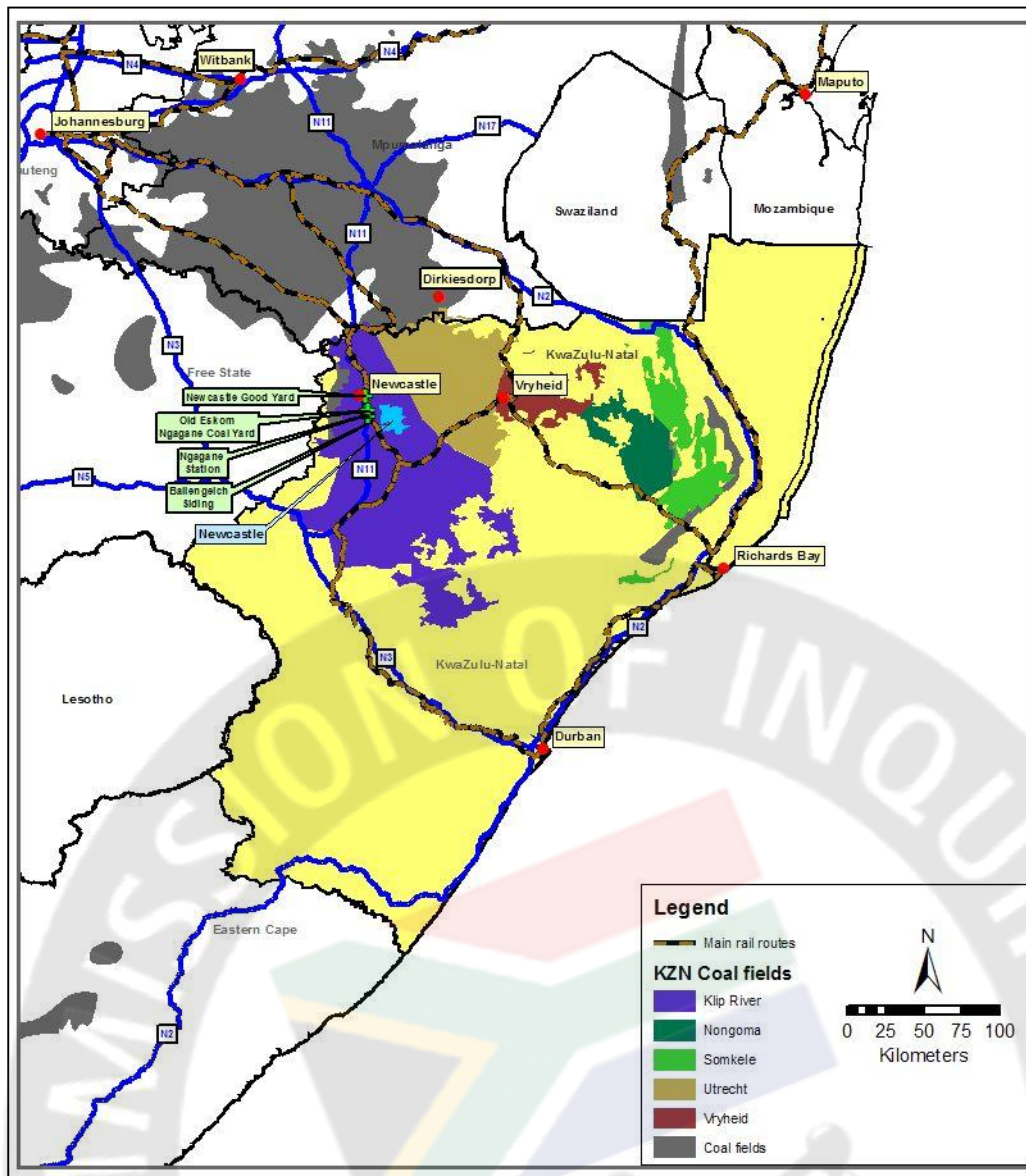
The Newcastle Project is located approximately 28 km southeast of the town of Newcastle, along the P296 road, directly south of Osizweni Township, primarily within the Dannhauser and partly within the Newcastle Magisterial Districts of the KwaZulu-Natal Province of the Republic of South Africa. The nearest large town is Newcastle which hosts the Mittal Steelwork. The area was historically known for its coal mines and Eskom's Ingagane Power Station. The location of the Newcastle Project relative to the main rail infrastructure in the eastern parts of South Africa is illustrated in Figure 1.4_1.



Map showing the location of the Newcastle Project

A few smaller and historic towns are in close proximity to the project area. Towns such as Glencoe and Dundee are both known for their coal mining history.

There are a number of existing railway sidings close to the Prospecting Right that link the area to the ports of Durban and Richards Bay. Tarred roads are easily accessible and link the area to any part of South Africa. Figure 1.4_2 illustrates the position of the Newcastle Project relative to the main logistical rail and port infrastructure of Kwazulu-Natal.



Map showing the location of the Newcastle Project in relation to the main Railway Infrastructure and National Roads.

5. Topography and Climate

KwaZulu-Natal has a varied yet verdant climate thanks to a diverse and complex topography. Generally, the coast is subtropical with inland regions becoming progressively colder. Temperature drops towards the hinterland becoming much cooler in the winter. Ladysmith in the Tugela River Valley reaches 30 °C (86 °F) in the summer, but may drop below freezing point on winter evenings. Snow may occur in Glencoe and Dundee in winter while Newcastle is known to be one of the coldest towns in South Africa during the winter.

The topography in the project area consists of undulating surface with large hills and hummocks in the surrounding areas. Mountains can be seen in the distance which forms part of the upper Drakensberg series. In the prospecting area there are a number of stream tributaries with the main river to the north known as the Buffels River.

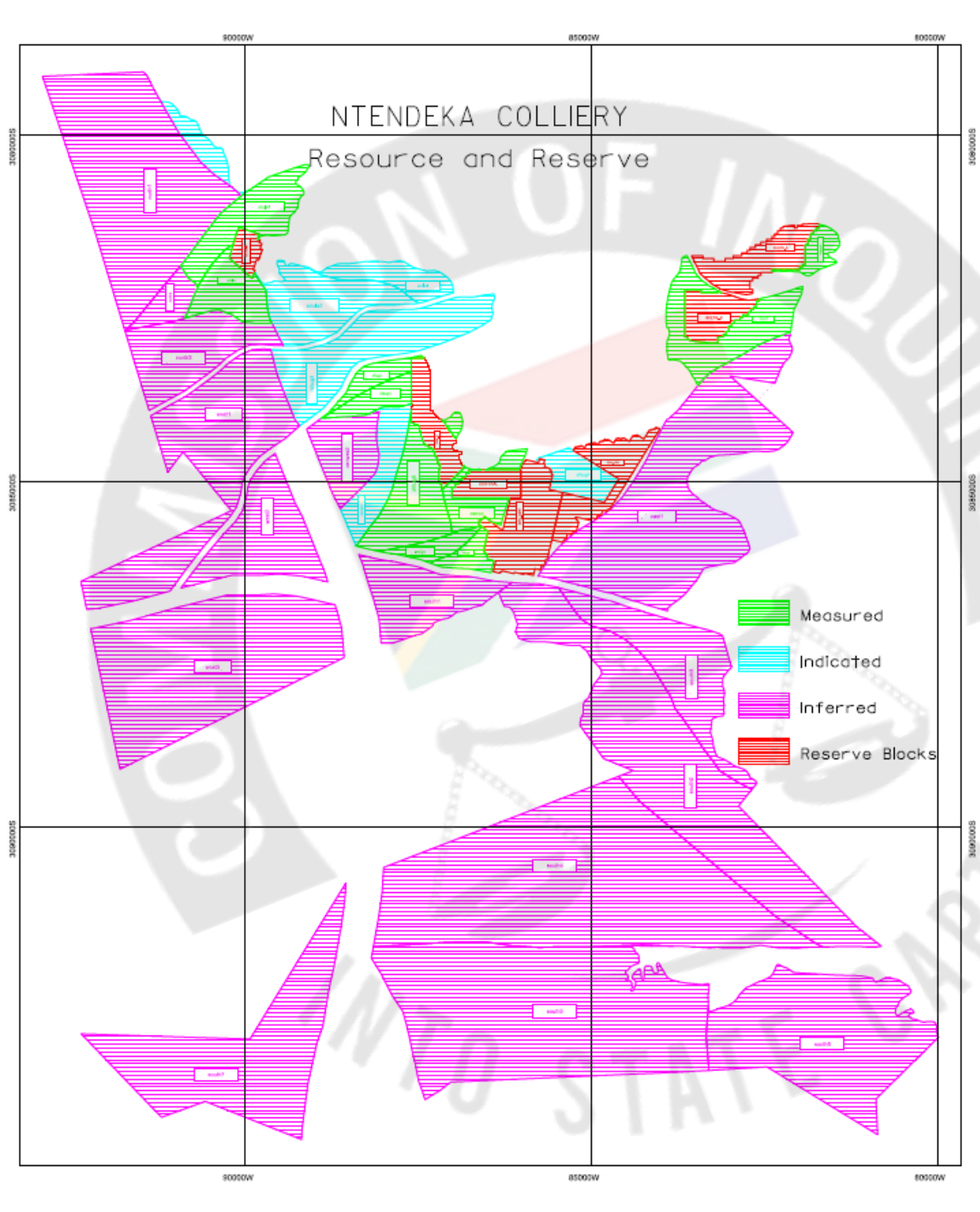
Farming and industrial activities in Newcastle are the main economic activities in the region. Agriculture is currently the leading activity in the rural areas where water is in abundance and used for irrigation of crops.

6. GEOLOGICAL INTERPRETATION AND MODELLING

The resource modelling and volume calculations were done by Siyaphambili, using the MINEX 6.0.2 software (published by ECS Mining Software Systems).

Cut-off parameters, applied to the coal properties, to delineate the resources are seam thicknesses less than 1 m and a raw ash content of more than 50%. The following parameters were modelled for each of the mineable coal seams:

- Seam Floor and Roof Elevations;
- Seam Thickness;
- Raw and product coal (various ash content %) qualities on air dried basis;
- Topography – as defined from aerial surveys; and
- Limit of Weathering.



Map showing Resource and Reserve Blocks.

7. RESOURCE CLASSIFICATION CRITERIA

The Ntendeka Colliery area covers 12 181.2 ha of farm land of which 8,808 ha has potential mineable coal resources. In the resource areas the depth to the roof of the Top Seam ranges from 0 to 270.5m with an average of 59.4 m.

Portions of a deposit that do not have a reasonable prospect for eventual economic extraction were not included in the Resource classification. The following key assumptions were made in determining that the Resources classified have a reasonable prospect for eventual economic extraction:

- Seam thicknesses less than 1 m were considered to be uneconomic;
- Material with a raw ash content of more than 50% was considered not to be coal; and
- There are no coal resources estimated between the surface grid (TOPS) and the limit of weathering (LOW).

The following guidelines were used to classify the resource areas and only boreholes with full washability analysis were considered for classification purposes.

- Drill hole density (Figure 6_1):
 - Measured Resource. > 8 boreholes per 100 ha (< 350 x 350 m drill grid [= 197 m radius]);
 - Indicated Resource. 4 to 8 boreholes per 100 ha (< 500 x 500 m drill grid [= 282 m radius]); and
 - Inferred Resource. < 4 boreholes per 100 ha (> 1 000 x 1 000 m drill grid [= 564 m radius]).
- Geological and grade continuity; and
- Geological structure.

For the Top Seam, the area was drilled to a density sufficient to enable classification of the resource areas. The total gross *in situ* resource of 294mt consists of 50.4mt "**Measured**", 36mt "**Indicated**" and 207.7mt "**Inferred**" resources. For all the resources the classification is as defined by the current JORC classification for multiple seam deposits. Tabled below are the tonnage breakdown (in millions) and the classification per resource block.

Tonnage per Resource Classification.

Top Seam (Mt)	
Measured	50.4
Indicated	36
Inferred	207.7
Total	294.1

8. RESOURCE STATEMENT

RESOURCE CLASSIFICATION	GTIS (Mt)	GEOL LOSS	TTIS (Mt)	SEAM NAME	SEAM THICK (m)	RD (g/cc)	AS (%)	RAW QUALITIES (air Dried)					CV (MJ/KG)
								IM (%)	VM (%)	FC (%)	TS (%)		
Measured	41.19	10%	37.07	Top	2.76	1.58	28.41	2.25	15.01	54.37	2.11	22.39	
	9.23	10%	8.31	Bottom	1.07	1.53	24.46	1.71	16.23	57.59	2.09	23.68	
Total Measured	50.42	10%	45.38		2.45	1.57	27.68	2.15	15.23	54.96	2.11	22.63	
Indicated	29.19	15%	24.81	Top	3.10	1.59	27.91	2.78	14.95	54.38	1.98	22.23	
	6.84	15%	5.81	Bottom	1.44	1.55	25.74	1.76	14.76	57.73	2.16	23.42	
Total Indicated	36.03	15%	30.62		2.78	1.58	27.50	2.58	14.91	55.02	2.01	22.46	
Inferred	162.12	20%	129.70	Top	1.93	1.58	26.95	1.59	15.24	56.21	2.37	23.75	
	45.55	20%	36.44	Bottom	0.91	1.56	27.12	1.40	15.93	55.57	1.91	23.55	
Total Inferred	207.67	20%	166.14		1.71	1.58	26.99	1.55	15.39	56.07	2.27	23.70	
Total Resources: Top Seam	232.50	18%	191.58	Top	2.24	1.58	27.36	1.87	15.16	55.62	2.27	23.29	
Total Resources: Bottom Seam	61.62	18%	50.56	Bottom	1.00	1.55	26.53	1.50	15.84	56.15	1.97	23.55	
TOTAL RESOURCES	294.12	18%	242.14		1.98	1.58	27.18	1.79	15.30	55.73	2.21	23.35	

9. RESERVE CLASSIFICATION CRITERIA

The mine design and planning was undertaken by external consultants with relevant competence and experiences. Steffanuti Stocks Mining Services was used for all reserves considered to be economically mineable by opencast methods using the following parameters:

- 5% geological loss
- 5% mining loss
- Maximum strip ratio 1:7

Mindset (Pty) Ltd was used for all reserves considered to be economically extractable via underground methods using the following parameters:

- 63% extraction factor
- 5% geological loss
- 5% estimation error
- 7.5% mining loss

10. RESERVE STATEMENT

RESERVE CLASSIFICATION	MTIS (Mt)	MINING METHOD	MINING EXTRACTION	ROM (Mt)	SEAM NAME	SEAM THICK (m)	RawRD (g/cc)	Ash (%)	Moist (%)	Volts (%)	Carbon (%)	Sulph (%)	CV (MJ/KG)
Proven	9.81	OPENCAST	90%	8.83	Top	2.93	1.57	27.94	2.38	17.37	52.45	1.92	22.76
	0.47		90%	0.42	Bottom	1.12	1.51	21.61	1.65	18.35	58.39	2.01	24.71
Total OC Proven	10.28			9.25		2.68	1.56	27.06	2.28	17.50	53.28	1.93	23.03
Probable													
Total OC Probable													
Total Opencast	10.28		90%	9.25		2.68	1.56	27.06	2.28	17.50	53.28	1.93	23.03
Proven		UNDERGROUND											
Total UG Proven													
Probable	5.76		63%	3.63	Top	3.11	1.60	30.16	1.82	17.02	51.00	1.71	21.64
Total UG Probable	5.76			3.63		2.68	1.56	27.06	2.28	17.50	53.28	1.93	23.03
Total Underground	5.76		63%	3.63		3.11	1.60	30.16	1.82	17.02	51.00	1.71	21.64
TOTAL RESERVES	16.04			12.88		2.44	1.57	27.89	2.38	16.57	53.22	2.22	22.39

It should be noted that these qualities are a composite of the average wash qualities of the various opencast areas over a five year period and variations will occur. Upon agreement of target qualities between Eskom and Ikwezi a full production schedule will be compiled of anticipated monthly qualities that will meet the predetermined range of acceptable qualities.

	ASH	CV	FC	IM	TS	VOLS
YEAR 1	20.3	25.3	58.1	1.96	1.83	19.6
YEAR 2	19.4	26.3	58.2	2.56	1.42	19.9
YEAR 3	19.4	26.3	58.2	2.57	1.42	19.9
YEAR 4	19.4	26	59.1	2.45	1.42	19.1
YEAR 5	20.3	25.1	60.9	1.89	1.56	16.9
5 YR AVG	19.7	25.8	58.8	2.31	1.53	19.2

Proposed indicative 5 year quality specification for Eskom (based on a wash RD of 1.75)

11. PROJECT STATUS

Ikwezi Mining (Pty) Ltd has been completed the following regulatory approvals:

- Mining Right
- Integrated Water Use Licence
- EIA Approval for Siding
- Siding design Approval from TFR
- MOU agreement with DOT for use of its main haul road

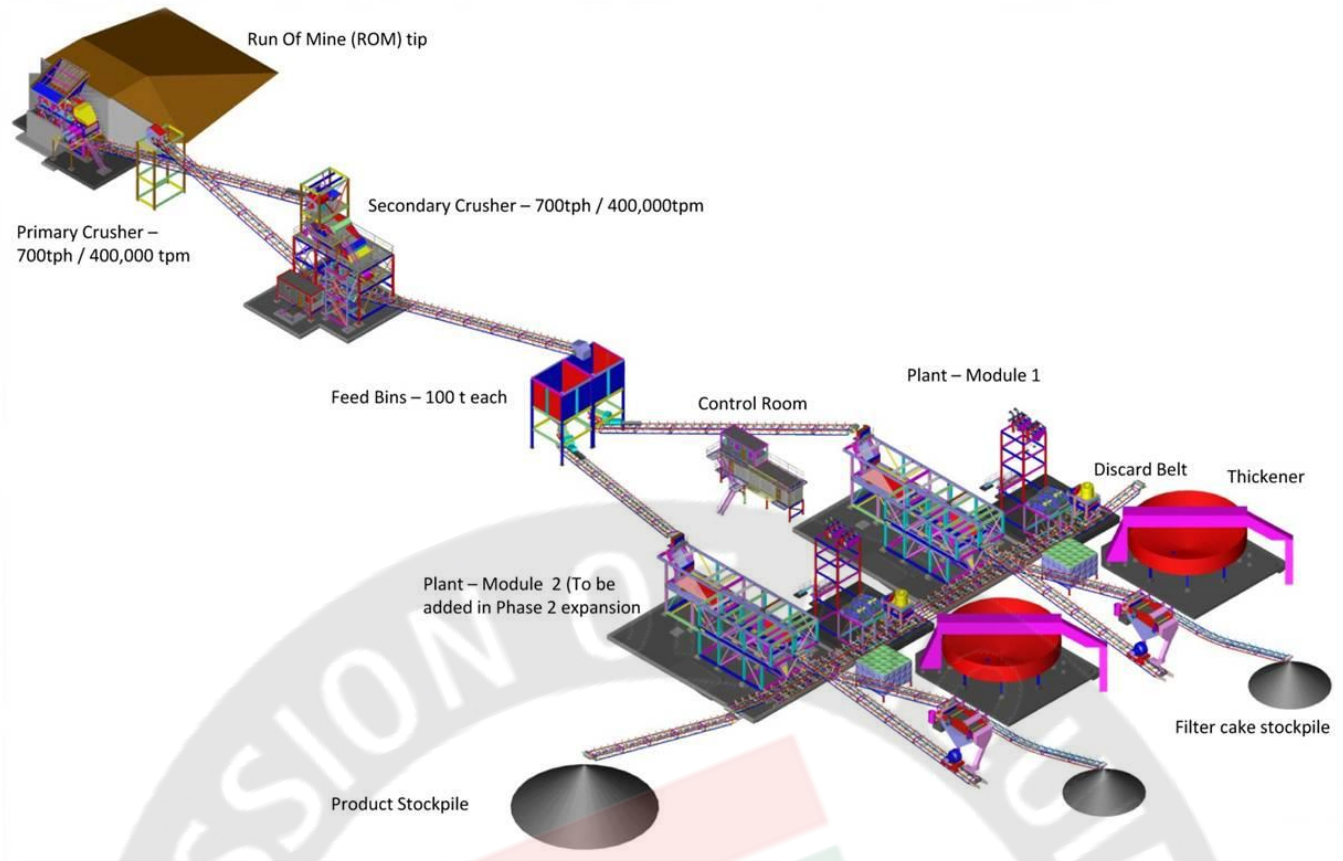
The following regulatory licences are imminent:

- NEMA
- NEMWA
- PDA

In addition the following activities have been completed:

- Beneficiation plant with capacity to process 2 million tons p.a. Run of Mine (ROM) coal has been completed and dry commissioned
- Remaining work to bring plant into full operation is the installation of the water supply system which will commence on receipt of IWUL.
- Initial site establishment for the first open cast operation has commenced.
- Agreement with Stefanutti Stocks Mining has been entered it under which they will contract mine the open cast operations on behalf of the Company.
- Farms on which initial opencast operations will be conducted have been purchased.
- Rail agreement in place with Transnet Freight Rail (TFR) further to their commitment to provide 1.5Mtpa rail capacity to either the ports of Richards Bay or Durban
- Provincial road linking the Ntendeka colliery coal wash plant to the Ngagane siding has been rebuilt / upgraded including the rebuilding of two major bridges at a cost to the Company of approx. R16 million
- Farm on which the old Ngagane power station siding was located has been purchased for reinstallation of siding to support the Ntendeka colliery.
- Major Power Infrastructure

Newcastle Project – Ntendeka wash plant layout including phase 2 expansion



The below photo shows the completed wash plant with Run Of Mine ramp on LHS of picture.



Stock pile area adjacent to wash plant / Run of Mine (ROM) ramp



12. Water Supply

12.1 Water Requirements

A full hydrological study has been done and the hydro-engineering implications of the mining and beneficiation processes have been assessed culminating in the submission of a water use license for the colliery.

Water is to be used for dust suppression, coal washing, human consumption, and general industrial use such as laundry, equipment cleaning, rehabilitation irrigation etc.

According to the Water Balance Report for the mine, the total makeup water required to be brought onto site is 1 222 cubic meters per day. Assuming the Plant runs at 30 days per month, the total required per month is 37 000 cubic meters. Since we will be treating this water, and some brine (Dissolved Air Flotation “DAF” Plant waste) will be produced, we are assuming that 40 000 cubic meters per month will be required.

12.2 Water Sources

A number of water sources have been studied. These included run-off from rainfall, recovered process water from the washing plant, effluent water from the sewage treatment works on the mine, an old opencast pit near to the Plant location that fills during the rainy season, boreholes and the local river system.

It became apparent in the early stages of planning that these sources of water may be unreliable, over used due to cattle watering and the like, and too small to ensure uninterrupted supply to the mine and plant.

12.3 Ngagane Colliery

In the research of the area, the Old Ngagane colliery located on the farm Vreda, was pinpointed as a possible source of water. The Ngagane colliery ceased operations approx. 20 years ago with the mothballing of Eskom’s Ngagane power station between 1988 to 1990.. The rehabilitation liability of the Ngagane Colliery belongs to Anglo Coal (although mined

many years ago and only by the previous owners) and the responsibility for any polluted decant seemingly lies with Anglo.

The mine currently decants particularly poor AMD into the Ngagane River catchment. Although the quantities do not appear to be excessive, the qualities are particularly poor.

The volume of water contained in the old workings (229 hectares in extent) is approximately 4.3 million cubic meters. The recharge of the underground workings is primarily from groundwater and limited surface ingress at a number of subsidence areas.

12.4 Proposal

Ikwezi proposes to lay a 7 kilometer pipeline from the Ngagane Colliery to its Washing plant and industrial area and to abstract initially 40 000 cubic meters of polluted water per month (dry season).

At least two boreholes will be used to pump water and a third is planned to spread the area of abstraction across more of the old workings.

The impact of this abstraction should be to reduce the water level in the old workings by less than 4 centimeters per month. The height of the workings varies between 1.8 meters to 3.0 meters. The re-charge should ensure that the ingress from the 2km x 2km extent of underground workings balances the abstraction in a very short period of time. Monthly abstraction will constitute 0.001% of the water volume contained in the old workings.

Abstraction volumes are calculated as per Plant tons. If 40 000 kiloliters is needed for 170 000 tons of coal then approx. 0.24 kiloliters will be needed per feed ton to the plant.

Preliminary treatment will be to bring the ph up to 7.0 by lime addition via a dosing plant at the Plant.

Dissolved Air Flotation “DAF” methodology and the engineering facility to be situated at the Wash Plant site, is well proven technology and it is expected that 10% of the water will report to the brine tanks after treatment. Disposal will be via drying beds or preferably water cannon fine mist sprays over the discard dump area. The evaporation rates will then be adequate to cater for the approximately 100 liters per minute of maximum brine disposal required. Four water cannons are to be used in rotation so we see no major difficulty in disposing of the saline brine.

The water balance is then as follows:

Water ex Ingagane Colliery old workings	40 000 cubic meters per month
Waste water from DAF plant	4 000 cubic meters per month
Water to Plant (make up water)	36 000 cubic meters per month

12.5 Benefits

The benefits from Ikwezi making use of this source of raw water are as follows:

- ✓ Limited abstraction from local boreholes.
- ✓ No abstraction from local rivers and streams which are used for agriculture and human consumption.
- ✓ Ikwezi will be able to ensure that minimal (if any!) decant from Old Ngagane Colliery is released into the Ngagane Catchment.
- ✓ The benefits are long term – approximately 20 years.
- ✓ The water will be treated in a 2 stage process – initially treated to raise the ph and ensure that the water used in the Plant is not acidic. Second the water will be treated in a Dissolved Air Flotation Plant to reduce the salt concentration to industrial water specifications for use in the Plant.
- ✓ A secondary small RO plant will take some of the incoming water and improve the quality to potable levels for use in the change house, laundry etc.

12.6 Risk Assessment

Risks identified are as follows:

The reduction in pressure within the old workings does not halt the current pollution decant.

To mitigate this Ikwezi proposes to engage with Anglo Coal who are the surface holders to construct properly designed holding dams or sumps at the decant points and to pump from these points to the ph treatment point prior to the water being gravity fed to the Plant.

The area of old workings from which water is being pumped is isolated from the rest of the underground and runs dry.
To mitigate this Ikwezi will have at least 2 pumping boreholes active and 2 others equipped and ready should the elevation of the water level on any one of the active pumping holes decrease more than expected.

Should the Plant stop operating for a few days, will the decant resume in the Ngagane catchment?

The paddocks and holding ponds to be constructed will contain sufficient capacity to keep the decant from entering the river for at least 10 days, thereafter the pumping to the Plant will reduce the levels in the holding dams before resuming pumping from the old workings.

Should a 100 year flood event overrun the holding dams.

Clearly under these conditions the holding dams will be flushed out, however the intent is to keep these facilities at minimum levels, thus minimising the impact. In any event during such an event, the dilution is significant.

12.7 Summary

The initiative will resolve the decant problem at Ngagane for the life of the Ikwezi Ntendeka mine (approximately 20 years).

Post closure of the mine, the infrastructure to pipe water to the DAF plant will still be intact and could form the basis for a permanent solution to the problem.

Ikwezi's proposal forms an integral part of the water use license application.

Ikwezi's Ntendeka Colliery will be extremely efficient in its water conservation and use and will be a "zero effluent" site.

The construction of the bulk and treated water storage facilities at the wash plant will commence on receipt of the IWUL for the Ntendeka colliery. In addition to the DAF plant that will bring the water quality up to an industrial water standard for use by the operation, a potable water plant to further treat water for site usage has been purchased together with a sewage plant thus making the site completely self-sufficient with regard to water.

Further, the wash plant incorporates a filter press and centrifuges which has the benefit of reducing water usage at the plant in an area which has water constraints. As a result, the discard dumps are totally dry and are not co-disposal dumps i.e. slurry dams which are common at the majority of coal processing facilities in South Africa. Additional yield from the filter presses have not been included in the financial models and as such they are conservative in this regard.

13. Siding

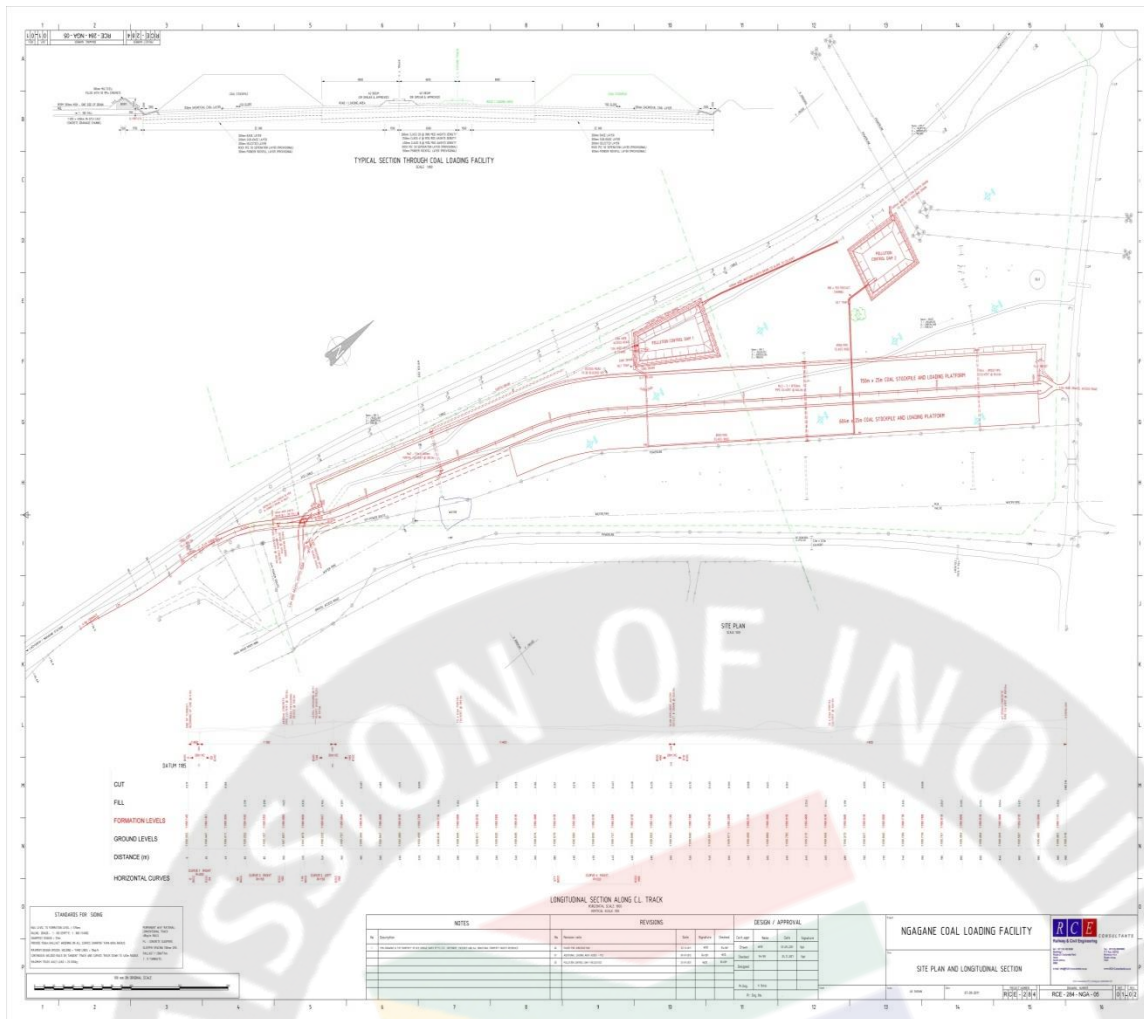
An option over land that contains the old rail siding for the Ngagane power station has been secured and EIA approval received for the siding.

Detailed designs have been completed to reinstall the siding (the tracks have been lifted by others and sold for scrap) which have been approved by Transnet Freight Rail (TFR).

The siding will be RBCT compliant and capable of handling a 50 wagon train. There are a number of existing sidings available in the area which are currently coal compliant and that can be used by the operation i.e. Talane, Ballegich as well as Newcastle.

Agreement has been reached to use the Newcastle siding awaiting the completion of Ikwezi's dedicated siding at Newcastle which is scheduled for completion in September / October 2012. Should coal be available prior to the completion of our Ngagane siding, we will use this in the interim. Detailed designs together with quotes and costings have been received and have been included in the financial model.

An overall design of the siding is shown below:

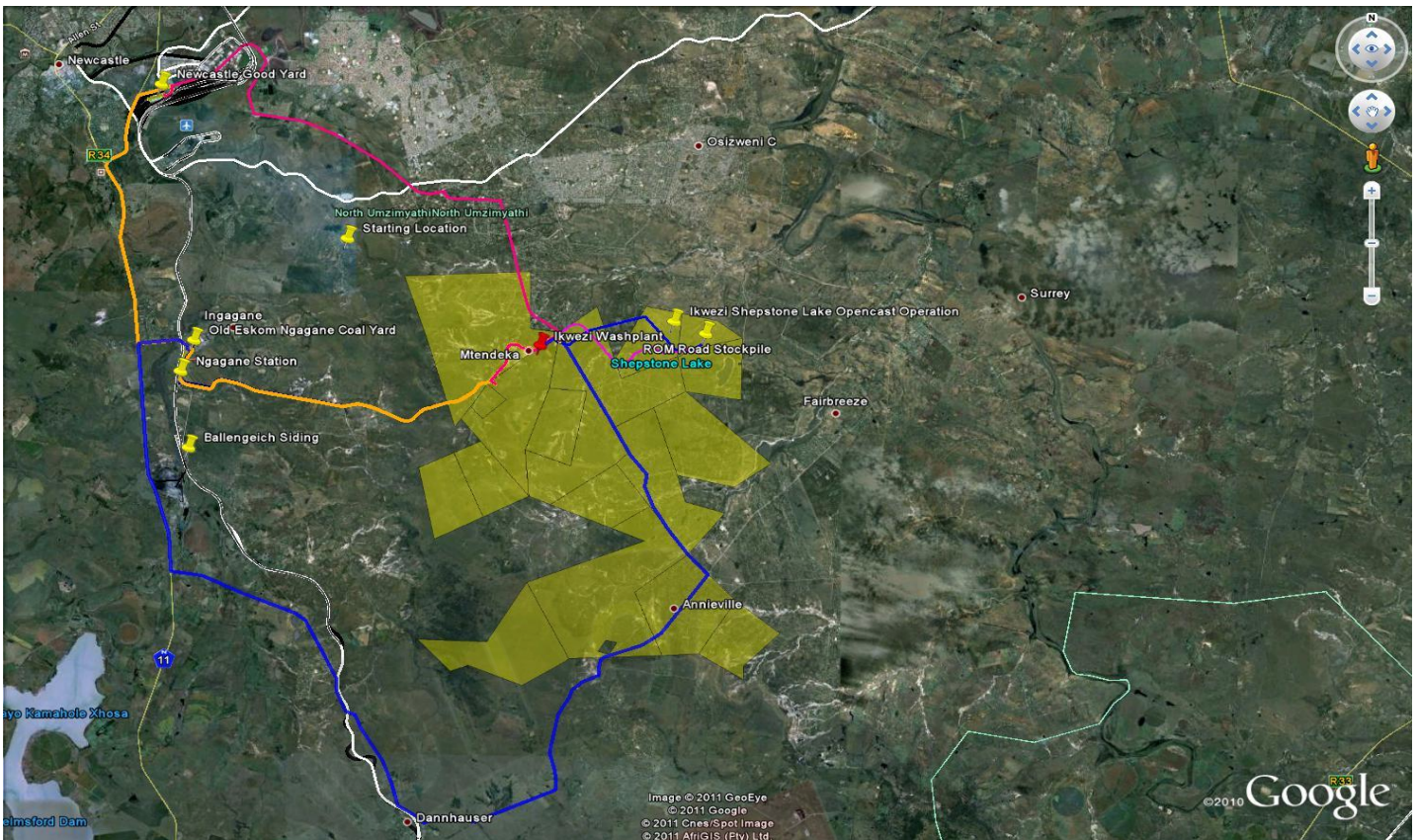


Diagrammatic siding design layout

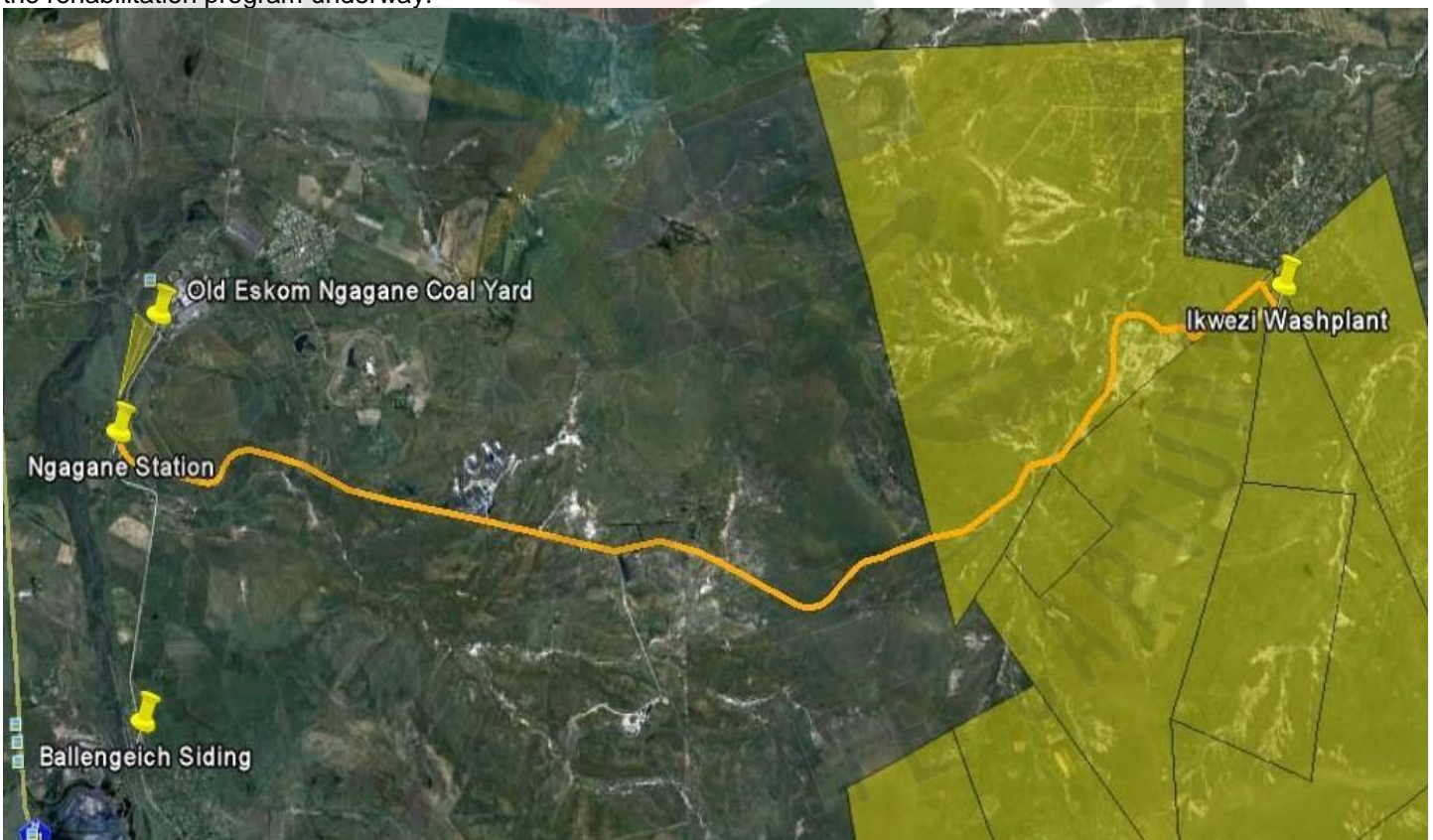
14. Road from wash plant to siding

The initial plan was for Ikwezi to use an existing siding approx. 26km from the wash plant in the town of Newcastle which was available and connected to the wash plant via the P272, a provincial tarred road. Geotechnical work was done on the road and it was discovered that running coal trucks along the P272 would result in the disintegration of the road within a 2 or 3 year period. The road also runs through the densely populated area of Madadeni on the outskirts of Newcastle and would have impacted traffic flow in the area. As a result the decision was made to move the siding location to the old Ngagane power station site. The haul distance is shorter (16km) and the road runs through unpopulated farm land with minimal population thus greatly improving the health and safety aspect as well as providing a reduced haulage cost due to the shorter distance. An existing road is in place, half of which follows an old railway line where the tracks were "removed" but which provides excellent geotechnical stability. To bring the road up to the required standard, the relevant sections of the road that required rework have been widened to 13m from its current approx. 8m, resurfaced in certain areas and rebuilt in others. Culverts have been replaced together with two major culverts (bridges) over a small river adjacent to the wash plant and over a gully approx. 5km from the wash plant having been rebuilt. The full road length has been graded and is in a good, operable condition. Work to bring the road and bridges to the required standard was completed by Stefanutti Stocks.

The picture below shows the original planned route (in pink) together with the current route in yellow. The route in pink will be utilized should there be a 2 or 3 month delay for whatever reason in the establishment of the proprietary Ngagane siding that will be owned by the Company. The area in yellow outlines the Mining Right – approx. 12,000ha.



The picture below shows the route of the road together with some pictures inserted showing the road status prior to the rehabilitation program underway.



Road rehabilitation and widening completed



Building of major bridge adjacent to wash plant on haul road to Ngagane siding prior to construction



Building of major bridge adjacent to wash plant on haul road to Ngagane siding during construction



Completed bridge adjacent to wash plant on main haul road to Ngagane siding



Second bridge on haul road from coal wash plant to Ngagane siding under construction



The road that the Company is a provincial road and is open to general public use. This (whilst essential for the operation) is a substantial contribution that has been made to improving the area in which we operate. Grants were applied for and approved by the DTI with regard to the construction of the rail siding and the rehabilitation of the road, which resulted in them providing a contribution towards the cost of construction of the bridges. An application has also been made to them for the costs associated with the construction of the rail siding at Ngagane.

15. PROJECT WAY FORWARD

Ikwezi Mining is looking to finalise a R200 million debt facility in order to complete the construction of its Ntendeka Colliery infrastructure and siding. Upon finalisation of this facility Ikwezi will be in production within a three to four month time frame producing approximately 170 000 tons of ROM coal and between 110 000 and 150 000 tons of product coal (quality dependent).

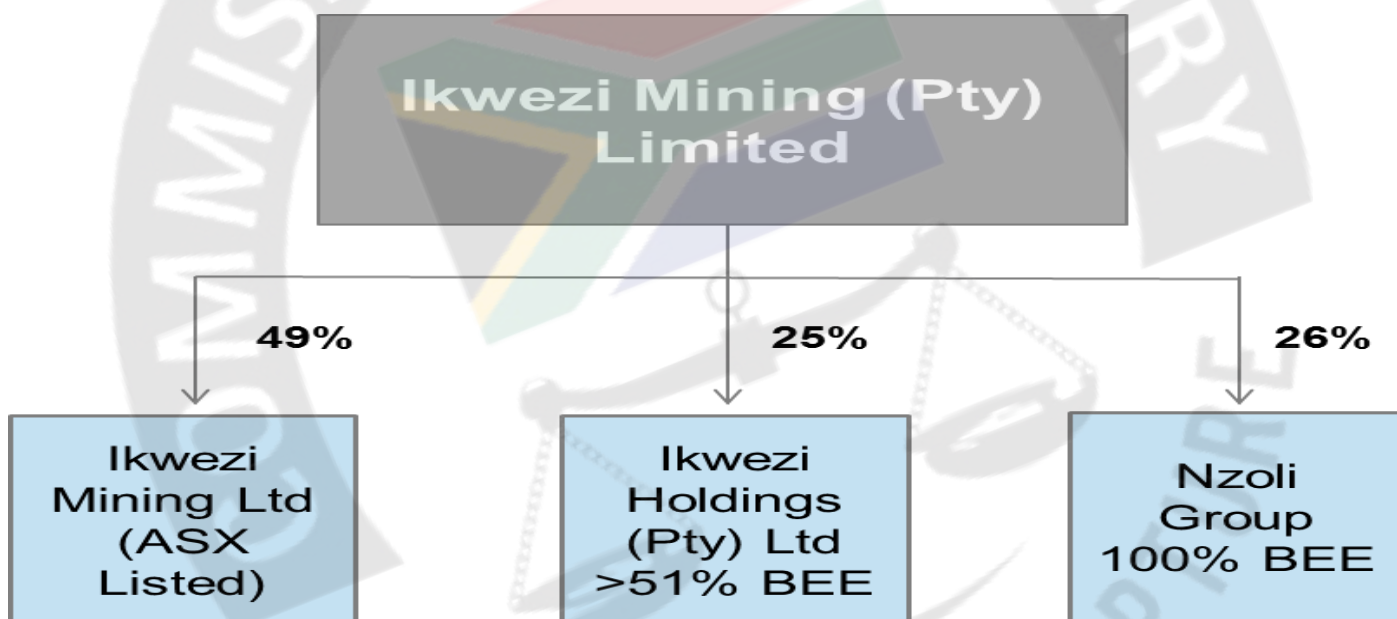
16. IKWEZI CRITERIA QUALIFYING AS AN ESKOM VENDOR

As part of its Mining Right application a Social and Labour Plan (SLP) was submitted that incorporated Ikwezi's commitments towards social development in the area that it is operating. This plan, prior to approval by the DMR, was submitted and discussed at length with all relevant stakeholders including local municipalities and communities and any other interested parties. The approved SLP, provides the framework for the minimum commitment in this aspect and Ikwezi, through its work with the local authorities and communities has already gone over and above these commitments.

The relationship between Ikwezi and the various stakeholders is one of complete transparency with monthly forums and meetings scheduled that actively involve the relevant stakeholders in all aspects of the business.

16.1 OWNERSHIP

Ikwezi Mining (Pty) Ltd is currently owned by ASX listed Ikwezi Mining Limited (70%) and a South African BEE company, Ikwezi Holdings (Pty) Ltd (30%). An agreement has been reached to diversify the company further by introducing an additional BEE company, Nzoli Group as a shareholder. The structure below represents the shareholding structure for Ikwezi Mining as per the agreement and is currently being effected. Ikwezi Mining (Pty) Ltd thus has a 51% BEE ownership.



16.2 MANAGEMENT CONTROL

Currently Ikwezi Mining has a board consisting of 3 members, of which two are HDSA candidates. The target empowerment level of management for Ntendeka Colliery is initially 40% which is expected to be increased over time via preferential skills training and other educational initiatives.

16.3 EMPLOYMENT

Ikwezi Mining's employment policy, which all contractors are contractually bound to, is to employ all staff from local areas first and foremost. Should the necessary skills not be available locally, then a wider geographic area would be

considered. Given the area that the colliery is situated in as well as the high level of qualified individuals within this area it is anticipated that at least 70% of all staff will be employed from the local labour pool and at least 60% of all staff will be HDSA candidates. has a board consisting of 3 members, of which two are HDSA candidates. This level is expected to be increased over time via preferential skills training and other educational initiatives.

16.4 SKILLS DEVELOPMENT

A detailed and comprehensive list of skills programmes will be formulated upon the completion of the SEBS. This will inform future skills plans, as a clearer understanding will be gained as to the required skills of Doornkop Collieries employees. Each skills development programme that is proposed will be registered by the MQA and will constitute a credit towards a National Qualifications Framework (NQF) qualification.

Doornkop Colliery will actively implement skills development programmes of its employees, by means of:

- A skills assessment for all employees to identify the existing available skills, to determine any skills gap, and to give employees the opportunity to identify skills that they would like to obtain;
- A selection process for employees to specify courses for the development of the particular skills;
- Providing training that is ISO 9001:2000 accredited and which is audited by the MQA. All skills programmes that are successfully completed by employees, and are registered with the relevant SETA, will result in a credit disbursement towards a qualification from the NQF;
- Providing skills development programmes that are compliant with Section 20 of the Skills Development Act, 1998;
- Including learner support, monitoring, reporting, and assessment for all educational training offered to employees;
- Identifying employees with a very good performance in terms of pass rate and class attendance in the courses/programmes attended. These employees, in addition to those that show potential during on site or job training, will be classified into a talent pool, to get first preference in the implementation of the mentorship, career progression, internship and bursary, and employment equity plans; and
- Initiating various awareness campaigns in an effort to enhance life skills. These campaigns will include topics such as HIV/AIDS, employment equity, diversity etc.

Multi-skilling of employees will form a specific focus towards the end of the operation in order to minimise the impact of closure.

16.5 PREFERENTIAL PROCUREMENT

The Ntendeka Colliery (Newcastle Project) has recognised that to effectively participate in the transformation of the South African economy, it has to institute preferential procurement within its purchasing operations and across its entire supplier base.

The objective of the preferential procurement policy is to maximise opportunities for HDSAs to supply goods and services to the mining operation which will contribute to the development of sustainable HDSA business enterprises, and will contribute to the purchasing and procurement requirements of the Mineral and Petroleum Resources Development Act, 2002 and the Mining Charter.

Through its Procurement Plan, Ntendeka Colliery will implement measures to promote, affirm, prefer, and advance procurement to persons who have been subject to unfair discrimination in the past. Procurement will be used by the operation as one of the primary mechanisms to affect LED in the communities affected by its operation. The company commits itself to preferentially procuring from local HDSA companies (where this is practically possible) for capital goods, services and consumables. Where preferential procurement is not possible due to a lack of capacity in local communities, selected community members may be provided with training opportunities.

This commitment will be met as far as possible, by making use of the LM's SMME supplier database. Appropriate levels of HDSA and local procurement will be met from the outset of the operation. Where this is not possible, targets will be set for improving these levels over the coming years. These targets will be included in the Procurement Plan to be submitted to the DMR.

Table 9.3.5.1 indicates the preferential procurement targets for services, consumables and capital goods respectively. These represent estimated targets at this time until a more accurate idea of the suppliers that are available in the nearby area is established.

These targets will be met through implementing the following measures:

- Forming partnerships with HDSA suppliers.
- Encouraging suppliers to form partnerships, joint ventures, or consortia with HDSA supplier companies where there is no HDSA company tendering to supply the required goods or services.
- Providing a complete list of products and services, which are required by Doornkop Colliery and that could be supplied by HDSAs.
- Establishing structures to partner with other entities or with government to develop HDSA procurement capacity.
- Actively participating in the LM SMME and supplier database development.
- Communicating with the Department of Trade and Industry (DTI) to identify HDSA companies with the necessary capability wishing to operate in the minerals industry.
- Ensuring that tender requirements are comprehensively communicated to HDSA companies.
- Assisting aspiring HDSAs in the formulation of appropriate business plans.
- Assisting HDSAs in training programmes, which focus on meeting tender and South African Bureau of Standards (SABS) requirements, and on generating an understanding of basic financial control systems.
- Assisting HDSAs in identifying external markets, outside of the company, with a view to becoming more self-sufficient and less dependent on mining for income opportunities.

A selection checklist will be developed to discourage subjectivity and “fronting” with regard to supplier selections. Policy and procedure will be communicated to relevant stakeholders, including current suppliers.

Preferential procurement targets

Dates	2013	2014	2015	2016	2017
Capital Goods	25%	27%	29%	31%	33%
Services	50%	55%	60%	65%	70%
Consumables	10%	13%	16%	19%	21%

16.6 ENTERPRISE DEVELOPMENT

A sustainable development plan has been prepared by Ntendeka Colliery to provide a framework for initiatives that promote the sustainability of employee households, as well as that of receiving communities and labour sending areas. The aim of the sustainable development initiatives is to assist the surrounding community and employees after mine closure. The assistance will be provided in terms of supplementing livelihoods, since an important income generator (i.e. the mine) in the area would have ceased operations.

In accordance with sustainable development strategies, Ntendeka Colliery intends to:

- Plan and execute mining in a manner that adheres to the three cornerstones of sustainable development, namely: economical efficiency, social justice and environmental integrity;
- Lead by example and positively influence other mining developments in the area to follow due legal requirements; and
- Develop a framework for mine planning, operation and closure that satisfies legal requirements, achieves sustainable development and is flexible enough to accommodate change

Ntendeka Colliery will further strive to assist small enterprises operating in the community to expand their business opportunities. The formation of partnerships with local government and local organisations will be a key factor in determining the success thereof. Similarly, the company has a firm belief in promoting community ownership of initiatives, as this is the only true way to promote long-term sustainable development, beyond the depletion of mineral resources. The implementation of the community development model will also be achieved through this local partnership with the community. In summary, the following steps will be implemented to generate a successful Sustainable Development Plan, which is applicable to the socio-economic development trends and needs of the area:

- **Step 1:** Formulation and implementation of measures to assess socio-economic issues, impacts and responsibilities of Ntendeka Colliery through the undertaking of the SEBS. The SEBS determines the impact of

the operation and ultimate closure on employees, major labour sending areas and surrounding communities. Social management measures will be proposed to mitigate impacts;

- **Step 2:** This step will focus on identifying additional potential livelihood opportunities. It involves undertaking livelihood investigations with affected or target communities, based on an analysis of regional development gaps and trends. Detailed feasibility studies of potential livelihood projects will be conducted, and recommendations will be made for projects that will be most suitable; and
- **Step 3:** This step focuses on enterprise creation through the generation of a basic community development model and establishment of a community development vision, which are able to provide alternative and sustainable opportunities to mine employees and other affected individuals. This involves the identification of potential livelihood projects.

Specifically, sustainable development projects will be implemented by the colliery once mining has commenced. The target spend towards Enterprise development is as yet undetermined and will be finalised in conjunction with all relevant parties prior to commencement of mining.

16.7 SOCIO ECONOMIC DEVELOPMENT

16.7.1 Socio-economic profile of surrounding region¹

The key socio-economic factors for the province, DM and LM, and potential labour sending areas are set out in Table below.

Socio-Economic Profile of Surrounding Region as per Census 2001⁸

Socio-Economic Indicators	Kwazulu Natal	Amajuba District Municipality	Dannhauser Local Municipality		
Population					
Total number of people	10 259 230	442 266	91 366		
Total number of households	1 660 934	101 054	19010		
Average Household Size	4.7	4.4	5.1		
Brief Analysis	The Dannhauser LM area has seen a steady decline in the population over the last 6 years. The decline can possibly be attributed to either the high prevalence of HIV and Aids related deaths or due to the fact that the education levels of persons has increased substantially making it possible to move to larger centres where employment opportunities are greater				
Housing and basic services (% stated for households in the municipal areas)					
Formal Housing			65.8%		
Informal settlements (separate stands and backyard dwellings)			34.2%		
Pit latrines			69.3%		
No access to any toilet facilities			31.7%		
Piped water in dwelling			72.1%		
Rubbish removal			11.9%		
Electricity			81.6%		
Brief Analysis	The majority of houses in the Dannhauser LM are in rural areas. Basic services such as water, electricity, sanitation and refuse removal seems to have increased to acceptable levels over the past 6 years. Housing is being addressed through projects as can be seen in the Integrated Development Plan.				
Educational profile of adults over 20 years of age					
No or limited primary education			9.7%		
Completed primary education			32.3%		
Completed secondary education			50.8%		
Completed Secondary with Tertiary Acceptance			7.2%		

¹ Information sourced from the national 2001 census, Statistics SA – www.statssa.gov.za, Dannhauser IDP.

Socio-Economic Indicators	Kwazulu Natal	Amajuba District Municipality	Dannhauser Local Municipality		
Brief Analysis	Education levels have increased substantially over the last 6 years decreasing the previous illiteracy levels from 22% to 7%. This is in line with the trends of the larger Amajuba District area.				
Monthly income profile					
No income			65.8%		
R1 to R1,600 per month			29.1%		
R1,601 to R6,400 per month			4%		
R6,401 to R51,200 per month			1.1%		
R51,201 and above			0%		
Brief Analysis	The drastic decline in the mining sector has increased the zero income levels to the percentile as stated above. The majority of earners in the area average a monthly income of R 750.00 per month.				

16.8. Key economic activities

In terms of the key economic activities the mining sector was a dominant industry in the province in 2001. Mining activities decreased dramatically post 2001 and this caused a substantial increase in the unemployment rate in the area. The major employer across provincial, regional and local level is the manufacturing sector, followed by the mining and then the agriculture and community services sector. Agriculture is a mid-level contributor to employment.

Ntendeka Colliery will focus on the LED priority areas as identified in the IDP of the Dannhauser LM with an emphasis on poverty alleviation and economic growth and development. These need to be addressed taking cognisance of the fact that a significant proportion of the population have low educational levels combined with relatively high levels of unemployment.

Consultation has been held with the LED management team for the Dannhauser LM. During consultation, the LM highlighted that the vision for the long-term sustainability within their area of jurisdiction were in the agricultural and manufacturing sectors. It was indicated that where possible, partnerships will be formed with other businesses operating in the area to ensure that synergistic results are felt in the local community. In this regard, the municipality provided Ntendeka Colliery with a list of potential projects for consideration. Proof of this consultation can be seen in Appendix II.

Current strategic focus of LED initiatives in Dannhauser LM (2010/2011 IDP)

Potential Projects
Small scale contractor development
Local flour mill
Leather tannery
Aqua-culture farming at Durnacol
Jewellery manufacturing

The role of Ntendeka Colliery and its commitments in terms of the Socio Economic Development will be achieved through the implementation of a clear and comprehensive communication strategy. Communication will be open and transparent and delivered in a language that is understandable to stakeholders. It is anticipated that Ikwezi Mining would contribute at least 1% of its Net Profit towards this endeavour..

17. PRICING

Ikwezi Mining wishes to enter into a 5 year coal supply agreement with Eskom to supply coal on an FOT basis at a cost of R20/Mj/ton. In order to achieve a reasonable rate of return for costs incurred in the project, Based on Ikwezi's understanding of Eskom's pricing structure, Ikwezi understand that the price is somewhat higher than normal. However Ikwezi believes that this is a competitive price for the following reasons:

- Guaranteed supply in excess of 100 000 tons per month;
- High energy coal in excess of 25 Mj/kg;
- Product is a washed product and as a result there is reduced contamination resulting in a lower abrasive index;

- Ikwezi, at this stage is a single product operation and therefore international markets improvement would not detrimentally effect the quality and quantity of supply;
- Ikwezi has a life of over twenty years at the current rate of production with opportunities to add 50% resources via transactions with neighbouring mineral rights holders;
- Ikwezi's infrastructure has been designed so that with minimal capital expenditure the rate of production can be doubled in an 18 month period;
- Ikwezi has secured a private siding which will allow all coal to be railed to Eskom using existing rail infrastructure and decrease the current high truck volumes on the country's roads;
- Ikwezi is operating in one the most impoverished areas in South Africa and has taken this into account in terms of employment and procurement, etc. This policy does however attract a higher risk factor and cost as a large number of companies being dealt with are small or new companies. As such Ikwezi will mentor and financially support the growth of these businesses to a sustainable level;
- The financial loss to Ikwezi by not exporting its product is not compensated for in the price being offered to Eskom but does provide a reasonable rate of return. The decision to pursue this course of action is not one based on financial gain but rather one more coupled with social obligation. Having said that, a substantial investment has been placed put into the project by investors, who would need to see a return on that investment in order for any agreement to be reached.

In addition, Ikwezi is seeking funding of R200 million in order to finalise all construction activities and pay towards working capital in order to bring the colliery into production. The breakdown in terms of this capital requirement is as follows:

- Eskom Power – 30 million
- Water Infrastructure – 35 million
- Siding construction – 35 million
- Site Infrastructure including relocation – 20 million
- Box Cut Development – 15 million
- Site Establishment – 10 million
- Working capital – 55 million

18. CONCLUSION

Ikwezi Mining (Pty) Ltd is a socially responsible junior miner that is fortunate to have a mining right over one of the last remaining sizeable coal resource in South Africa, outside of the Waterberg. Further it is located in one of the most impoverished areas in the country that has been underexploited in recent times in terms of mining. The company has embarked on building a substantial operation that would allow the consolidation of other smaller mineral rights in the area and thus provide longevity to the project. Although having a generally higher sulphur content and lower volatile content than coal from the Witbank coalfields, the product derived is nevertheless very marketable. The high energy content of the product makes it ideal for the export market given the trend of lower energy products now being exported.

Given the current developmental state of the operation, (Ikwezi can produce coal in three months from deciding to start) Ikwezi is one of the few near production opportunities in the coal industry and certainly one of the very few long term projects outside of the Waterberg area. Its prime location means that Ikwezi is not constrained by the logistics that are affecting other producers while at the same time providing economic benefit to a very impoverished area of Kwa-Zulu Natal.

The current stakeholders in Ikwezi have decades of experience and knowledge in the coal industry, both in terms of multinationals like BHP Billiton, as well as smaller junior miners like NuCoal. The company hence has a strong management team with ample production experience and additionally have secured agreements with reputable contractors via their long good standing in the mining industry.

Ikwezi will be able to deliver in excess of 100 000 tons per month to Eskom at a reasonable cost with the ability to double this supply in 18 months, or sooner if power becomes available. Ikwezi firmly believes that this will go a long way towards alleviating any supply problems that Eskom may currently be having or will have in the near future. The benefit both regionally and nationally will be a real benefit that can be seen and be held up as a proud achievement and assist Eskom in with its current coal supply shortage.

From: Malesela Phukubje <PhukubM@eskom.co.za>
Sent: Sunday, 08 March 2015 20:01
To: Tshediso Matona; Tsholofelo Molefe; Venete Klein; viroshini naidoo; khozazw@telkomsa.net; baldwin ngubane; Romeo Kumalo; Mark Pamensky; chwayitam@yahoo.com; norman baloyi; nazia.c@vodamail.co.za; pat@patnaidoo.co.za
Cc: Zola Tsotsi; Wayne Venner; Leo Dlamini; Freddy Ndou
Subject: Board Memorandum and Resolutions 9th March 2015.docx

Good Evening Board Members,

The Shareholder has through the Chairperson of the Board requested that we convene an urgent Board Meeting to consider and make a decision on the issues contained in the attached document.

Urgent meetings are catered for under clause 13.9.4 of Eskom's Memorandum of Incorporation. It is proposed that the meeting commence at 10h00 in the Huvo Nkulu Boardroom at Megawatt Park. Board members who are unable to attend in person may participate by either video or telephone.

Kindly revert with an indication of your availability for purposes of confirming whether there is a quorum or not.

Best regards,

Malesela Phukubje | Company Secretary

Office of the Company Secretary | Office of the Chairman | Third Floor T36

2 Maxwell Drive Megawatt Park | Tel : +27 11 800 8542 | Cell : +27 84 200 0087 | Fax : +27 86 652 3139 |

eFax: 0866523139

E-mail : phukubm@eskom.co.za

Secretariat website: http://sivmas045.eskom.co.za/corporate_secretariat/

ESKOM SOC**9TH MARCH 2015****Memorandum**

The Company has implemented rolling restricted supply to all areas for a number of months. Notwithstanding the integration of Medupi unit 1, continued maintenance and unscheduled shut downs have and will inevitably cause ongoing planned and unplanned outages. The CEO is on public record as having forecast that these will continue for as much as 5 years.

Medupi and Kusile are years behind schedule and tens of billions over budget.

Lost revenue as a result of lost sales arising from supply not meeting demand runs into billions.

Escalating funding shortfalls have increased the interest carrying cost beyond prudential limits.

Eskom has been obliged to seek increasing funding from treasury. The forward forecast anticipates that funding shortfalls will continue.

The Company has also been subjected to public embarrassment relating to tender and other expenditure disputes -some of which have become litigious. These compound current negative perceptions of Eskom.

The impacts of these failings are numerous and the consequential risk extends far beyond the Company to all South Africans. Economic capacity is being severely restricted across all sectors and curtailed foreign and domestic investments postponed or cancelled outright. These in turn create a spiral effect with increasing unemployment and pressure on the fiscus.

The past response by Eskom has been to offer the public little insight to the causes and little guidance to the future. Public announcements are often uninformative or silent. The perception is that there has been a tendency to deny and defend. As a consequence neither business nor the man-in-the -street has any notion of what the future holds. That perception extends to a belief that - "neither does Eskom". This Board is duty bound to establish the facts and to address the causes and implications.

Until this moment the Board has been entirely reliant on the Executive for information pertaining to these challenges. It is abundantly clear that this in itself is part of the problem. This Board has no independent and objective insight into the extent that some of our failings might be caused or exacerbated by management failure. Given the abnormal risks facing the Company and its obligations to the public, this board must know the facts - as unpalatable as they might be.

The Board is also in an unenviable position as it is known that the Executive relationship with the shareholder can at times be more engaging than that with the Board. While this Board can have no quibble with close shareholder relationship this may not be a substitute for proper and sound corporate governance.

Given the severe risk of further outages and little independent understanding of the facts, there it is critical that the Board act immediately - to establish first-hand the causes of these challenges

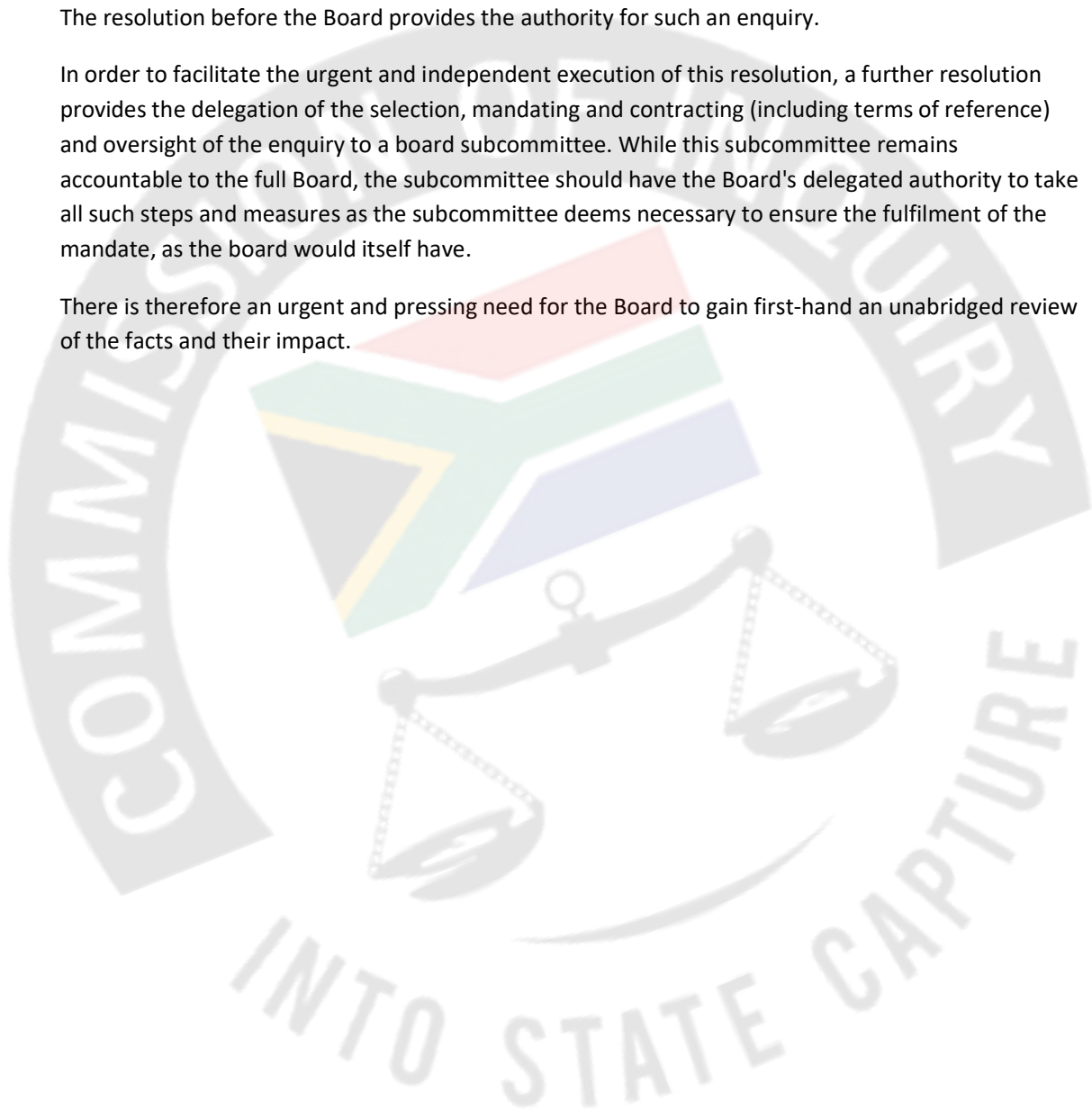
It is recommended that the Board urgently authorise and mandate an independent, external enquiry to establish the facts of the current difficulties. This enquiry must be unfettered by management and the Board and other policy stakeholders. It must be seen to be credible and objective. It must have a mandate to be penetrating and unhindered.

The Board must ensure that it creates the space and environment within the company and amongst stakeholders for the investigators to fulfil this mandate unimpeded and without influence.

The resolution before the Board provides the authority for such an enquiry.

In order to facilitate the urgent and independent execution of this resolution, a further resolution provides the delegation of the selection, mandating and contracting (including terms of reference) and oversight of the enquiry to a board subcommittee. While this subcommittee remains accountable to the full Board, the subcommittee should have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the fulfilment of the mandate, as the board would itself have.

There is therefore an urgent and pressing need for the Board to gain first-hand an unabridged review of the facts and their impact.



ESKOM SOC**DECISION RECORD OF THE BOARD****9TH MARCH 2015****Resolution**

1. That this Board resolves that there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors. Ordinarily notice of at least 7 days is required. Due to these exceptional circumstances (recorded in the memorandum) this Board resolves to accept short notice and to receive and consider the notice and resolutions of this meeting.
2. That this Board resolves that an external and independent enquiry be set up to investigate and determine the facts relating to the current technical, commercial and structural status and any acts and/or omissions that have contributed to the current deficiency of generating and distribution capacity of Eskom.
3. That the Board resolves to appoint a Board subcommittee comprising Zola Tsotsi, Chairperson of the Board, Ms Chwayita Mabude, Chairperson of Audit and Risk Committee and Zethembe Khoza, Chairperson of People and Governance Committee, mandated with delegated authority of the Board to determine the terms of reference of the enquiry; the selection, mandating and contracting of the independent investigators; and the oversight of the enquiry. The subcommittee shall have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the unfettered fulfilment of this mandate, as the board itself would have such power and authority, and further, without limitation, to ensure that the environment within the Company does not hinder or create a perception of hindering the enquiry and to take all such necessary steps to ensure such.
4. That the Board authorises the Chairperson in consultation with the Minister and the Minister of Finance to approve expenditure sufficient and necessary to fund this enquiry.
5. That this enquiry shall be required to present its final report to the Board, the Minister and the Presidency no later than the 30th June 2015.
6. That the subcommittee shall have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary given the target to complete the investigation within 3 months (urgency) and to appoint such persons or entities to conduct the enquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have any effect on the enquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations.

[illegible]

Members:	Signature:
1. Zola Tsotsi	
2. Tshediso Matona	
3. Tsholofelo Molefe	
4. Ms Chwayita Mabude	
5. Norman Tinyiko Baloyi	
6. Dr Pathmanathan Naidoo	
7. Venete Klein	
8. Nazia Carrim	
9. Romeo Kumalo	
10. Mark Vivian Pamensky	
11. Zethembe Khoza	
12. Dr Baldwin Sipho Ngubane	
13. Devapushpum Viroshini Naidoo	

From: Venete Klein <venete@kleininc.co.za>
Sent: Sunday, 08 March 2015 22:49
To: Zola Tsotsi; Malesela Phukubje
Subject: Urgent meeting 9/3

Dear Chairperson

Pls accept my apologies for tomorrow's meeting as I will be out of town in the morning.

Should you however not be quarate, I am back in Jhb at 18;00 and would be available for a meeting in the evening, given the significance of this gathering.

Having read the proposed discussion & resolution being sought, I would like to be included in the working committee to deal with the issues as articulated in your document. The reason for this is as Chair a statutory board sub committee, I feel that I will add value in helping with the process.

Kind regards

Sent from my iPhone



Forensic Investigation into various allegations at DPE

Tender Number NT 022-2016

RFQ 026-2017

July 2019



FUNDUDZI

14. ACTIVITIES AT DPE AND VARIOUS SOCS DURING MINISTER BROWN'S TENURE

14.1. We determined that Minister Brown served as the DPE Minister from 26 May 2014 to 27 February 2018.

14.2. The table below reflects key officials that served during Minister Brown's tenure as the Minister of Public Enterprises:

Minister	Lynne Brown
Advisors to the Minister	Annelize van Wyk Professor Daniel Plaatjies
Spokesperson	Colin Cruywagen
DG	Mogokare Richard Seleke
Acting DG	Matsietsi Mokholo Kgathatso Tlhakudi
Chief of Staff	Mziwonke Jacobs Khalid Sayed Justine De Allande

14.3. PROCESS FOLLOWED BY DPE IN THE APPOINTMENT OF BOARD MEMBERS DURING MINISTER BROWN'S TENURE

14.3.1. According to Mokholo, the practice of not having board appointment framework continued during Minister Brown's tenure at DPE.

14.3.2. According to Mokholo, during Minister Brown's tenure, DPE adopted a board database and appointment framework relating to the appointment of board members to SOCs.

14.3.3. Ruthnam provided us with a board database and appointment framework,¹ which illustrates the appointment process as follows:

Skills review and identification:

14.3.3.1. The Board members should have the combination of skills necessary to carry out their work.

14.3.3.2. It is important to identify the skills required for each SOC Board following a skill review and performance assessment for the previous year alongside an assessment for future skills requirement.

14.3.3.3. The skills-based process reinforces the role of shareholders in identifying the requirement for a particular position on a SOC Board. Every vacancy creates an opportunity to reassess the needs of a Board, and the skills and experience that will best complement the talents of the other board members.

Identifying suitable candidates

¹ Exhibit 36

14.3.3.4. Identify suitable well qualified candidates who reflect the demographic diversity of South Africa from the Board Database.

14.3.3.5. The Board performance assessment and skills review provides criteria for each sector team to determine the suitability of candidates.

Candidate screening and vetting

14.3.3.6. Candidates should be screened through the CIPC or other databases to determine the number of Board seats the candidates hold as well as other reference, credit and background checks.

Selection and short-listing

14.3.3.7. From the identified candidates, selection and shortlist proposed suitable candidates by matching such candidate's competencies and skills with the relevant SOC Board's skills requirements and other relevant shareholder requirements.

Interviews

14.3.3.8. Ministry (and LGR) may interview shortlisted candidates to confirm their suitability for the specifically identified Board seat.

Obtain Minister's approval

14.3.3.9. Submit their shortlisted candidates as well as the recommended candidates for the relevant Board to Minister for his/her approval.

Cabinet approval

14.3.3.10. Once the Minister approves the recommended candidates, the submission is prepared for Cabinet endorsement.

Appointment

14.3.3.11. Following the Cabinet approval, the candidate is formally notified of his/her appointment, including the terms and conditions of the appointment.

14.3.3.12. A Board member may be appointed for a second term to ensure stability in Board dynamics and to recognise the significant intellectual investment in being a good director. Such re-appointment should be subject to the director's performance and his/her skills continuing to be relevant to the business.

14.3.4. We determined that Orateng Motsoai ("Motsoai") issued a **memorandum dated 22 September 2014 to Minister Brown** titled *"To obtain approval for the advertisement nomination of suitable candidates for inviting appointment to the boards of directors of state-owned companies within the portfolio of the Department of Public Enterprises"*.

14.3.5. The purpose of the memorandum was to brief Minister Brown on the board appointment methodology. The memorandum further sought to obtain Minister Brown's approval for the advertisement calling for nominations of suitable persons for possible appointment to the SOC boards.

14.3.6. According to the memorandum, interested persons were required to be persons who were suitable to serve on the SOC boards by virtue of amongst others, their qualifications and expertise, skills, experience and business acumen.

14.3.7. The memorandum further indicated that interested parties must be nominated and must submit an application form by means of a nomination form.

14.3.8. According to the memorandum the board appointment process would inter alia include the following:

- 14.3.8.1. Shortlisting process whereby the most appropriate candidates will be shortlisted;
- 14.3.8.2. Departmental security screening and vetting process;
- 14.3.8.3. Submission to the Minister for consideration and approval; and
- 14.3.8.4. Final selection once the minister is satisfied.

14.3.9. We determined that the memorandum was prepared and signed by Shelly Pather and Ruthnam on 23 September 2014 respectively. Minister Brown approved the memorandum on the same date.

14.3.10. In her written response, Minister Brown stated that “the administration of Boards was managed by the Legal and Governance Unit in DPE. They had procedures and manuals for the appointment of Boards. I inherited the procedure and simply adhered to it”.

14.3.11. Based on the memorandum, Minister Brown was familiar with the board appointment process. We however noted that there were various board appointments made during Minister Brown’s tenure as DPE minister that did not follow the formal process reflected above.

14.4.24. We determined that on 11 May 2015, Davids sent an email to Jumarie Botha (“Botha”) and Ruthnam and copied Annelize van Wyk and Mokholo with subject “3 x Boards – SA Express – Denel – Eskom”.²

14.5. THE INTRODUCTION OF INFOPORTAL1@ZOHOCOM TO ADVANCE STATE CAPTURE

14.5.1. A lot has been said and written by various individuals and media on the issues relating to the e-mail address infoportal1@zoho.com.

14.5.2. We provided an extensive narration of the infoportal1@zoho.com e-mail address and the identities of the individuals behind it in our report to National Treasury issued on 15 November 2018.

14.5.3. In the said report, we referred to various SOC executives and board members who sent or received emails from the infoportal1@zoho.com e-mail address.

14.5.4. During the current investigation, we determined that there were various DPE officials who received or sent emails to the infoportal1@zoho.com e-mail address.

14.5.5. During our review of the DPE emails, we obtained various email communication between infoportal1@zoho.com and Kim Davids (“Davids”) (anckimwc@gmail.com) in respect of various board appointments at SOCs and the sharing of Department confidential information.

² Exhibit 43

14.5.6. The various email communication suggests that infoportal1@zoho.com and Davids facilitated state capture by ensuring that certain individuals were appointed as board members/non-executive directors at different SOCs.

14.5.7. Davids was appointed at the DPE as the PA to Minister Brown.

14.5.8. We determined that in July 2016, Seleke converted Davids' contract of employment from fixed term to a permanent contract.

Request for the approval of the Denel board appointments

14.6.34. We determined that on 11 May 2015, Makobe issued a memorandum to Minister Brown requesting the Minister to approve an urgent submission of Cabinet Memoranda number 3, 4 and 5 of 2015 on the appointment of new members to the Boards of SAX, Denel and Eskom.³

RESPONSE ON THE WAR ROOM ASSESSMENT

14.7.9. We determined that on 16 July 2015,⁴ Davids forwarded an e-mail titled "Response on the war room assessment Assessment" from Kim.Davids@dpe.gov.za to anckimwc@gmail.com.

14.7.10. We determined that Davids forwarded the said e-mail, stating the following "Herewith draft letter. ...your views please. Thanks Kim Davids". We however noted that the recipient's e-mail address was not reflected thereon.

14.7.11. We determined that on 17 July 2015, infoportal1@zoho.com responded and sent an e-mail to Davids' email address anckimwc@gmail.com stating that *"please remove the part about guidance from IMC...Please add a clause whereby its is stated that significant changes have now been made and that you need more time before presenting to the IMC so request the IMC be postponed for a quarter to allow the changes to take effect*

This protects from unnecessary issues being raised in this forum now".

14.7.12. We noted that there was no attachment to the e-mail dated 17 July 2015 from infoportal1@zoho.com to Davids.

14.7.13. The document that was attached to the original email was a draft response letter in respect of the Electricity War Room from Minister Brown to Saul.

14.7.14. We determined that on the same day (i.e. 17 July 2015), Davids sent an email to Minister Brown stating that:

"Dear Mam

Herewith please find below in relation to draft ADG letter to war room.

Slamat/regards

Kim"

³ Exhibit 53

⁴ Exhibit 56

14.7.15. We determined that in December 2014, Cabinet announced that a war room had been set up to oversee the implementation of a five point plan to address the electricity challenges facing the country.

14.7.16. The war room comprised the Departments of Energy, Cooperative Governance and Traditional Affairs, Public Enterprises, National Treasury, Economic Development, Water and Sanitation and Eskom, as well as technical officials.

14.7.17. It is evident that Davids worked closely with infoportal1@zoho.com to amend Minister Brown's response on the war room assessment.

14.7.18. Davids could not have interacted with infoportal1@zoho.com without Minister Brown's instruction and/or knowledge.

14.7.19. Infoportal1@zoho.com was involved in the responses prepared for Minister Brown in respect of the war room.

14.7.20. We determined that on 19 August 2015, infoportal1@zoho.com sent an email titled "Q&A revised" to Davids on email address styled anckimwc@gmail.com stating "Amended".⁵ Attached to the email were questions and answers in respect of the state of SOCs.

14.7.21. We noted that the said questions and answers document was created by Colin Cruywagen on 19 August 2015 and last modified by Ashok on the same date. A possibility exists that the Ashok referred to above maybe Ashok Sharma who was appointed as the Eskom board member in 2011.

CONCLUSIONS RELATING TO THE ELECTRICITY WAR ROOM

14.7.22. Davids shared confidential information in respect of the Ministers responses to the war room assessment with infoportal1@zoho.com; and

14.7.23. Davids' sharing of confidential information relating to the war room with the Guptas or their associates may have compromised the operations of the electricity war room.

RECOMMENDATIONS RELATING TO THE ELECTRICITY WAR ROOM

14.7.24. Based on our findings, we recommend that Davids should be subpoenaed to the Zondo commission to explain why she was in contact with infoportal1@zoho.com in respect of the war room.

DPE Position regarding investigations commissioned by Eskom Board

14.7.25. We determined that on 28 August 2015, Davids sent an e-mail titled Eskom Memo from Kim.Davids@dpe.gov.za to anckimwc@gmail.com.⁶

14.7.26. Attached to the e-mail was a decision memorandum dated 14 August 2015 addressed to Minister Brown from Makololo.

14.7.27. The subject of the decision memorandum was DPE Position regarding the investigation commissioned by the Eskom Board into the Status of the Business and Challenges Experienced by Eskom.

⁵ Exhibit 57

⁶ Exhibit 58

14.7.28. The purpose of the memorandum was to provide the Minister with the Department's analysis and view of Eskom's Preliminary Report on the status of the Eskom Business and the challenges experienced by Eskom.

14.7.29. The decision memorandum was prepared by the following individuals:

14.7.29.1. Loice Mtetwa,

14.7.29.2. Orateng Motsoai;

14.7.29.3. Melanchton Makobe; and

14.7.29.4. Makgola Makololo.

14.7.30. We determined that the decision memorandum was signed by Mokholo in her capacity as Acting Director General.

14.7.31. We noted that Minister Brown and Gratitude Magwanishe had not signed in the space provided.

14.7.32. It is not clear why Davids forwarded the document to her private e-mail address.

14.7.33. A possibility exists that Davids may have forwarded the document to her private e-mail address in order to share it with infoportal1@zoho.com.

14.8. THE APPOINTMENT OF THE ESKOM BOARD

14.8.1. During our review of the DPE emails, we determined that infoportal1@zoho.com played a role in the composition of various Eskom board sub-committees.

14.8.2. We determined that on 6 March 2015, infoportal1@zoho.com sent an email titled: "Eskom Committee" to Davids on email address styled anckimwc@gmail.com proposing various Eskom sub-committees .

14.8.3. The following committees were proposed in the said email from infoportal1@zoho.com to Davids:

14.8.4. Audit & Risk

14.8.4.1. New Lady CA (Chair);

14.8.4.2. Viroshni Naidoo;

14.8.4.3. Nazia Carrim;

14.8.4.4. Romeo Khumalo; and

14.8.4.5. Norman Baloyi.

14.8.5. Tender & Procurement

14.8.5.1. Ben Ngubane (Chair);

14.8.5.2. Zethembe Xhosa [sic];

14.8.5.3. Nazia Carrim; and

14.8.5.4. Chwayita Mabude.

14.8.6. IFC

14.8.6.1. Mark Pamensky (Chair);

14.8.6.2. Pat Naidoo;

14.8.6.3. Zathembe Khoza;

14.8.6.4. Venette Klein; and

14.8.6.5. Zola Tsotsi.

14.8.7. People & Governance

14.8.7.1. Chwayita Mabude (Chair);

14.8.7.2. Ben Ngubane;

14.8.7.3. Chwayita Mabude;

14.8.7.4. Romeo Khumalo; and

14.8.7.5. Venette Klein.

14.8.8. Social & Ethics

14.8.8.1. Venete Klein (Chair);

14.8.8.2. Pat Naidoo;

14.8.8.3. Viroshni Naidoo;

14.8.8.4. Norman Baloyi; and

14.8.8.5. Zola Tsotsi.

14.8.9. Emergency Task Team and New Build

14.8.9.1. Zethembe Xhosa [sic] (Chair);

14.8.9.2. Ben Ngubane;

14.8.9.3. New Lady CA;

14.8.9.4. Viroshni Naidoo; and

14.8.9.5. Nazia Carrim.

14.8.10. During our consultation with Mokholo, she indicated that DPE would only be responsible for appointing the statutory committees which include the following:

14.8.10.1. Audit and Risk Committee;

14.8.10.2. Social and Ethics Committee; and

14.8.10.3. Remuneration committees.

14.8.11. Based on the review of the infoportal1@zoho.com email, infoportal1@zoho.com recommended names for two statutory committees namely the Audit and Risk committee and the Social and Ethics committee.

14.8.12. The above infoportal1@zoho.com email is an indication that the formation of Eskom board committees was facilitated by Davids and external individuals not in the employ of Eskom and DPE.

14.8.13. We were provided with a copy of an undated Eskom board resolution appointing board members to various committees.⁷ According to the draft resolution, the following board members were appointed to the various committees:

Audit and Risk Committee

14.8.13.1. C Mabude as member and Chairperson;

14.8.13.2. N Carrim;

14.8.13.3. R Khumalo; and

14.8.13.4. V Naidoo

Social, Ethics and Sustainability Committee

14.8.13.5. V Klein as a member and Chairperson;

14.8.13.6. P Naidoo; and

14.8.13.7. V Naidoo.

People and Governance Committee

14.8.13.8. V Klein as member and Chairperson;

14.8.13.9. R Khumalo;

14.8.13.10. B Ngubane; and

14.8.13.11. Z Khoza.

Board Tender Committee

14.8.13.12. N Carrim as member and Chairperson;

14.8.13.13. C Mabude;

14.8.13.14. Z Khoza; and

14.8.13.15. P Naidoo.

Investment and Finance Committee

14.8.13.16. M Pamensky as member and Chairperson;

14.8.13.17. Z Khoza;

14.8.13.18. V Klein; and

⁷ Exhibit 64

14.8.13.19. C Mabude.

Recovery & Build Programme

14.8.13.20. P Naidoo;

14.8.13.21. V Naidoo;

14.8.13.22. N Carrim; and

14.8.13.23. B Ngubane.

14.8.14. According to the draft resolution, the Build Programme Review and the Eskom Emergency Task Team Committee had been merged into one committee.

14.8.15. Based on our review of the draft resolution and the infoportal1@zoho.com email dated 6 March 2015, we determined that at least 3 members recommended by infoportal1@zoho.com were appointed to various committees as reflected in the draft resolution.

14.8.16. Below is a summary of the individuals recommended by infoportal1@zoho.com and appointed to the various Eskom committees:

Audit and Risk Committee

Infoportal1@zoho.com proposed sub-committee	Actual Eskom sub-committee composition
New Lady CA (Chair)	
Viroshni Naidoo	V Naidoo
Nazia Carrim	N Carrim
Romeo Khumalo	R Khumalo
Norman Baloyi	
	C Mabude as member and Chairperson

Tender & Procurement

Infoportal1@zoho.com PROPOSED SUB-COMMITTEE	ACTUAL	ESKOM	SUB-COMMITTEE
Ben Ngubane (Chair)			
Zathembe Xhosa [sic]	Z Khoza		
Nazia Carrim	N Carrim as member and Chairperson		
Chwayita Mabude	C Mabude		
	P Naidoo		

Investment and Finance Committee

Infoportal1@zoho.com PROPOSED SUB-COMMITTEE	ACTUAL	ESKOM	SUB-COMMITTEE
Mark Pamensky (Chair)	M Pamensky as member and Chairperson		

Pat Naidoo	
Zathembe Khoza	Z Khoza
Venette Klein	V Klein
Zola Tsotsi	
	C Mabude

Social, Ethics and Sustainability Committee

Infoportal1@zoho.com	ACTUAL ESKOM SUB-COMMITTEE COMPOSITION
PROPOSED SUB-COMMITTEE	
Venete Klein (Chair)	V Klein as a member and Chairperson
Pat Naidoo	P Naidoo
Viroshni Naidoo	V Naidoo
Norman Baloyi	
Zola Tsotsi	

Recovery & Build Programme

Infoportal1@zoho.com	ACTUAL ESKOM SUB-COMMITTEE COMPOSITION
PROPOSED SUB-COMMITTEE	
Zethembe Xhosa [sic] (Chair)	
Ben Ngubane	B Ngubane
New Lady CA	
Viroshni Naidoo	V Naidoo
Nazia Carrim	N Carrim
P Naidoo	

14.8.17. It would appear that the individuals proposed on the Eskom sub-committees by infoportal1@zoho.com were communicated to the Eskom board for implementation. A possibility exists that either Davids or Minister Brown communicated the proposed composition to the Eskom board for implementation.

14.8.18. As reflected above, Ngubane was recommended by infoportal1@zoho.com to be the Chairperson of the Board Tender Committee. According to a memorandum dated 9 April 2015 from Motsoai to Minister Brown, Ngubane was removed from the Board Tender Committee by virtue of his appointment as the interim Chairperson of the Eskom board.

14.8.19. The said memorandum to Minister Brown further indicated that Pamensky, Khumalo and P Naidoo had conflict of interest wherein they had current/potential/related business interest in companies that held contracts or had been awarded contracts by Eskom.

14.8.20. According the memorandum, the Eskom interim Chairperson, Ngubane indicated that an independent assessment would be conducted to determine the materiality of the contracts. We were not provided with the letter written by Ngubane.

14.8.21. We determined that the memorandum was approved by Minister Brown on 20 April 2015.

14.8.22. We further determined that Motsoai issued a memorandum dated 21 October 2014 to Minister Brown recommending the appointment of the Eskom Board.

14.8.23. According to the memorandum, the following were the proposed new appointments:

14.8.23.1. Ben Ngubane;

14.8.23.2. Chwayita Mabude;

14.8.23.3. Venete Klein;

14.8.23.4. Nazia Carrim;

14.8.23.5. Romeo Kumalo;

14.8.23.6. Mark Pamensky;

14.8.23.7. Zethembe Khoza;

14.8.23.8. Tshediso Matona; and

14.8.23.9. Tsholofelo Molefe.

14.8.24. We noted that Simphiwe Makhathini ("Makhathini") raised concerns in respect of the composition of the board by writing the following comments "I'm concerned about the skills of the proposed Board. It doesn't address the challenges Eskom is facing. I would recommend that with the vacancies, we seriously look at strengthening those areas".

14.8.25. We noted that despite the concerns raised by Makhathini the memorandum was recommended by Mokholo and approved by Minister Brown.

CONCLUSIONS ON ESKOM BOARD COMPOSITION

14.8.26. Based on the findings discussed above, we conclude that the composition of the Eskom board sub-committees was influenced by infoportal1@zoho.com; and

14.8.27. A possibility exists that the influence of the composition of the Eskom board through infoportal1@zoho.com may have been done to facilitate contracts to be awarded to the Gupta linked entities.

RECOMMENDATIONS ON ESKOM BOARD COMPOSITION

Based on the findings discussed above, we recommend that as follows:

14.8.28. Davids should be subpoenaed to the Zondo Commission to inter alia explain:

14.8.28.1. Why she communicated with infoportal1@zoho.com in respect of the Eskom board committees;

14.8.28.2. Her relationship with infoportal1@zoho.com;

- 14.8.28.3. Who she was in contact with when communicating with infoportal1@zoho.com;
- 14.8.28.4. Who instructed her communicate with infoportal1@zoho.com;
- 14.8.28.5. Who provided her with the email address infoportal1@zoho.com.
- 14.8.29. DPE and Eskom should investigate whether any of the abovementioned Eskom committees approved decisions that benefited Gupta linked entities (i.e. Tegeta decisions).
- 14.8.30. DCPI should subpoena the hosting service provider of infoportal1@zoho.com in order to obtain all emails linked to the said email address. The investigation of the said emails would be in the best interest of the country and State Capture commission to establish the extent of capture conducted by infoportal1@zoho.com.

14.9. APPOINTMENT OF GIOVANNI LEONARDI AT ESKOM

14.9.1. We determined that on 16 April 2015,⁸ Davids forwarded an email titled "CV for DPE database" from Kim.Davids@dpe.gov.za to anckimwc@gmail.com. Attached to the email was Giovanni Leonardi's CV.

14.9.2. We further determined that on the same day i.e. 16 April 2015, Davids sent an email to infoportal1@zoho.com stating "*Fyi below....send me please a answer for Mam to revert to this below.*

Much appreciated.

Kind regards

Kim Davids"

14.9.3. We noted that infoportal1@zoho.com responded to Davids email by stating that "Will do. Please give me till noon". Davids responded to the email by stating "Ok. Thanks very much. Kim Davids"

14.9.4. We determined that Giovanni Leonardi was appointed onto the Eskom board during Minister Browns tenure as DPE minister.

14.9.5. We determined that on 11 May 2015, Davids sent an email to Botha and Ruthnam and copied Annelize van Wyk (Special Advisor to Minister Brown) and Mokholo . The subject matter of the email was "3 x Boards – SA Express – Denel – Eskom".

14.9.6. In the email, Davids indicated that as discussed with Minister Brown and her direction, the following was the Eskom board nominations for the Cabinet memorandum:

14.9.7. Mariam Cassim; and

14.9.8. Leonardi Giovanni.

14.9.9. We determined that the "Leonardi" that was recommended to the Eskom board as per email dated 11 May 2015 was Giovanni, who's CV was sent to Davids by infoportal1@zoho.com on 16 April 2015.

⁸ Exhibit 65

14.9.10. We determined that a letter of appointment dated 20 May 2015 was signed by Minister Brown,⁹ appointing Giovanni as a Non-Executive Director to the Eskom Board.

14.9.11. According to the letter, Giovanni's appointment was effective from 25 May 2015 for a period of three years.

14.9.12. We noted that Giovanni did not sign the acceptance letter however, he did serve on the Eskom board.

14.9.13. We were not provided with supporting documents reflecting who nominated Giovanni to the Eskom board. The said information was requested on numerous occasions, however, it was not provided to us as at date of this report.

14.9.14. There is no evidence that Giovanni was subjected to a shortlisting, screening and vetting process as required by the Department.

14.9.15. We noted from Giovanni's CV and appointment letter that his address was reflected as Via Valòn 3, CH-6743 Bodio, Switzerland.

14.9.16. Giovanni served on the Eskom board until he resigned on 19 January 2018. Minister Brown accepted Giovanni's resignation on 20 January 2018.

14.9.17. We determined that Giovanni had served on the Eskom board for approximately 2 years and 7 months before he tendered his resignation.

14.9.18. It is evident that Giovanni's CV was sent to Davids to enable her to facilitate his appointment on the Eskom board.

14.9.19. The communication between Davids and infoportal1@zoho.com above is a clear indication that she was communicating on behalf of Minister Brown. As indicated above, Davids could not have acted or communicated with infoportal1@zoho.com without the knowledge of Minister Brown.

14.9.20. In her response to questions relating to Giovanni's appointment on the Eskom board, Minister Brown indicated that *"Like other names, Giovanni Leonardo's name came to me as part of a list in the normal course of the process. I had some doubts, but after looking at the CV, I thought international electrical expertise would be valuable"*.

14.9.21. Minister Brown further indicated that Giovanni was appointed in line with Department's procedures and manuals for the appointment of Boards. As indicated above, there is no evidence that Giovanni was subjected to a shortlisting, screening and vetting process as required by the Department.

14.9.22. Giovanni's appointment as an Eskom board member therefore did not follow the department's procedures as indicated by Minister Brown.

14.9.23. Giovanni's CV from infoportal1@zoho.com to Davids is another indication of the collaboration that was taking place in board appointments at SOCs.

CONCLUSIONS RELATING TO GIOVANNI'S APPOINTMENT TO THE ESKOM BOARD

Based on the findings discussed above, we conclude as follows:

⁹ Exhibit 67

14.9.24. infoportal1@zoho.com and Davids worked closely together to facilitate the appointment of Giovanni to the Eskom board;

14.9.25. A possibility exists that Giovanni was recommended and placed at Eskom to pursue certain agendas and mandates that would benefit entities linked to the Guptas; and

14.9.26. Giovanni was not subjected to a transparent recruitment process which included nominations, shortlisting, security screening, vetting and interviews.

RECOMMENDATIONS RELATING TO GIOVANNI'S APPOINTMENT OF THE ESKOM BOARD

Based on the conclusions discussed above, we recommend that DPE considers the following:

14.9.27. DCPI should subpoena the hosting service provider of infoportal1@zoho.com in order to obtain all emails linked to the said email address. The investigation of the said emails would be in the best interest of the country and State Capture commission to establish the extent of capture conducted by infoportal1@zoho.com.

14.9.28. Davids should be subpoenaed to the Zondo Commission to inter alia:

14.9.28.1. Explain her relationship with infoportal1@zoho.com

14.9.28.2. Who she was in contact with when communicating with infoportal1@zoho.com;

14.9.28.3. Who instructed her to communicate with infoportal1@zoho.com;

14.9.28.4. Who provided her with the email address infoportal1@zoho.com.

14.9.29. DPCI to investigate if Davids, Giovanni and any other role player received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

14.9.30. Investigate whether Giovanni facilitated transactions that benefited Gupta linked entities.

14.11. APPOINTMENT OF BOARD MEMBERS AT SAFCOL

14.11.10. We determined on 6 July 2015 at 9:43, Botha sent an e-mail to Davids and copied Van Wyk. Botha indicated the following in the said emails:

14.11.10.1. *"Kim, sorry for bothering you as I know you are on leave.*

I see from the list of Safcol docs that Ms Nazia Carrim is on your New Board, she already sit on the Eskom Board. Please advise.

Thank you"

14.11.11. Davids responded to Botha's e-mail on the same day at 09:53 confirming that Nazia Carrim was on the Eskom board and further that she could be nominated for other boards as well.

14.11.12. It was reported in the media that Nazia Carrim is married to Essa's cousin, Muhammed Noor Hussein.

14.11.13. There is no evidence that the SAFCOL board was subjected to a nomination, shortlisting, screening and vetting process as required by the Department.

14.11.14. We obtained SAFCOL's 2016 integrated report and noted that the following individuals were appointed to the SAFCOL board on 18 August 2015:

14.12. APPOINTMENT OF BOARD MEMBERS AT ALEKKOR

14.12.1. We determined that on 16 July 2015,¹⁰ Davids sent an email to infoportal1@zoho.com from her private e-mail address styled anckimwc@gmail.com. The title of the e-mail was "Trevern's CV". In the email, Davids stated the following:

"Dear Saleem Herewith cv for Alekkor board as discussed".

14.12.2. We noted that Trevern Marais Haasbroek's CV and a motivation letter purportedly prepared by Trevern and dated 15 July 2015 were attached to the said email.

14.12.3. The e-mail above is an indication that Davids was communicating to a certain Saleem/Business Man.

14.12.4. We further determined that on 20 July 2015 Davids forwarded Haasbroek's CV from her private e-mail address (anckimwc@gmail.com) to her DPE e-mail address styled Kim.Davids@dpe.gov.za.

14.12.5. On 20 July 2015 at 10:57, Davids sent an e-mail to Botha and Ruthnam. In the said e-mail, Davids inter alia indicated the following:

"Herewith attached please find remainder of List of Board names and CV's"

14.12.6. We noted that Haasbroek was one of the board members on the list.

Appointment of Richard Seleke at DPE

17.47. We determined that on 21 June 2015,¹¹ blueberries.slk@gmail.com sent an email to infoportal1@zoho.com titled "Richard CV" stating the following:

"evening sir"

please find attached my CV and supporting documents.

Regards

Richard"

17.48. We determined that on the same date i.e. 21 June 2015,¹² infoportal1@zoho.com forwarded Richard Seleke's CV to Davids on email address anckimwc@gmail.com stating "Hi Madam

As per sir. This is the candidate for dg. Is it possible for him to meet madam on Tuesday?

¹⁰ Exhibit 76

¹¹ Exhibit 100

¹² Exhibit 101

Regards”.

17.49. Attached to the email was Richard Seleke’s CV and qualifications.

17.50. We determined that on 23 June 2015 at 4:44 PM,¹³ Davids forwarded Seleke’s CV from her personal e-mail address to her DPE e-mail address.

17.51. It should be noted that at the time that Seleke’s CV was sent to infoportal1@zoho.com, the position of DG had been advertised and cancelled at least two times.

17.52. During the course of our investigations into allegations at Transnet and Eskom on behalf National Treasury, we sent Seleke questions relating to his CV that was sent to infoportal1@zoho.com. Seleke however failed to respond to questions relating to his CV being sent to infoportal1@zoho.com. Seleke previously communicated with us using e-mail address blueberries.slk@gmail.com which was the same email address used to send his CV to infoportal1@zoho.com.

17.53. Media and #Guptaleaks searches reflect that Seleke’s CV was sent from the infoportal1@zoho.com e-mail address to Duduzane Zuma.

17.54. We determined from various e-mail communication between Seleke and DPE officials that Seleke used e-mail address styled blueberries.slk@gmailcom before and after his appointment as the DG of DPE.¹⁴

17.55. We can therefore conclude that blueberries.slk@gmailcom is Seleke’s e-mail address even though he denied that it was his.

Seleke’s appointment letter

17.87. We determined that Minister Brown signed Seleke’s appointment letter for the DPE Director General position **on 27 November 2015**.

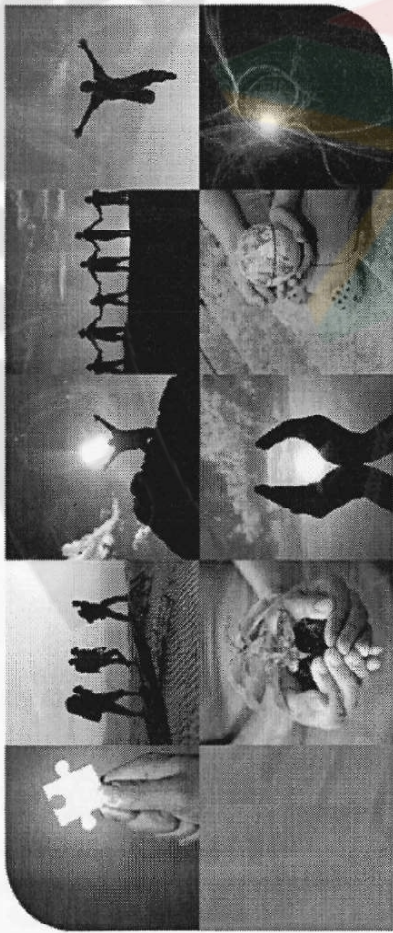
17.88. Based on our review of the email discussed above, the appointment of Seleke appears not to have been a transparent recruitment process in that a parallel process facilitated by infoportal1@zoho.com was taking place outside of DPE in identifying suitable candidates for the DG position.

¹³ Exhibit 102

¹⁴ Exhibit 103

Exhibit 36





BOARD DATABASE AND APPOINTMENT FRAMEWORK

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Background and Overview

- For effective Shareholder oversight and Board management, a formal and structured process of recruitment and selection of candidates for appointment to Boards through a database of candidates for Boards.
- The intention is to introduce rigour and professionalism in the recruitment and selection process.
- This will help DPE identify and recruit quality board members able to provide strategic orientation and long-range planning to management and the State Owned Companies (SOC) and thus contribute to value creation for the Shareholder.
- The development of the Board database and appointment framework contributes towards DPE's continuous improvement of its oversight responsibilities over SOC.
- It must be noted that, as part of the SOC Reform Process, Cabinet is deliberating on the development of a Guide for the Appointment of Persons to Boards of State and State Controlled Institutions - DPE input has been instrumental in finalising the Guide.



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THE BOARD

- Boards are primarily responsible for providing oversight, advice & counsel to executive management & monitor such executive management.
- The Boards protect shareholder & shareholder value through providing its collective wisdom to help management move in new strategic directions.
- The Board must have the appropriate balance of skills & experience within its ranks to fulfill its mandate.
- The SOC must have a Board comprising majority of Non-Executive Directors (NEDs) & is led by a Chairperson who is independent.
- The Shareholder should have an ongoing process for identifying, developing or seeking skills for the Board that will optimally achieve the SOC mandate.

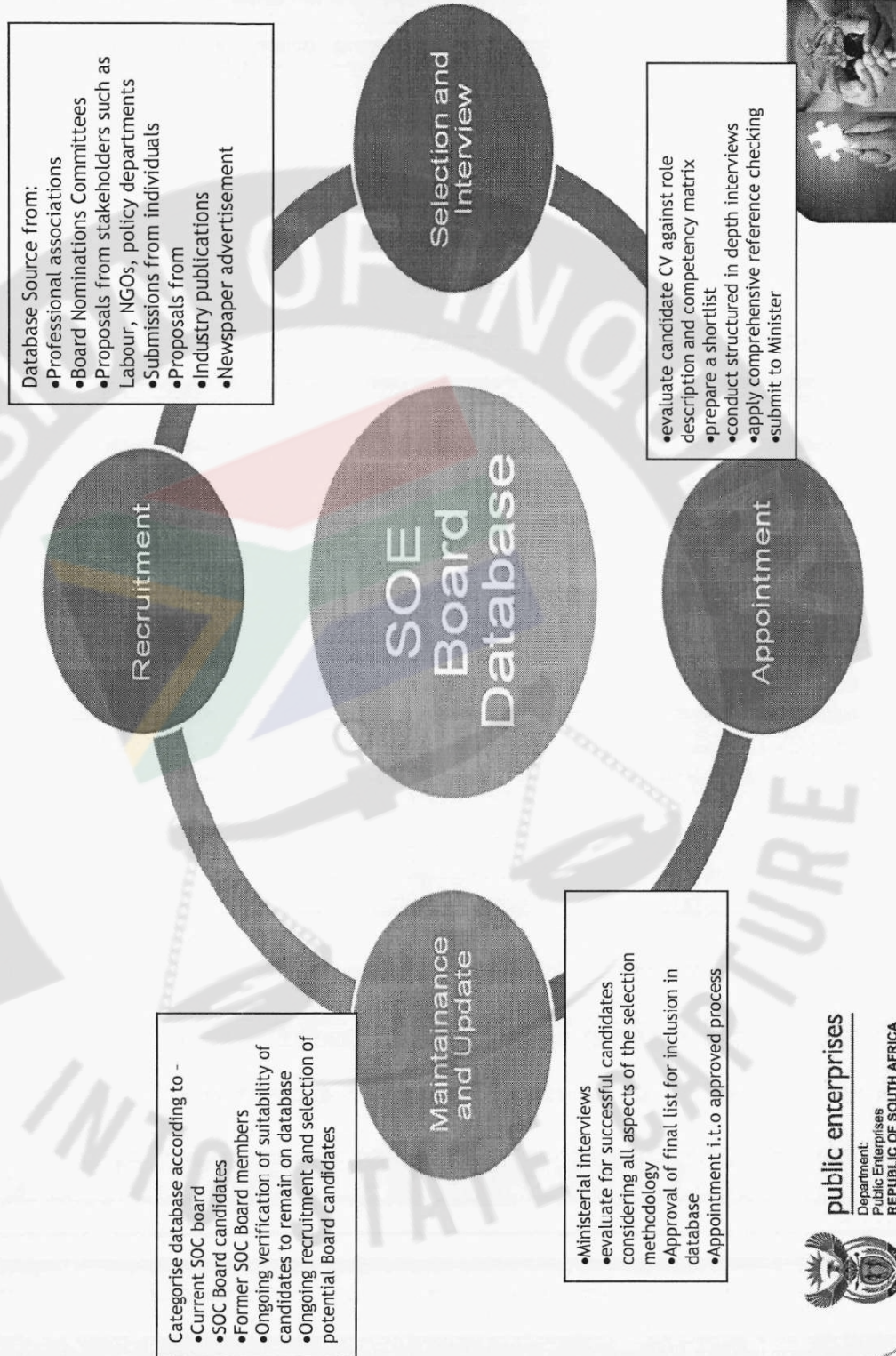


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Board Appointment Process (1/3)



Board appointment process (2/3)



Appointment Process (3/3)

The Board members should have the combination of skills necessary to carry out their work. It is important to identify the skills required for each SOC Board following a skill review and performance assessment for the previous year alongside an assessment for future skills requirement.

The skills based process reinforces the role of shareholders in identifying the requirement for a particular position on a SOC Board. Every vacancy creates an opportunity to reassess the needs of a Board, and the skills and experience that will best

Identifying suitable candidates

Identify suitable well qualified candidates who reflect the demographic diversity of South Africa from the Board Database. The Board performance assessment and skills review provides criteria for each sector team to determine the suitability of candidates.

Candidate screening and vetting

Candidates are screened through the CIPC or other database to determine the number of Board seats the candidates holds as well as other reference, credit and background checks.

Selection and short-listing

From the identified candidates, select and shortlist proposed suitable candidates by matching such candidate's competencies and skills with the relevant SOC Board's skills requirements and other relevant shareholder requirements.

Interviews

Ministry (and Legal & Governance), may interview shortlisted candidates to confirm their suitability for the specifically identified Board seat.

Obtain Minister's approval

Submit their shortlisted candidates as well as the recommended candidates for the relevant Board to Minister for his/her approval.

Cabinet approval

Once the Minister approves the recommended candidates, the submission is prepared for Cabinet endorsement.

Following the Cabinet approval, the candidate is formally notified of his/her appointment, including the terms and conditions of the appointment.

A Board member may be appointed for a second term to ensure stability in Board dynamics and to recognise the significant intellectual investment in being a good director. Such re-appointment should be subject to the director's performance and his/her skills continuing to be relevant to

Portfolio View of Board composition and vacancies

SOCs Score Board		SA Express		Eskom		Alexkor		Denel		SAFCOL		Transnet	
KRA	KPIs	2016/17	2017/18	2016/17	2017/18	2016/17	2017/18	2016/17	2017/18	2016/17	2017/18	2016/17	2017/18
Leadership	Chairperson	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	CEO	Acting	Acting	Yes	Acting	Yes	Acting	Yes	Acting	Acting	Acting	Yes	Yes
	CFO	Yes	Yes	Yes	Yes	Yes	Acting	No	Acting	Yes	Acting	Yes	Yes
	Number of Board Positions	12	12	15	15	10	10	16	16	12	12	14	14
	Number of Board vacancies	4	4	7	7	0	2	4	3	2	3	3	4
Legal and Governance	Number of EXCO Vacancies	0	0	1	1	0	2	4	2	4	1	1	0
	Exco Vacancy Position/Title	0	0	None	None	0	CEO/CFO	CEO	CEO/CFO	CEO	CEO	CEO	0
	Shareholder's Compact Signed	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Corporate Plan Submitted	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Annual Report submitted on time	No	P	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Normal Oversight												
	Close Monitoring												
	Urgent attention												

- The filling of Board vacancies is underway and needs to be fast-tracked
 - Eskom - 4 Interim NEDs on 23 June 2017 - Cabinet memo has been prepared and approved (July 2017)
- Only Transnet has confirmed CEO in the position
- Only SAX and Transnet have confirmed CFO in the position
- Alexkor CEO and CFO submission to Minister in process
- SAFCOL CEO submission to Minister in process
- Denel CEO and CFO submission to Minister in process - Cabinet Memo has been prepared and approved (July 2017)
- Proposed names for Eskom, Transnet and Denel are undergoing verification process.



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ALEKKOR BOARD

Minimum of six (6) and maximum of ten (10) of Directors

Demographics	Africans	Whites	Indians	Coloureds	Total
	M	F	M	F	
Total number of Board Members	2	3	2	0	8
Vacancies	2				
Skills gap	Mining, Chartered Accounting, Environmental Specialist				

Africans

Whites

Indians

Coloureds

Total

M

F

M

F

M

F

M

F

Total number of Board Members

2

3

2

0

1

0

0

0

8

Vacancies

2

2 Acting EDs

Alexkor has submitted candidates for the appointment for CEO and CFO for Minister's consideration during July 2017.

Should Mr Bansi revert back to NED, the Board will have one vacancy.

Skills gap

Mining, Chartered Accounting, Environmental Specialist

Restricted

1

SOUTH AFRICAN EXPRESS BOARD

Minimum of three (3) and maximum of fifteen (12) Directors

Demographics	Africans		Whites		Indians		Coloureds		Others		Total
	M	F	M	F	M	F	M	F	1 Male Indian National		
Total number of Board members	3	3	1	0	0	0	1	0	1		9

Vacancies

3

2 NEDs and 1 ED (Acting CEO: Mr Victor Xaba)

Skills gap

CA, economics and/or Business Management, turnaround strategist



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Restricted



5

SAFCOL BOARD

Minimum of six (6) and Maximum of twelve (12) Directors

		Africans		Whites		Indians		Coloureds	Total
Board members 7 NEDs & 2 EDs	M	F	M	F	M	F	M	F	
	4	3	1	0	0	1	0	0	9

Vacancies

3 NEDs
NED Acting as ED (Acting CEO): Mr Harvey Theron
The CFO was placed on suspension pending disciplinary hearing on 1 June 2017. Letter from Chairperson in August 2017 indicates that Ms. Pillay has tendered her resignation and it has been accepted by the Board, who would need to undertake a recruitment process promptly

Skills gap

Forestry, Environmental Management, financial accounting

Restricted

TRANSNET BOARD

Minimum of ten (10) and maximum of fourteen (14) Directors

African		Whites		Indians		Coloureds	Total
Board members	M	F	M	F	M	F	
	3	2	2	0	1	0	9

Vacancies

5 NEDs

Skills gap

CA, Rail engineers, auditing



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Restricted



Challenges of the Board Appointment process (1/3)

- Acknowledgement is given to the fact that the process is two fold in that the administration of the database, verification process of nominees is dealt with by LGR;
- The process of final selection for verification and consultation is seen as political and once the final list is received the Department processes the decision memo and Cabinet memo for approval;
- However, DDGs have expressed discomfort that risk raised on nominees are not taken into account;
- The vacancies on the Boards have not been filled:
 - Minister is in the process of taking possible nominees to Cabinet for approval;
 - However, the process is taking longer than anticipated;
 - The process itself has challenges as the database is inadequate
 - Only one advert every two years;
 - Continuous additions to the database through out the year is acceptable;

Challenges of the Board Appointment process (2/3)

- Cont....
 - Allegations that names even if from the database are questioned when linked to the Guptas
 - The full circle of steps in the process are subject to approval, while some steps in the process such as setting up a panel to interview the nominees and verification of references are not done.
- All Board composition is above the minimum in terms of the MOI. Hence, the numbers of vacancies in itself is not an indication of a dysfunctional Board;
- However, the trend of inability to fill vacancies is concerning.



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Challenges of the Board Appointment process (3/3)

- EXECUTIVES:
- CEO recruitment process for Alexkor, SAFCOL and Denel are underway;
- CFO recruitment process for Denel is in its final stages of approval;
- CFO recruitment for Alexkor has been received and submission is being prepared; and
- CEO for SA Express became vacant from 1 April 2017 with Mr Victor Xaba being appointed to act in the position until the optimal group structure is in place.



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Way forward

- The full spectrum of the board appointment process must be implemented to ensure that skills match the required competencies for the Boards;
 - Establish a panel to interview candidates to make recommendations to Minister;
 - Consider DDG: LGR, relevant sector DDG (DDG: EE, DDG: ME, DDG: TE); Chief of Staff, CD: Governance,
 - Candidate reference check should be included in either service provider or panel duties;
 - Increase frequency of advertisement to annual as opposed to every two years;
 - Determine level of materiality of conflict of interest to appointment;
 - Panel to agree on combination or weighting of skills, expertise, awareness of duties/liabilities of directors and government policy;
- Combination of demographic representation of the country is ideal to be fair; and
- Only 1 third of rotation as per the MOI;



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Exhibit 43



Orcilla Ruthnam

From: Annelize Van Wyk
Sent: Monday, May 11, 2015 1:23 PM
To: Jumarie Botha; Kim Davids; Orcilla Ruthnam
Cc: Matsietsi Mokholo
Subject: Re: 3 x Boards- SA Express- DENEL- ESKOM

Noted.

Noted from my Samsung Galaxy smartphone

----- Original message -----

From: Jumarie Botha
Date: 11/05/2015 13:22 (GMT+02:00)
To: Kim Davids, Orcilla Ruthnam
Cc: Annelize Van Wyk, Matsietsi Mokholo
Subject: RE: 3 x Boards- SA Express- DENEL- ESKOM

Dear Kim

Noted, and thank you for this information.

Regards

Jumarie Botha
Administrative Secretary
Head: Cabinet Services
Office of the Minister

+27 (0)12 431 1146 | +27 (0) 21 4696756 | +27 (0)83 675 1732 | jumarie.botha@dpe.gov.za
1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 431 1000



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Please consider the environment before printing this email.

Click on the following link to view directions to DPÉ <http://www.dpe.gov.za/home.asp?id=1053>

From: Kim Davids
Sent: 11 May 2015 01:19 PM
To: Jumarie Botha; Orilla Ruthnam
Cc: Annelize Van Wyk; Matsietsi Mokholo
Subject: 3 x Boards- SA Express- DENEL- ESKOM
Importance: High

Hi All,

As discussed with Minister and as per her direction herewith please find the SA Xpress Board nominations for CM.

SA Xpress Board

1. Mr George Mothema -	Current and Proposed Chair
2. Mr Trevor Abrahams-	New
3. Mr Ezrom Mabyana-	Current
4. Ms Boni Dibate	Current
5. Mr Phetulo Ramosebudi	New
6. Mr Rajest Naithani	New
7. Ms Judith Normvula Nkabinde	New
8. Ms Given Refilwe Sibiya	New
9. Ms Mamoroke Lehobye	New

Composition of SA XPRESS BOARD as follows irt SKILLS:

- Aviation	-3
- Corporate Governance	-5

- Finance, Risk & Compliance -3
- Management -6
- Board Experience -5
- Advisory/Structuring -2
- Legal Services -1
- Leadership -5
- Public Sector -6

DENEL Board for CM

- | | |
|--------------------------------|---------------------|
| 1. Mr Daniel Mantsha | New- Proposed Chair |
| 2. Mr Thamsanqa Msomi | New |
| 3. Mr Johannes Motseki | Current |
| 4. Mr Tauyame Mahumapelo | New |
| 5. Ms Silence Ntshaveni | New |
| 6. Ms Pinkie Mahlangu | New |
| 7. Ms Mpho Kgomongoe | New |
| 8. General Vusi Nkabinde (rtd) | New |
| 9. Ms Refiloe Mokoena | New |
| 10. Ms Nonyameko Mandindi | New |

Composition of DENEL BOARD as follows irt SKILLS:

- Defence & Security -3
- Corporate Governance -6
- Finance, Risk and Compliance -3
- Management -7
- Board Experience -3
- Advisory/Structuring -6
- Legal Services -4
- Leadership -7
- Public Sector -7

Eskom Additional Board Members x 2

1. Mrs Miriam Cassim - New
2. Mr Giovanni Leonardi

Composition x 2 Members as follows inr SKILLS

- 1. Energy & Technical -1
- 2. Corporate Governance -2
- 3. Finance, Risk & Compliance -1
- 4. Management -2
- 5. Board Experience -2
- 6. Advisory/Structuring -1
- 7. Leadership -2

Please ensure the changes are effective accordingly and please note the additional summary of Skills as per the board nominations for ease of reference.

Ms Kim Davids
Executive Personal Assistant: Office of Minister L Brown
☎ +27 (0)12 431 1098 | 📧 +27 (0)12 431 1039 | ✉ Kim.Davids@dpe.gov.za | 📠 +27 (0)72 700 8067
1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 431 1000
☎ +27 (0)21 469 6762 | 📠 +27 (0) 21 465 6762 | 120 Plain Street| 16th Floor |Cape Town |



Click on the following link to view DPE website & email disclaimer <http://www.dpe.gov.za/home.asp?id=10>
Click on the following link to view directions to DPE <http://www.dpe.gov.za/home.asp?id=1053>

Exhibit 56



Daniel Maruatle

From: Kimberly Davids <anckimwc@gmail.com>
Sent: Friday, 17 July 2015 15:47
To: Kim.Davids@dpe.gov.za
Subject: Fwd: Re: Fwd: Response on the war room assessment Assessment

----- Forwarded message -----

From: "Business Man" <infoportal1@zoho.com>
Date: 17 Jul 2015 15:46
Subject: Re: Fwd: Response on the war room assessment Assessment
To: "Kimberly Davids" <anckimwc@gmail.com>
Cc:

please remove the part about guidance from IMC...

base add a clause whereby its is stated that significant changes have now been made and that you need more time before presenting to the IMC so request the IMC be postponed for a quarter to allow the changes to take effect

This protects from unnecessary issues being raised in this forum now

---- On Thu, 16 Jul 2015 20:46:30 +0400 **Kimberly Davids**<anckimwc@gmail.com> wrote ----

Herewith draft letter. ...your views please. Thanks

Kim Davids

----- Forwarded message -----

From: "Kim Davids" <Kim.Davids@dpe.gov.za>
Date: 16 Jul 2015 6:42 PM
Subject: Fwd: Response on the war room assessment Assessment
To: "anckimwc@gmail.com" <anckimwc@gmail.com>
Cc:

Kim Davids
Personal Assistant to
Minister L Brown
Ministry of Public Enterprises

----- Original message -----

From: Matsietsi Mokholo
Date: 16/07/2015 17:39 (GMT+02:00)
To: Lynne.brown5@me.com
Cc: Lynne Brown , Annelize Van Wyk , Makgola Makololo
Subject: Response on the war room assessment Assessment

Dear Minister,

Please find attached a draft response letter to the war room for your consideration.

Regards,
ADG



Exhibit 57




Daniel Maruatle

From: Kimberly Davids <anckimwc@gmail.com>
Sent: Wednesday, 19 August 2015 16:19
To: Kim.Davids@dpe.gov.za
Subject: Fwd: Q&A revised
Attachments: Q&A revised.docx

Kim Davids

----- Forwarded message -----

From: "Business Man" <infoportal1@zoho.com>
Date: 19 Aug 2015 3:59 PM
Subject: Fwd: Q&A revised
From: "Kim Minni" <anckimwc@gmail.com>


Amended



QUESTION AND ANSWERS

Q: SOCS have recently been in the news for all the wrong reasons. Give us your view on how to change this pattern. How are the SOCS in your portfolio performing?

A: I agree. Recent publicity and media coverage of the SOCs have not been entirely positive and the SOCs are under pressure to perform. There is no argument to the fact that SOCs are critical in driving Government's plans to revitalize the economy, create jobs and train people - not only for the SOCs but to ensure continued pipeline of critical skills required by the country.

I am happy to report that all 6 SOCs in my portfolio, Transnet, Denel, Alexkor, Safcol, SAX and Eskom, have reported profits for the year under review. These profits are not yet at the level I require but they are an indication that these entities are making significant improvements and are on a positive growth path.

Denel and Transnet have had major successes. Transnet's revenue increased by 8%, to R61, 2 billion in 2014/15, while Denel's operating profit increased by 50%. Denel's achievement is remarkable especially if we take into account the precarious position it was in a few years ago. This is the fifth successive year that Denel has reported a profit.

SAX is on track to strengthen its solvency position. The company will report an operating profit at its AGM next month. I must add that the austerity measures we have introduced are beginning to have a positive effect. These measures include the closure of loss-making routes and savings of R140million. I anticipate that these austerity steps will lead to an overall saving of about R240million by the end of the 2015/16 financial year. Despite its challenges, the airline continues to be a leader in transformation through the development of young pilots and technicians to protect South Africa's youth across all racial divides.

Q: SOC reform process makes provision for a robust Shareholder Model. Is it sitting on your desk? Can you give us an idea what you are looking at?

A: Yes, the Shareholder Management Model is taking shape and I am excited with what is being proposed. The reform process by its nature is evolutionary and therefore we have adopted a position where the concept paper that we are working on must be comprehensive. Hence it was necessary that my Department consults widely on the nature of the reforms and the model that will ultimately culminate in the over-arching legislation.

Q: Cost overruns at Medupi, Kusile and National Multi-Purpose Pipeline are of concern. They are all in your portfolio. What are you doing to ensure this is stopped?

A: Interventions have been made and I will ask the Eskom and Transnet CEO's to provide further details

Q: How critical are SOC's contribution to the GDP, skills training and job creation

A: The six SOCs within the DPE's portfolio employ 107 335 people (Eskom – 41 787; Transnet – 55 506; Denel – 6 931; SAFCOL – 1 716; SAX – 1 095 and Alexkor – 300) These SOCs contribute significantly to the GDP. If the revenue approach is used to estimate the contribution, this is estimated at just over 10 percent of the GDP.

In the 2014/15 financial year, the SOCs collectively enrolled 5 286 new trainees in various scarce and critical skills.

This represented 790 artisans, 616 technician, 387 engineers and 11 Cadet Pilots. 3 320 trainees were enrolled in various sector specific critical skills programmes.

Eskom collaborated with its supplier network to train 1 916 matriculates in artisan trade. 541 graduates were placed in experiential programmes.

One area that we are also paying attention to is Transnet's locomotives acquisition programme. The contractual arrangement with the suppliers is that of the 1064 locomotives, only 40 will be imported, while the rest will be built and assembled across various parts of South Africa including Koedoespoort and Durban. This is to ensure that we create local beneficiation out of this contract, and advance this sector of our economy.

In addition Eskom and Transnet's capital expenditure programmes continue in strengthening the investment levels by public entities alongside other SOCs such as ACSA and SANRAL. This is despite the subdued economic climate where even investment by the private sector is constrained.

Q: What progress is being done to stabilise the grid and minimize the impact of load shedding

A: I have been briefed by the Board on this and will ask the Eskom CEO to provide us with a more detailed answer

Q: The Denton's report is done, what is the feedback on the report?

A: The report was handed over to Eskom and the Board is still studying it. The Board will then share their recommendations with me and the Department. Only then will I be able to express a view on the contents and the Board's recommendations

Exhibit 58



Sibongile Mbeje

From: Kim Davids <Kim.Davids@dpe.gov.za>
Sent: Friday, 28 August 2015 09:08
To: anckimwc@gmail.com
Subject: Eskom Memo
Attachments: Eskom Memo.pdf

Morning, as discussed

Ms Kim Davids

Executive Personal Assistant to
Minister: Lynne Brown
Ministry of Public Enterprises

Cell: +27 72 700 8067 | Tel: +27 (0)12 431 1098 | Fax: +27 (0)12 431 1039 | Kim.Davids@dpe.gov.za
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Tel: +27 (0)21 469 6762 | Fax +27 (0)21 465 2381 |
120 Plein Street | 16th Floor | Parliament | Cape Town | Switchboard: +27 (21) 469 6760



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1347/2015



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DECISION MEMORANDUM

DEPARTMENT OF PUBLIC ENTERPRISES
PRIVATE BAG/PRIVAATSAK X15
14-18
2015-08-25
HATFIELD 0028
DEPARTEMENT VAN OPENBARE ONDERNEMINGS

TO : MS. LYNNE BROWN, MP
MINISTER

FROM : MS. MAKGOLA MAKOLOLO
ADDG: ENERGY ENTERPRISE

FILE REF : 15/1/R

IDMS REF : 182780

SUBJECT : DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY
THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND
CHALLENGES EXPERIENCED BY ESKOM

DATE : 14 AUGUST 2015

1. PURPOSE

- 1.1. This memorandum serves to provide the Minister with the Department's analysis and view of Eskom's Preliminary Report ("Report") on the status of the Eskom business and the challenges experienced by Eskom. Recommendations on the way forward are also posited for the Minister's attention.
- 1.2. A letter to the Eskom Chairperson has also been prepared for Minister's signature (Annexure "A").

2. SUMMARY

2.1. Key Report Findings

Poor Plant Performance

- (a) Lack of maintenance, deferral of outages and quality of maintenance undertaken are the primary cause of an increase in plant outages and unreliability.

Lefapha la Dikgwebo tsa Puso • Lefapha la Dikgwebo tsá Mmusó • UMnyango wezinkampani zikaHulumeni • Muhasho wa Mabindu a Muvhuso • Departement van Openbare Ondernemings • Kgoro ya Dikgwebo tsá Setshaba • Ndzawulo ya Mabhindzu ya Mfumo • LiTiko leTemahizhini aHulumende • ISebe lezaMashishini oMbuso

- Confidential -

043 041111
19 AUG 2015
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041125

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

- (b) The cost of maintenance contracts with Original Equipment Manufacturers (OEMs) was viewed to be much higher than industry norms.

Delays and Cost Overruns on New Build Programme

- (c) The findings of the Report are aligned to the Department's knowledge and the independent review commissioned by the Department on the build programme in 2013.
- (d) Final reporting from Exco to the Board on the timelines for the build projects including the associated confidence level for risks materialising was sanitised given that some departments had previously requested extensions to these timelines before the Board was briefed.

Primary Energy Costs

- (e) Eskom Coal price increases are largely due to (i) greater volumes from short- to medium term contracts and the logistics costs associated (ii) escalations in long term contracts, (iii) increased cost of mining, (iv) BEE requirements for coal supply and (v) global demand for steam coal.
- (f) A fair process might not have been followed in the appointment of short-term diesel supplier.
- (g) Primary Energy Division (PED) hardly ever solicits advice from Legal Services.

Finance

- (h) Eskom's financial outlook may not improve as per the latest "going concern" model if performance does not improve from previous years.
- (i) The identified causes of the financial challenges include, among others (i) reduced plant performance which warranted high reliance on expensive peaking plants, (ii) Eskom's weak approach to its cost base, exacerbated after the MYPD3 decision, (iii) new build cost escalations.

Legal

- (j) Notwithstanding the fact that Eskom procurement processes comply with applicable legislation, there appears to be high levels of misalignment between Eskom policies and industry practice.
- (k) Anomalies in the procurement of coal contracts as some of these contracts were awarded without following appropriate tender processes and some contracts were awarded without Eskom having concluded coal supply agreements with suppliers.

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- (l) Further, procurement of diesel was found to be a problem due to the fact that (i) prices paid to some non-contracted suppliers were exorbitant, (ii) prices were not negotiated since sourcing occurred under an "emergency situation".
- (m) Security risks to the Eskom's National Key Point sites have been identified. Responses to security issues are a knee-jerk reaction and takes place after the breaches have occurred.
- 2.2. According to the Report, the organisational structure of Eskom has not positioned the entity strategically and appropriately to respond to the business challenges effectively. More detail in this regard is required to comprehensively qualify this finding. The Report further alludes to widespread silo mentality within Eskom, which comes out in disjointed planning assumptions and procurement inefficiencies.
- 2.3. As identified in the Report, poor procurement and contracting practices predominantly contribute to the widespread cost overruns and overall inefficient operations. It is very disappointing to note of the identified rampant inefficiencies that are still embedded within the business especially considering that the Department approved Eskom's "Back to Basics" PFMA application in 2012 aimed at streamlining operations and improving efficiencies across the organisation.
- 2.4. The Report sheds light on issues that the Department may not have been privy to such as the ability of the Internal Audit, and Audit Risk Committees to carry out their mandates as well as the effectiveness of procurement processes and contract management. However, in many cases, the Department has been aware of the issues and expected that the Report would take the findings a step further in allocating responsibility and accountability to specific individuals. This could very well have been informed by the preliminary nature of the findings.
- 2.5. Based on the Report, it appears that the Board in some instances was not fit or firm to carry out its fiduciary duty. This is seen in the Board's comprehension of the financial position the company and the extent of the risks in the generation plant and build programme. Whether this comprehension or lack thereof speaks to its capabilities or its inclination to lean on Shareholder bailout requires further probing.
- 2.6. It is the team's view that further probing or investigations be undertaken to take the findings forward and the Eskom Board should be informed accordingly. The Energy Enterprise (EE) unit had already planned on carrying out a project to unpack Eskom's

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cost structure during this financial year. This will include a deep dive into the primary energy costs (coal and diesel contracts) among other initiatives.

3. ANALYSIS AND FINDINGS

3.1. POOR PERFORMANCE OF THE GENERATING PLANT

3.1.1. Report Findings

(a) State of the Generation fleet

The Report findings on the state of Eskom's Generation plant are that (i) the average age of fleet is over 30 years (as is 70% of fleet in Europe); (ii) Eskom's plants were run at high utilisation levels from the mid-90s with plant availability target of 90% being the order of the day (90:7:3 strategy); (ii) low levels of maintenance than ideal were implemented as there was significant underinvestment vs best practice. These are also shared by the Department.

(b) Underlying causes and Impact of Strategies

- i. Lack of maintenance, deferral of outages and quality of maintenance undertaken are the primary cause of an increase in plant outages and unreliability.
- ii. Various initiatives leading to the Generation Sustainability Strategy (80:10:10 Strategy) have been embarked upon to improve plant performance and restore integrity of plant. UCLF level still unfavourable as the required levels of maintenance are still not being effected due to lack of adequate outage space.

(c) Pricing of Maintenance contracts

- i. The cost of maintenance contracts with OEMs were viewed to be much higher than industry norms and are characterised by cost overruns and are not performance based.

3.1.2. DPE Concerns

- (a) The Department shares the same understanding of the causes of the poor plant performance. However, given that the average age of the Eskom fleet in itself is neither peculiar nor unique when compared to global trends, how Eskom utilised and maintained its plant over the years (especially under the 90:7:3 strategy) is the major driver of the higher than ideal unplanned outages and a significant deviation away from best practice.

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- (b) The evolution of Eskom's approach to generation plant maintenance is a major contributor to the state of the plant. This evolution was informed by various factors, most of which are underpinned by poor forecasting and a deviation from prudent operator model. Protecting the asset base should always be the top priority especially considering the Regulator has historically provided Eskom with capex for the required maintenance of which Eskom systematically underutilised.
- (c) Whilst it is important for the Shareholder to have an understanding of the status of the operations and the effectiveness of Eskom's response or lack thereof, it is also equally important to take stock of the role the Shareholder played in the evolution of Eskom's approach to generation plant maintenance – the "keep the lights on" (KTLO) era.
- (d) To the Department's knowledge, Eskom's 80:10:10 Strategy was implemented in August 2013 and not 2014 as detailed in the Report. The benefit realisation phase was pegged at 18 months (reached in 2014) with sustainability reached 72 months thereafter. Instead, December 2014 was characterised by high outages and prolonged load shedding. The assertion in the Report that the 80:10:10 Strategy has been successful cannot be supported. Based on Eskom's own forecast, if they had continued on a 6% maintenance strategy (i.e. 6% PCLF), UCLF would exceed 15% in 2014/15. However the same UCLF was recorded whilst Eskom was implementing a 10% maintenance strategy (i.e. higher planned maintenance levels of 10%). Furthermore, in April 2015 alone, the UCLF recorded was over 17%, with the year to date (three months to June 2015) level peaking at 16.5%.
- (e) The Department however supports the Report's recommendation for the 80:10:10 Strategy to be consistently reviewed especially considering that adequate space for maintenance is not available and the levels of philosophy based maintenance are not yet in effect.
- (f) Technical reports to the Board submitted by the Exco may have compromised the Board's ability to resolve challenges due to the complexity and because recommendations were unclear. What is important to the Shareholder is to ensure that the capacity of Board is enhanced so as to support the core function of the business (the strengthening of the Board in this regard has since been effected)

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and for Exco to ensure clear and sanitised reporting to the Board to empower decision making.

- (g) It is disconcerting to note that maintenance contracts are overpriced, have suffered consistent cost overruns and are not performance based given the materiality of this area on overall business sustainability. There is lack of due diligence exercised by Management and Board in this manner which must be addressed.

3.1.3. Concluding Remarks

- (a) The practice of deviating away from prudent operator principles must be systematically rooted out of Eskom's planning. The Board's fiduciary duty in protecting the company asset base must always be upheld in as far maintenance strategies are developed, implemented and funded, regardless of external pressures and influences.
- (b) The Department is cognisant of the scope of the investigation and the fact that it was commissioned by and for the Board. That being said, a number of issues raised in the Report require further probing to benefit the requirements of the Shareholder. For example:
- i. The Report suggests that the Board was consistently kept abreast of the state of the fleet (and the progress on the build programme). That being said, it appears that the Board has not always informed the Shareholder formally and in a timely manner when risks to the generation plant (and build programme) materialised.
 - ii. It is stated that the VGB report on Eskom Outage Movement which was issued in September 2012, raised serious concerns with the postponement of outages and highlighted the risk to the plant availability from such practice. It is important to note that this was before Eskom submitted its MYPD3 application to NERSA. At this point, the Department would have expected that given the significance and materiality of this risk that the maintenance assumptions (and plant availability levels) in the MYPD3 application would need to be revised and the Department informed accordingly and timeously. It cannot be overemphasised how the operational philosophy has been a departure point with NERSA since then and the impact this has going forward.
 - iii. Furthermore, Eskom provided aspirational EAF values (80%) to DOE in the review of the IRP2010 which in itself compromised the planning of new

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supply options and extent of demand side reduction required to avert or reduce the level of load shedding. The aspirational timelines for the build programme further exacerbated the situation.

- iv. The Report suggests that the energy challenges will last much longer than the two to three year period that Eskom has been communicating. Eskom must provide the confidence level associated to this pronouncement and revise projections to the Shareholder if necessary.

- (c) A deep dive into the organisational structure of Eskom and silo mentality of its divisional activities is required. The Report states that outage execution, a core function of the Generation business, was hampered by the organisational structure and new outage process of 2011/12. More detail on this is required as the Department's assertion has always been that the organisation is not streamlined to carry out its mandate and that there is no cohesion between and within various divisions.

- (d) The Report sheds light on the controls and systems in place for compliance and their effectiveness. Given that the level of irregular expenditure (which for the 2014/15 was around R700 million) remains unacceptable it warrants that the Internal Audit and Audit and Risk Committees be empowered to carry out their mandates effectively so as to deter such behaviour. The Shareholder expects that the Board will implement the recommendation made in this regard.

- (e) It is clear that without a deep dive into "red flag" areas such as the coal and diesel procurement (i.e. analysis of existing contracts in detail); those responsible for mismanaging funds will not be held to account and the behaviour will not be arrested. Until such time that Eskom's inefficiencies are addressed, it will be difficult to have a discussion on the cost-reflectiveness of the tariff.

- (f) Further probing is required into whether it was ineffective management of the revised outage execution plan of 2011/12 that contributed to the high levels of UCLF or the plan itself. The materiality of this planning on the rest of the business is significant.

3.2. DELAYS AND COST OVERRUNS OF THE NEW BUILD

3.2.1. Report Findings

- (a) The findings of the Report are aligned to the Department's knowledge and the independent review commissioned by the Department on the build

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programme in 2013 with reference to the status, causes of the delays, current status and lessons learnt.

3.2.2. DPE Concerns

- (b) Reporting from Exco to the Board on the timelines for the build including the associated confidence level for risks materialising was insufficient and sanitised - extensions to the timelines reported to Board were being requested in other parts of the business but these were not considered.
- (c) Of notable mention is that reporting to the Board on the timelines for the new build was based on optimistic timeframes and the impact of the risks was not pronounced accordingly. That being said, it is also clear from Board meeting minutes that the Board in turn did not inform the Shareholder (formally) in a timely manner.

3.2.3. Concluding Remarks

- (a) Exco's reporting appears to have compromised the Board's effectiveness in responding to the risks and subsequently delayed the flow of critical timelines to the Shareholder. The most significant casualty in this instance is the impact that optimistic timelines on the build have had on DOE's planning and NERSA's tariff determination.
- (b) Eskom consistent reporting of unrealistic and optimistic timeframes has cost both Eskom (i.e. liquidity position, maintenance programme, reputation) and the country at large (i.e. reduced economic growth, load shedding, reputation) greatly.

3.3. PRIMARY ENERGY COSTS

3.3.1. Report Findings

- (a) Due to lack of investment in the cost plus mines and the historical increase in demand, cost plus coal contracts fell below contracted levels leading to an increasing reliance on short to medium term contracts to make up the balance. Eskom's coal supply mix is made up of 38% cost plus, 37% short-to medium term and 25% fixed price.
- (b) Eskom Coal price increases largely due to (i) greater volumes from short-to medium term contracts and the logistics costs associated, (ii) escalations

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in long term contracts, (iii) increased cost of mining, (iv) BEE requirements for coal supply and (v) global demand for steam coal.

(c) More findings are reported and discussed under Section 3.5 (Legal).

3.3.2. DPE Concerns and Concluding Remarks

- (a) The Department notes the factors contributing to the coal price increases; however, the contribution of each factor was not addressed in detail. Further probing should be made on this so as to equip the discussions around investment in coal mines, the Department's emerging miner's policy and road to rail migration programme going forward.
- (b) Whilst the Department is not advocating for a "witch hunt" per se, it is important that actionable evidence be obtained through the final phase of the Report or a further forensic investigation commissioned by the Shareholder. The Department has been of the view that there are significant irregularities in the coal and diesel procurement that must be pronounced. The Report does not take this assertion further. Without knowing how the Board will internalise the recommendations of the Report (once finalised), it is difficult to conclude at this stage that the findings of the Report will direct the right behaviour within the business, especially as it relates to transparency.
- (c) It is important that the Department requests an action plan on primary energy procurement from the Board. In parallel, through the EE unit's project, an independent expert (s) will be appointed to review Eskom's cost structure, including assessing the cost drivers for efficiencies. This will include a deep dive into the coal and diesel contracts.

3.4. FINANCE

3.4.1. Report Findings and Recommendations

- (a) The Report presents assumptions that underpin Eskom's cash flow position, which in some instances differ from the Corporate Plan.
- (b) Eskom's financial outlook may not improve as per the latest "going concern" model if performance does not improve from previous years.

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- (c) The identified causes of the financial challenges include, among others (i) reduced plant performance which warranted high reliance on expensive peaking plants, (ii) Eskom's weak approach to its cost base, exacerbated after the MYPD3 decision, (iii) new build cost escalations.
- (d) The Report concluded that Exco's reports to the Board were credible and factually correct; however, the executives were unresponsive in carrying out their duties, a general lack of commitment and discipline.

3.4.2. DPE Concerns

- (a) The Department especially is concerned with the lack of resolve in addressing Eskom's cost structure. An independent review of Eskom's cost base will be commissioned by the Department in this financial year – the terms of reference for which have been developed.
- (b) The Department has been of the view that the Business Productivity Programme (BPP) is not effective. The Report shares this view and qualifies the reasons for the low impact of the programme across the business.
- (c) The culture within Eskom of looking externally for their challenges to be addressed must be arrested. This behaviour was also observed at Board level especially as it related to the financial challenges the company faced. A paradigm shift is required across the business, top-down approach.

3.4.3. Concluding Remarks

- (a) The Report states that the decision to procure additional diesel from ad hoc suppliers contributed to the chronology of Eskom's financial problems. It is important to highlight that the Department approved Eskom's Generation Maintenance Strategy in 2011 which was aimed at keeping the lights on and conducting maintenance. The various strategies in support of this were submitted to the Department and included the need for additional purchases to run peaking plants. This necessitated the procurement from ad hoc suppliers, which the Department has since learned (from the Report) was characterised by lack of transparency and due diligence. Although this level of detail (i.e. contracts) was not requested by the Department at the time, it was the Board's fiduciary duty to ensure that the procurement process was fair and cost effective. It may be necessary for the Department to review or strengthen its PFMA application process.

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- (b) It is very disconcerting to note that Internal Audit is operating on an incomplete mandate which disempowers its function and has in fact contributed directly to the financial challenges the company faces. This is a finding against the Board which must be taken seriously.
- (c) The lack of commitment, discipline and due diligence, in general, to effect cost efficiency is suggested at the highest level of accountability within Eskom. Further probing from the Shareholder preferably, which extends to the previous and current Board and Exco is necessary to hold individuals to account. In the absence of a specific "example" being held to account, the behaviour may not be rooted out.
- (d) The Report fails to make any linkages to the regulatory framework which is very odd and of concern.

3.5. LEGAL

3.5.1. Integrity of Procurement Processes

Report Findings

3.5.1.1. Notwithstanding the fact that Eskom procurement processes comply with applicable legislation, there appears to be high levels of misalignment between Eskom policies and industry practice, particularly on using the same teams for scoping and designing commercial strategies, whilst also evaluating bids.

3.5.1.2. Anomalies in the procurement of coal contracts as some of these contracts were awarded (i) without following appropriate tender processes, (ii) some contracts were awarded without Eskom having concluded coal supply agreements with suppliers, (iii) Primary Energy Division (PED) which is responsible for coal sourcing seems to ignore policies, does not elevate matters to the Board for decisions and does not even consult with Eskom Legal Department whenever contracts are amended, (iv) although negotiations with coal suppliers is done by a team, the award of contracts is done by one person.

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3.5.1.3. Further, procurement of diesel was found to be a problem due to the fact that (i) prices paid to some non-contracted suppliers were exorbitant, (ii) prices were not negotiated since sourcing occurred under an "emergency situation", (iii) there is no proper implementation and management of Conflict of Interest policy which results in employees benefitting from tenders through indirect relationship with suppliers, and tender processes are sometimes influenced by senior employees.

3.5.1.4. **Delegation of Authority:** Over the years there have been changes to the organisational structure of the company and it has not been aligned to the Delegation of Authority (DOA). This is particularly noticeable in PED position of General Manager which has been replaced by a position of Senior General Manager with no decision making power.

3.5.1.5. Eskom Supply Chain Management processes are generally inadequate and it appears different Units are working in silos, and this causes inefficiencies and possible manipulation of the system. Further, flaws and weaknesses in contracts have been identified e.g. modifications in the T-Systems contract which exposes Eskom to enormous risks. Notwithstanding the fact that the Department approved Eskom's "Back to Basics" PFMA application aimed at streamlining operations and improving efficiencies across the organisation, it is disappointing to note the rampant inefficiencies that are still embedded within the business.

3.5.1.6. **Governance:** There is a clear Delegation of Authority Framework that was approved by the Executive Committee (Exco) in 2013. Further Governance Review was also conducted and presented for Exco approval in August 2013. Despite these clear Frameworks the report found that there were instances where Exco colluded with the Board to bypass governance processes.

3.5.1.7. Instances of refusal to implement Board decisions, abuse of confidentiality documents and leaking of documents by executives to the media and Board members were also found.

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DPE Concerns and Concluding Remarks

- 3.5.1.8. The report makes certain recommendations particularly that the principle of substance over form be considered in procurement matters, and further that procurement processes pertaining to coal and diesel be subject to close scrutiny. However, it is the view of the Department that where non-compliances are pointed out to the company and no decisive action is taken, this places a huge risk to the company. It is further disconcerting that the Board Tender Committee can approve contracts that have not been sanctioned by the Legal Department. This does not auger well as it raises the Board's apparent lack of fiduciary duty towards the company, and accentuates a finding that the Board sometimes does not read packs and is consequently not adequately prepared for meetings.
- 3.5.1.9. It is concerning that one person can be responsible for the awarding of contracts. This is unacceptable as it erodes the constitutional requirement of transparency in procurement processes.
- 3.5.1.10. Further, a key position such as Senior General Manager in PED not to have some decision making powers and yet this is where coal and diesel procurement takes place is concerning.
- 3.5.1.11. Further, it is unacceptable that the position of Senior Manager Contracts in PED that has been vacant for the past five years has been abolished and there seems to be no equivalent position established to oversee the management of coal contracts.
- 3.5.1.12. The exorbitant prices of coal that Eskom pays is indicative of the flaws in Coal sourcing strategies and these need to be revisited and refined. PED cannot be left to procure coal and diesel without proper checks and balances. This has been a cause for concern for the Department for years and Eskom needs to do a complete overhaul of its coal procurement. There must be consequences management and follow ups on audit findings.
- 3.5.1.13. The fact that the PPPFA exemptions have lapsed, and procurement by SOC are looked at on a case by case basis, does not give Eskom the right or licence to flout legislation as reported. This is viewed in a

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serious light and further investigations on this matter must be conducted as it also raises a concern of possible non-compliance with the PFMA.

3.5.1.14. Collusion between Exco and the Board to bypass governance processes and leakage of information to the media is extremely disturbing as it is indicative of governance collapse and weak internal controls. The Department needs to task a forensic investigation into this finding as there could be more information that could be uncovered.

3.5.2. Contract Management

Report Findings

3.5.2.1. Contract Management Framework is in place however, contract management and project support office was only established only September 2014.

3.5.2.2. Poor contracting strategies. Although NEC and FIDIC contracting strategies are used in the Build Programme; these are sometimes not amended to fit purposes in order to adequately protect the interests of Eskom. For example; at Medupi Eskom Execution Partner Parsons Brinkerhoff (PB) did not align any of its processes and systems with the Eskom contract management framework.

3.5.2.3. Lack of technical capacity and experience by project teams in managing and implementing the Build Programme contributed to the delays at Medupi.

3.5.2.4. Inconsistent treatment of contractors, which was evidenced at Medupi with Hitachi and Alstom in respect of boiler control system and boiler tube welding.

DPE Concerns and Concluding Remarks

3.5.2.5. Eskom should not have contracted only PB for a turnkey project of this magnitude; it should have spread the risk across various service providers.

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3.5.2.6. Modification of existing contracts proved to be ineffective as it opened loopholes for manipulation of procurement processes and systems and non-competitive pricing.

3.5.2.7. Eskom trained and developed employees on NEC and FDIC contract and project management quite late into the Build Programme. Equally, it is concerning that Eskom established a Contract Management and project support office only in 2014 when the Build Programme started in 2008. Someone needs to be held accountable for lack of judgement and ill-timed decisions.

3.5.2.8. Consequent management must be implemented where it is found that projects teams have been negligent in project implementation.

**3.5.3. Security Failures and Accountability
Report Findings**

3.5.3.1. Security risks to the Eskom's National Key Point sites have been identified. Responses to security issues are a knee-jerk reaction and takes place after the breaches have occurred.

3.5.3.2. Group Security, Information Technology and Forensic Departments seem to be working in silos.

3.5.3.3. Compliance with internal policies is poor and not monitored.

3.5.3.4. There are high levels of information leaks with regards to tender documents, Board meetings discussions, and prevalence of bugging devices.

DPE Concerns and Concluding Remarks

3.5.3.5. The report is recommending that security standards and technology must be upgraded. It is concerning that after DPE had approved the PFMA on national security refurbishment project in 2013, nothing or little seems to have been done.

3.5.3.6. Compliance with internal policies seems to be a problem and this cuts across all areas of the business that have been reported on. A

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recommendation that Group Compliance must report directly to the Board is welcomed as this will elevate the seriousness of this issue.


4. RECOMMENDATIONS

- 4.1. A common theme across the report is related to the quantum and impact of primary energy costs (coal and diesel in particular); the weak procurement processes and the ripple effect across the business, as evident in the poor operational and financial performance. Actionable recommendations in this regard are required. In parallel, the Department is commissioning an independent assessment in Eskom's cost structure which will include the assessment of primary energy procurement practices and processes and identify areas for improved cost controls
- 4.2. Taking into consideration all the highlighted damning findings, it is the Department's assertion that the exoneration of the suspended executives by Eskom was premature as it was based on preliminary findings and recommendations which may compromise any further probing for completeness. The Board should be apprised of this position.
- 4.3. It is important to highlight that the brief provided to Denton included Minister's specification for a "deep dive" investigation to be undertaken. From the Report, it does not appear that this has been done, which could be because of the preliminary nature of the findings. For completeness, further probing from the Shareholder should be carried out. Chief among these findings is that on a number of issues, the Board was fully apprised by the Exco but lacked interpretation of the issues, or urgency in responding to the issues. The Department's observation is that the quality and timing of information communicated to the Shareholder is inadequate. This warrants that the scope of the investigation be extended to include assessing the Board's capabilities, and integrity in executing their fiduciary duties to the company.
- 4.4. It is recommended that a Communication Plan (on the Report findings) for various stakeholders must be discussed and developed between Ministry and the Department.
- 4.5. Minister is recommended to write to the Board, requesting the Board to submit an action plan which clearly outlines specific consequent management on issues that have been raised in the Report for its consideration. Minister is requested to sign the attached letter (Annexure "A") to the Chairperson of Eskom, if in agreement with the content thereof.


DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM


Memorandum prepared by:



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 DATE: 14/08/2015


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<p> MS. MATSIETSI MOKHOLO ACTING DIRECTOR-GENERAL DATE: 24/08/2015</p>	<p><input checked="" type="checkbox"/> RECOMMENDED / <input checked="" type="checkbox"/> NOT RECOMMENDED / COMMENTS</p> <p>1) PARAGRAPH F ON PAGE 5 IS NOT CLEAR - THE BOARD HAS BEEN STRENGTHENED ^{Paragraph F on page 5 has been changed & strengthened}</p> <p>2) PLS SEE EDITS ON PAGES 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100</p> <p>3) THE ISSUES RAISED IN PARAGRAPHS C & D ON PAGE 7 WERE PART OF THE DEBATOR'S BRIEF</p>
<p>MS. LYNNE BROWN, MP MINISTER DATE:</p>	<p>APPROVED / NOT APPROVED / COMMENTS</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MR. GRATITUDE MAGWANISHE, MP DEPUTY MINISTER DATE:</p>	<p>NOTED / COMMENTS</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Dr Ben Ngubane
Acting Chairperson
Eskom Holdings SOC Ltd
P O Box 1091
Johannesburg
2000

Fax: 011 800 5803
Tel: 011 800 5991

Dear Dr Ngubane

Comments on the Draft Preliminary Report of the Investigation Commissioned by the Eskom Board into the Status of the Eskom Business and Challenges Experienced by Eskom

The above matter has reference.

The Department has studied the Preliminary Report ("Report") of the investigation instituted by the Board and has noted the key findings and recommendations arising therefrom. The Department acknowledges that the Report was prepared at the midpoint of the investigation and posits preliminary findings and recommendations. However, the Board does not provide its views and Action Plan (if any) on the many recommendations that were cited in the Report, and is therefore requested to provide same.

Salient Recommendations

- (a) A common theme across the Report is related to the quantum and impact of primary energy costs (coal and diesel in particular); the weak procurement processes and the ripple effect across the business, as evident in the poor operational and financial performance. Actionable recommendations in this regard are required. Therefore, further probing or investigations must be undertaken to take the Report findings forward;

- (b) In studying the Report, it appears that the Board in some instances was not fit or firm to carry out its fiduciary duty. This is observed in inter alia; the Board's lack of comprehension of the financial position of the company and the extent of the risks in the generation plant and build programme.
- (c) Based on the Report findings and the fact that the investigation had not been completed at the time the Report was drafted, it is the view of the Department that the exoneration of suspended employees may have been premature.

I have attached comprehensive comments on the findings of the Report for ease of reference for your consideration and response.

I look forward to hearing from you.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE:

Exhibit 64





ESKOM HOLDINGS SOC LTD
(Registration No. 2002/015527/30)
("The Company")

WHEREAS the sole Shareholder has consented to the passing and approval of the ordinary resolutions set out below in terms of the provisions of the Companies Act, 71 of 2008 ("the Companies Act") and in terms of the Company's Memorandum of Incorporation ("MOI"):

ORDINARY RESOLUTION 1: APPOINTMENT OF MEMBERS OF THE AUDIT AND RISK COMMITTEE:

It is hereby RESOLVED that the following non-executive directors are approved to serve on the Audit and Risk Committee:

- C Mabude appointed as member and Chairperson of the Audit and Risk Committee;
- N Carrim appointed as member of the Audit and Risk Committee;
- R Kumalo appointed as member of the Audit and Risk Committee;
- V Naidoo appointed as member of the Audit and Risk Committee.

ORDINARY RESOLUTION 2: APPOINTMENT OF MEMBERS OF THE SOCIAL, ETHICS AND SUSTAINABILITY COMMITTEE:

It is hereby RESOLVED that the following non-executive directors are approved to serve on the Social, Ethics and Sustainability Committee:

- V Klein appointed as member and Chairperson of the Social, Ethics and Sustainability Committee;
 - P Naidoo appointed as member of the Social, Ethics and Sustainability Committee;
 - V Naidoo appointed as member of the Social, Ethics and Sustainability Committee.
-

ORDINARY RESOLUTION 3: NOTING OF APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO BOARD COMMITTEES

It is hereby NOTED that the following Non-Executive Directors have been appointed to the People and Governance Committee, the Board Tender Committee, the Investment & Finance Committee and the Recovery & Build Programme Committee, respectively:

1. People and Governance Committee:

- V Klein appointed as a member and Chairperson of the People and Governance Committee;
- R Kumalo appointed as a member of the People and Governance Committee;
- B Ngubane appointed as a member of the People and Governance Committee;
- Z Khoza appointed as a member of the People and Governance Committee;

2. Board Tender Committee:

- N Carrim appointed as a member and Chairperson of the Board Tender Committee;
- C Mabude appointed as a member of the Board Tender Committee;
- Z Khoza appointed as a member of the Board Tender Committee;
- P Naidoo appointed as a member of the Board Tender Committee.

3. Investment and Finance Committee:

- M Pamensky appointed as a member and Chairperson of the Investment and Finance Committee;
- Z Khoza appointed as a member of the Investment and Finance Committee;
- V Klein appointed as a member of the Investment and Finance Committee;
- C Mabude appointed as a member of Investment and Finance Committee.

4. Recovery & Build Programme Committee:

- P Naidoo appointed as a member and Chairperson of the Recovery & Build Programme Committee;
 - V Naidoo appointed as a member of the Recovery & Build Programme Committee;
 - N Carrim appointed as a member of the Recovery & Build Programme Committee;
 - B Ngubane appointed as a member of the Recovery & Build Programme Committee.
-

ORDINARY RESOLUTION NO.4: NOTING OF THE MERGING OF THE BUILD PROGRAMME REVIEW COMMITTEE AND THE ESKOM EMERGENCY TASK TEAM COMMITTEE

It is hereby NOTED that the Build Programme Review Committee and the Eskom Emergency Task Team Committee have been merged into one committee, to be known henceforth as the Recovery and Build Programme Review Committee.

SHAREHOLDER

SIGNATURE

DATE

**Ms. L Brown, MP
(Representative of the
Government of the
Republic of South Africa)**

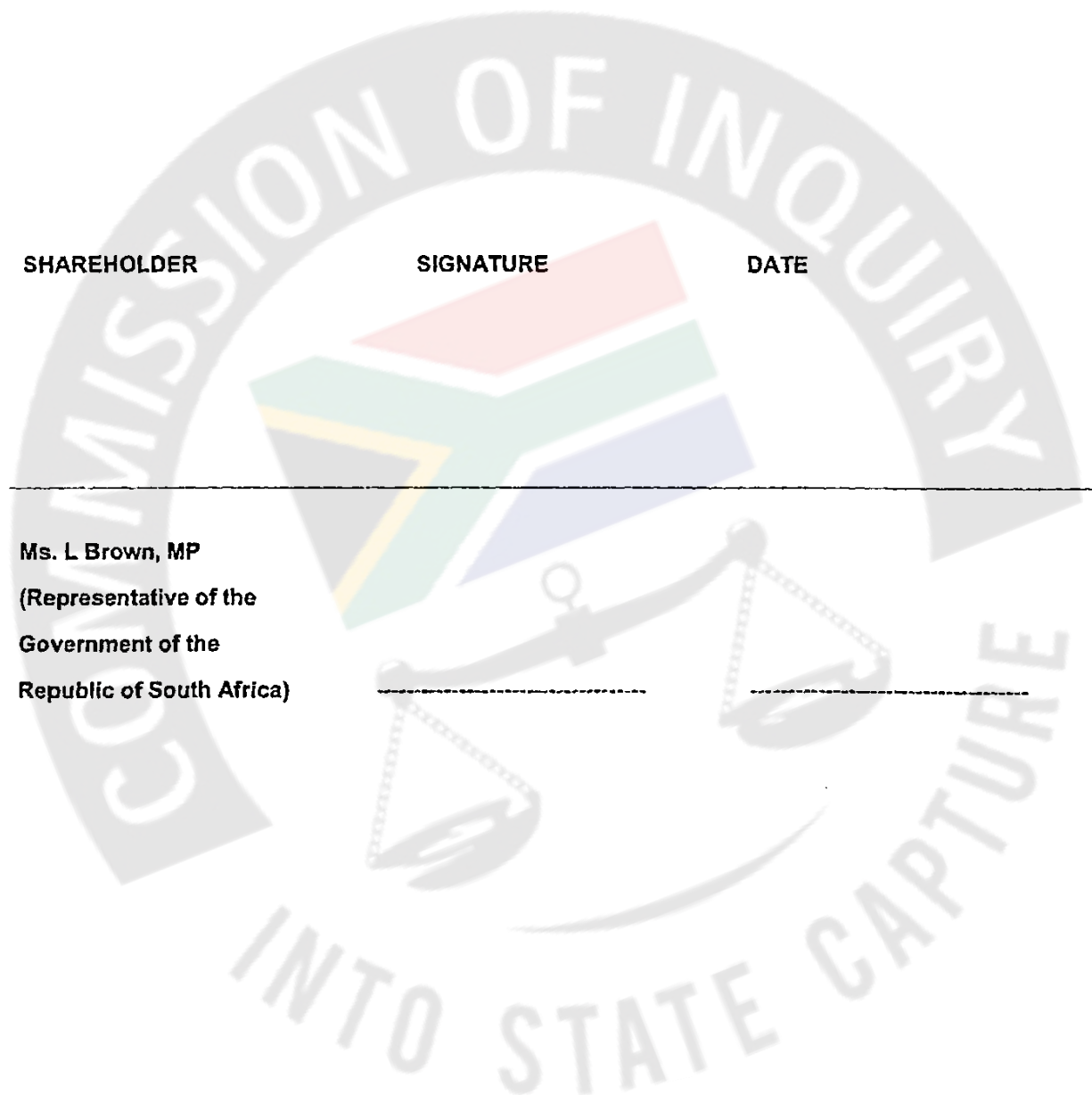


Exhibit 76



Daniel Maruatle

From: Kimberly Davids <anckimwc@gmail.com>
Sent: Thursday, 23 July 2015 14:51
To: Kim.Davids@dpe.gov.za
Subject: Fwd: Trevern's CV
Attachments: CV Trevern 1.docx; CV Trevern 1.pdf

----- Forwarded message -----

From: "Kimberly Davids" <anckimwc@gmail.com>
Date: 20 Jul 2015 15:21
Subject: Fwd: Trevern's CV
To: <Kim.Davids@dpe.gov.za>
Cc:

Kim Davids

----- Forwarded message -----

From: "Kimberly Davids" <anckimwc@gmail.com>
Date: 16 Jul 2015 10:03 AM
Subject: Fwd: Trevern's CV
To: "Business Man" <infoportal1@zoho.com>
Cc:

Dear Saleem

Herewith cv for Alexkor board as discussed

15 July, 2015

To Whom It May Concern

I am currently: Chairman SWT Holdings Pty LTD
Managing Director TG Mintster Consulting Pty LTD
Director on SWT Holdings and subsidiaries

My specialities lie in: Won the best BBBEE Company in SA BBQ Awards 2013 in the main category,
Turnaround specialist with exceptional management skills.

I will benefit your organization through: Years of experience, bright personality, industry
connections, and 15 years' experience holding Directorship with various big corporations.

Please do not hesitate to contact me should you have any questions or comments in this regard.

Yours Sincerely

Trevern Marais Haasbroek

CURRICULUM VITAE
Trevern Marais Haasbroek



PERSONAL INFORMATION

Surname	:	Haasbroek
First Names	:	Trevern Marais
Nationality	:	South African
ID Number	:	630905 5124 084
Contact Number	:	083 300 9990/ 084 800 9990
Email	:	Trevern@tgmintster.com
Drivers Licence	:	EB 0 vehicle restriction
Availability	:	Immediately

EDUCATION HISTORY

Qualification	:	Electronic Engineer Diploma (T3) CPUT
Qualification	:	International Capital Markets Qualification SECURITIES INSTITUTE LONDON RPE All Five modules SECURITIES INSTITUTE LONDON Registered Securities Trader Johannesburg Stock Exchange Registered Safex Trader SAFEX First Level Regulatory Examination: Representatives Financial Services Board First Level Regulatory Examination: Key Individuals Categories 1 Financial Services Board Investment Practice and General Investment Advice as part of JSE Membership University of the Witwatersrand Johannesburg Various Courses with miner Institutions
Matric	:	Pass Oude Molen Technical High School Pinelands
Language Proficiency	:	English (high proficiency: speak, read and write)

Afrikaans (high proficiency: speak, read and Write)

Short Story

:

Loss my right leg in an industrial accident in 1976. Started cycling with one leg and achieved many goals. Matriculated in 1982. Studied at CPUT. At this stage started off as entrepreneur while studying. Also started a sporting career in wave ski surfing. Was the first amputee to achieve Western Province Team Colours in able body sport. This was in 1988. Moved on and started racing inflatable motor boats. Achieve 3 times provincial team colours in able body sport as amputee. All of these achieves was first in the history of South Africa. During all of I excelled in the business world. This was extremely challenging to earn respect with business leaders as a disable individual. The accolades stream in from all over the world.

EMPLOYMENT HISTORY:**Year**

:

1983 with a Telkom bursary till 1988

Responsibilities

:

Technical Engineer

- Part of the team to install MNET as channel via microwave broadcasting over South Africa

- Project coordinator for the first digital telecom channels in South Africa
- 1987 ran the control room in shifts to manage communication networks of Telkom.

Responsibilities

:

Owner of BP Service station

- 1988 – 1991
- Was the first white member to join NAFCOC.

Year

:

1991 started a very successful transport and logistics company, and sold it in 1997 after the bomb explosion in the V&A Waterfront. Same time investing in shares on the JSE. I became the biggest client of De Witt Morgan in Cape Town. They ask to open offices for them in Cape Town.

I am also one of the founder members of Solid Waste Technologies with Edgar Adams. We were the first company to introduce Green Energy in South Africa. Our company was publicly launched by the then Minister of Minerals and Energy Phumzile Ngcuka on national TV. This company is the leader in South Africa in Medical Waste treatment. I have been a director since inception 1999.

Responsibilities	:	2000 De Witt Morgan Stock brokers JSE till 2009 <ul style="list-style-type: none"> • Communicate with private clients and advise on investments. • Was appointed as Director with in one year due to performances. • When I join they were 48 out of 48 with turnover and value. In 2007 they were consistently in the top 10 under my leadership. This was achieved by widening there scope and client base from private clients to • I was the first limited company other than multi nationals with DMA into our market with ITG in Europe and London. • Attended all international conferences and was part of discussion panels at these events on risk and investment opportunities in South Africa and Africa. • Was preferred service provider to PIC, Sanlam, Old Mutual, Coronation, Stanlib, Metropolitan, etc. • Started Unit Trust on behalf of the company. Served on the investment board.
References	:	Johan Van Der Merwe CEO Sanlam Investment Management Loen Smit Senior Management PIC

Year	:	2009 Dolberg Spencerfin
Role and Responsibilities		One of the founder members and Director

- Structure of business model and creating investment vehicles
- Affiliation with all institutions and platforms
- Entrusted with Unit Trust from past credentials with Metropolitan
- Served on the investment committee with fellow Directors and Nedbank
- Resigned and sold over 2014/2015

Year

:

2015 Still the Chairman and Director of SWT Holdings. Assisting various start-up companies giving advice, structures and funding options. Responsible for a deal between Stryker USA, a NASDAQ listed entity and SWT that is revolutionary in the medical industry. SWT has signed an exclusive agreement for SUD's (single used devices) with Stryker and redistribution in Sub Sahara.

In 2009 I was responsible for a USA based company Ganeden that manufacture a very specific probiotic. This probiotic is today the basis for feeding the male nutritional people with an inexpensive meal. The rights was passed on with out cost to provide a low cost meal with all the advantages of a protein diet. I was also approach with USA White House authority to supply SA with crude when sanctions was placed on IRAN.

Exhibit 77



Exhibit 100



Daniel Maruatle

From: Kimberly Davids <anckimwc@gmail.com>
Sent: Tuesday, 23 June 2015 16:45
To: Kim.Davids@dpe.gov.za
Subject: Fwd:Richard C.V
Attachments: mogokare CV.doc; qualifications.pdf

Kim Davids

----- Forwarded message -----

From: "Business Man" <infoportal1@zoho.com>
Date: 21 Jun 2015 8:34 PM
Subject: Fwd:Richard C.V
To: <anckimwc@gmail.com>

Hi Madam

As per sir. This is the candidate for dg. Is it possible for him to meet madam on Tuesday?

Regards

===== Forwarded Message =====

From : blueberries.slk@gmail.com
To : infoportal1@zoho.com
Date : Sun, 21 Jun 2015 22:32:34 +0400
Subject : Richard C.V

===== Forward Message =====

evening sir'

please find attached my C.V and supporting documents.

regards

Richard