EXHIBIT U 19

BALDWIN SIPHO NGUBANE

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

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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

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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

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

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**

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

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.

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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

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' 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

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

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.

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

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.

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

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

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 Ramathlodi

11.1. I set out below the context of my and Mr Molefe's meeting with Advocate Ngwako Ramatlhodi ("**Minister Ramatlhodi**").

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.

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 2015the 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. Koornfontein 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 Ramathlodi to the meeting.

12. **The R1.68 billion guarantee**

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 Matshela 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 _____ day of Umtata 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

Sonata Baker

BSN 1

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
		Document Type	OCSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

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

BY INVITATION

Mr F Ndou	Acting Divisional Executive: Office of the Chairman

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.

BSN 1

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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

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

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.

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

BSN 2

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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.

BSN 2

- 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

HERE

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 3

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 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. Primary energy, such as but not limited to costs related thereto

3.2. Unnecessary load shedding

3.3. Cost escalations of the build program and continuous extension of deadlines

3.4 Review of processes of raising bonds and reporting thereof

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 l.

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

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For and on behalf of
[Service Provider]

_____
Signature

_____
Name of Signatory

_____
Designation of Signatory

BSN 4

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MINUTES OF THE ESKOM BOARD MEETING AND WORKSHOP B16-2014/15 HELD ON 14 MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 09H00

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Board Chairman
Mr NT Baloyi	Member
Ms N Carrim	Member
Mr Z W Khoza	Member
Mr R Kumalo	Member
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member (Tele-conference)
Dr BS Ngubane	Member (Tele-conference)

APOLOGIES

Mr M Pamensky	Member
Mr R Kumalo	Member

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

1. OPENING AND WELCOME

The Chairman welcomed members to the meeting. He apologised for the late notice of the meeting

2. APOLOGIES

Apologies were noted as indicated above.

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.

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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

The agenda was approved. The following matters were proposed for discussion in the meeting:

- Email message from Mr. Baloyi;
- The threat of an interdict against Eskom: there were indications that an interdict may be launched against Eskom;
- Update on Current State of Affairs: the Board needed to assess its position and any developments following the events of the past week;
- Medial Liaison Matters: the Board had indicated that it would appoint a spokesperson and this matter needed to be discussed and clarified;
- Conditions of Suspension of Executives: that one of the suspended executives had inquired whether he could hold discussions with colleagues on operational matters;
- Powers and functions of acting executives in terms of the Delegations of Authority: it was clarified that they will have the same powers as the persons they are standing in for.

7. EMAIL MESSAGE FROM A BOARD MEMBER

7.1 Email regarding the decisions of the previous Board meeting

An email message had been received from Mr Norman Baloyi regarding the decision to suspend executives. The Chairman expressed concern that the message in the email message made it appear as though the Board was not *ad idem* with regard to those decisions.

Mr. Baloyi made reference to the letter which was issued by the Minister of PE to media houses indicating that the inquiry was not against individuals. He read the relevant extract of the letter in which the Minister's letter stated that the inquiry will not take longer than three months and that it is not directed at specific individuals. He stated further that he would like the Board to ensure that there was alignment between the Terms of Reference of the inquiry and what the Minister of PE had stated. He executives such as laptops and cell also made input on the issue of the budget for the inquiry as well as the tools of trade used by the

suspended executives such as cell phones and laptops in the sense that that decision must be reviewed and also the is generation, that the head of generation should also have been suspended.

A member raised the issue of e-mail security and stated that experience has demonstrated that there are people who intercept email communications such that that information will be in the public domain. She warned that members must be careful when communicating by e-mail and try to be general as there is no guarantee of security around e-mails. The importance of keeping confidentiality and not writing e-mails, especially when members involve the Minister in their communications.
The use of e-mails without exercising the necessary caution will result in conflict and misunderstanding which could be avoided.

It was also stated that it was not proper for the e-mail message to have been sent to the FD and the CE. Mr. Baloyi explained that the "replied to all" and that the FD and the CE were recipients in the e-mail he was responding to. When the original e-mail was checked, it was found that the CE and the FD had been copied on the update of the events of the meeting of 11 March 2015 but the question was not necessarily about "who" but whether the Board is ready for the sensitive stage of the company's life.

The Chairman stated that the inquiry is disturbing a lot of people with interests- both inside and outside of the organization, who believe that their issues are going to be interfered with. The Board should be aware that there is a lot at stake for some people and some may get personal in how they deal with the issues. With this in mind, the Board cannot afford to be flippant about how it handles its matters and the Board must be united because any hint of division in the Board will be exploited. Given the standing of Eskom in the economy of South Africa, there will be turf wars and the Board needs to be very circumspect in how it deals with its matters. It was stated further that there appeared to be people who were following and noting the movements of Eskom's executives and if there is any reason for the Board to feel that they are being monitored, they must find out why that is the case and take appropriate action.
Board alignment was stressed as an important issue and it was confirmed that the decisions taken are accepted by all and that all members should pull together in the same direction.

Mr. Baloyi clarified that he did not request for a review of the suspensions but explained that the decision to limit cell phone and laptop usage be reviewed. The Chairman clarified that on the issue of cell phones he did not deem it necessary to limit discussions because they would still need to communicate with colleagues. A member objected, stating that allowing cell phone usage is contrary to the reasons for suspension and this is linked to the issue of an interdict. He cautioned that there will be inconsistencies between the suspensions and allowing for usage of cell phone communication. This needs to be addressed as it constitutes a threat to the whole matter.
Legal advised that the member is correct and it is usually not allowed for a suspended employee to continue communicating with fellow employees as there may be interference with the inquiry.

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After some discussion of the matter, the Board agreed that what is contained in the letters and which is in writing must be enforced and adhered to.

(At this point Mr. L Dlamini joined the meeting)

A question was asked of Mr. Dlamini whether he had distributed the e-mail to both the CE and the FD and this was confirmed. It was also confirmed that the invitation to the meeting included the FD and the CE as well. A member commented that we need to be clear with how we approach these matters as they will compromise the Board's position.

With regard to the approach followed by the Board, it was commented that the Board had been given inaccurate information regarding whether it can suspend or put on special leave. Mr. Tsholanku clarified that there are different types of leave. A member insisted that one cannot suspend without a charge. It was clarified that suspension without a charge is legally recognised and that the suspension is subject to the findings of the inquiry so it can be done.

It was stated that the advice to the Board was given by a lawyer but it was also pointed out that the consultant was no longer a practising lawyer and that it would be preferable to deal with a practising lawyer who is not registered with a Law society and does not have a Fidelity Fund certificate, which affords some protection for the client. Non-practising lawyers do not have a Fidelity Fund certificate and do not run a trust account, which disadvantages the clients they do work for.
It was recommended that P&G Committee needs to consult with a specialist labour lawyer on the issues which have arisen so that there is a clear way forward, with confirmation of the legal issues.

(At this point the Chairman left the meeting and requested that Dr. Ngubane continue with the meeting)

A member proposed that the Chairman be requested to step aside for the moment, especially given the fact that there is going to be a live debate on a television programme on Interface to be aired on SABC 2 with the Minister. A member proposed that the Chairman be requested to step aside, especially in light of the fact that he has been around for a number of years and executives are being suspended. This was said to be a different issue and the Acting Chairman stated that he will be acting for the Chairman for this meeting only. It was also proposed that a discussion be had with the Chairman before any firm decision can be made or any communication is made with the Minister.

A member proposed that the Chairman of the Audit and Risk Committee as well as the Chairman of the People and Governance Committee support the Chairman with the interview. Mr. Dlamini confirmed that he had just checked with the Chairman and that he would be available for the Interface programme.

It was proposed that a Deputy Chairman be appointed if the Chairman could not make it or be in a position to perform his duties and it was explained that it was the Shareholder's call and this was confirmed by Legal.

A member submitted that the Chairman is unwell and that the Chairman left the premises very late attending to operational matters. The Acting Chairman noted that the Chairman cannot and should not be operational and that the idea was not approved by the Minister when it was put forward. It was clarified that the Chairman was not being operational but was attending to a host of meetings which were scheduled for him. An explanation was requested as to exactly which meetings he was attending to and it was explained that he was dealing with pre-arranged meetings and other engagements which flowed from the situation the organization found itself in.
It was made clear that the Chairman is entitled to perform his duties but he should not be operational at all, such as signing contracts and related matters. A member stated that the Chairman is engaging with staff and that she has the details of the engagements and it is up to the Board to determine whether this is operational or not.

It was explained that the Chairman engages with staff together with the CE and this is a judgement call on whether the Chairman should be engaging in those activities or not. It is in the annual calendar and it is up to the Board to decide whether this should continue. It was explained that this was the practice from the previous Chairman and CE and the Chairman would accompany the CE together with one of the Board members. It is an old practice which continues to this day.
The Chairman of the ARC was confirmed to be the custodian of the inquiry and all other committees would support ARC in undertaking the inquiry where their mandate was relevant.
It was resolved that the Chairman is not operational and that he should not be doing operational matters.

A concern was raised that if the Chairman is involved in meeting with trade unions and that if the top person is put forward, then where would people go in the event of a complaint. It was clarified that he was engaging with trade unions to reassure them that while things have happened, there is no vacuum in terms of leadership in the organization in terms of leadership.

It was suggested that the Acting Chairman have a discussion with the Chairman regarding the creation of the position of a Deputy Chairman. The Company Secretary advised that that action would amount to tampering with the structures and is not recognised so it is not advisable. It was agreed that the Chairmen of P&G and ARC attend the engagement with the trade unions in support of the Chairman.
A comment was raised that the ARC is charged with the responsibility to audit the organization.

(Tea Break and resumed at 10h49)

The issue of the spokesperson was tabled and that the Board needed to decide on it, as well as a clear scope of what the nature and extent of their involvement would be.

Mr. Baloyi made a statement to the Board to the effect that when he wrote about a review, he was referring to the withdrawal of the cell phones and laptops and that he was in agreement

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with and supported the Board's decision to suspend the executives. He wanted to make it very clear that he supported the Board's majority decision on the suspensions. The Board agreed that Legal and Ms. Naidoo will work with the issue of appointing an attorney to advise the Board on the decisions it has taken.

It was decided that the Acting Chairman of P&G consult with the former Chairman of P&G regarding the existence of charges against the suspended executives. The Board indicated that it wanted the full details around the issue of charges. It was requested that the Chairman of the ARC share the Terms of Reference with all Board members and the Chairmen of committees.

With regard to the Interface interview, it was stated that there must be a common view with regard to the issues which have unfolded.
A member suggested that the Minister should perhaps refrain from making any further statements to the media and that the matter is *sub judice*. It was suggested that the message be relayed through Ms. Klein.
Legal advised that we adopt a common response to the effect that there is an ongoing inquiry and that it is not intended that the outcome is pre-judged when the inquiry is still under way.

Under General, it was stated that the Board website has Ms. Naidoo and Mr. Baloyi's photos missing and that with regard to the Committees, members need to be advised of what is planned and upcoming.

Further, the issue about Mr. Linnell's budget is not clear and must be resolved but it was stated that that is not an issue and it will be dealt with at a later stage. A member wanted to know what Mr. Linnell's role is and it was explained that he would be assisting with the engagement of investigators to assist with the inquiry.

A member commented that the letter handed to the FD did not make any reference to issues around financial issues but she was suspended as well. This may pose a risk. It was clarified that the issue will be addressed when the discussion between the Acting P&G Chairman and the former P&G Chairman takes place.

With regard to the issue of the media person, it was reported that the media person who has been engaged to provide advice on the media aspects of the matter has no clarity around his involvement would be to create a "hub" within Eskom to manage the issue from a media perspective. He is continuing to work with Mr. Dlamini and the media consultant has indicated that he needs to be on a retainer but these matters have not been clarified yet and this forms part of the loose ends which need to be closed. It was explained by a member that the reason for engaging an outside specialist was because Eskom's media division has let the Board down on a number of occasions and this risk could not be allowed to materialize in this instance. It was proposed that a member or some other person be allocated to assist Mr. Dlamini to work on the issue of the media. The Chairman of SARC indicated that she was amenable to delegate one of the members of ARC to work with Mr. Dlamini on the media issues and that member is Mr. Kumalo.

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Another issue which was raised was with regard to the capacity of the CE's office and it was mentioned that Mr Freddy Ndou has been assisting in the role of ensuring that the CE's office has the necessary capacity to handle issues which require its attention. It was suggested that the Interim CE chooses one of the members of his executives as a right hand person to assist him in all matters which he has to deal with. It was agreed that two members of the Board (Acting ARC Chairman and Chairman of ARC) be mandated to speak to the Interim CE regarding this suggestion. The Acting Chairman of the Board mandated to inform Mr. Kumalo of his appointment to deal with the media specialist.

Resolved that:

1. The Audit and Risk Committee be delegated with the custodianship of the inquiry;
2. The Chairman of the Board should not be involved in operational matters;
3. The Acting Chairman of the P&G and the former Chairman of P&G consult with regard to possible charges which may be brought against the suspended executives;
4. The Acting Chairman of P&G and the Chairman of ARC to accompany the Chairman of the Board to the engagements which will take place with the trade unions on 16 March 2015;
5. The suspended executives not be allowed to communicate with employees during the period of their suspension;
6. Ms. V Naidoo and Legal are authorised to engage the services of a specialist attorney who must provide a legal opinion to the Board regarding the decisions it has taken around the suspensions as soon as possible;
7. The Chairman of the Audit and Risk Committee to share the Draft Terms of Reference with all Board Members and Chairmen of Committees prior to finalisation;
8. The Shareholder to be advised of developments once the legal opinion has been obtained;
9. Legal to prepare a note to the Board with regard to institution of charges against the executives; and
10. Mr. Kumalo be mandated to handle media matters around the inquiry with the appointed specialist.

9. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 12h15.

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

BSN 4

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CHAIRMAN: _____ **DATE:** _____

BSN 5

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
		Document Type	OCSDFM
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		Review Date	July 2015
		Office of the Company Secretary Department	

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

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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.

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

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 Ntsgingila 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.

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 specifity 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, Mt 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.

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

BSN 7

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

EXTENSION OF SECONDMENT AGREEMENT OF BRIAN MOLEFE

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 28 May 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Chief Executive of Eskom, be confirmed as soon as possible.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Acting Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution.

I have requested a more thorough examination of the public service rules as this opinion was obtained on an urgent basis, before taking it to the full board for consideration.

Based on the foregoing, and whilst we appreciate that this process may demand some time, it may be prudent to extend the duration of the secondment agreement from Transnet in order to ensure that we do not have a period where he is not contracted to either Eskom or Transnet. I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the extension.

Accordingly, I hereby request Minister's support and endorsement for the extension of the secondment of Brian Molefe as chief executive officer of Eskom for a further period to be negotiated between Eskom and Transnet.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr Ben Ngubane
INTERIM CHAIRMAN
Date: 23/06/15

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STATE CAPTURE

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Our Reference:	Mr Jerry Kaapu	Your Reference:	Ms Venete Klein
Direct Line:	(011) 669 9519	Date:	18 June 2015
E-mail Address:	j.kaapu@bowman.co.za		

Per e-mail

ESKOM HOLDINGS (SOC) LIMITED

Attention Ms Venete Klein

E-mail address: venete@kleininc.co.za

Dear Venete,

RE: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

1. INTRODUCTION

1.1 We have been instructed to urgently consider and advise Eskom on the appointment process for its Chief Executive ("CE"). We are advised that Eskom wishes to take steps to appoint a new CE as expediently as possible and, in so doing, has already identified a suitable potential candidate for the position. Eskom seeks advice on whether it can consider the said candidate without engaging in a full blown recruitment process (public invitation to apply for the position) but, in so doing, complying with all of its duties and obligations.

1.2 We advise that due to the urgency of the requested advice, we do not set out a comprehensive overview and analysis of all legislation and documentation which may relate to the matter but confine ourselves strictly with addressing the advice sought. To this extent, we confirm that we have considered all legislation which may be applicable, including the Companies Act, No. 71 of 2008, the Eskom Conversion Act, No. 13 of 2001

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 Attorneys Notaries Conveyancers

Directors RA Legh (Chairman) | PM Maduna (Deputy Chairman) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | M Angumuthoo | J Banoobhai | AM Barnes-Webb | TL Beira | ARL Bertrand | F Bhayat | CM Bouwer | IL Brink | REW Burman | LD Campbell | RM Carr | PM Carter | LA Chater | RA Cohen | CN Cunningham | GH Damant | RA Davey | MEC Davids | D de Klerk | ID Dhladhla | TC Dini | CR Douglas | HD Duffey | BR du Plessis | L Dyer | JE Esterhuizen | L Fleiser | KA Fulton | BJ Garven | TM Genbashe | DJ Geral | LHM Gerstle | D Gewer | AA Gordon | TJ Gordon-Grant | K Goss | CB Green | S Grimwood | A Hale | AS Harris | P Hart-Davies | PA Hirsch | T Jithoo | JR Kaapu | G Kekesi | CP Kennedy | KM Kern | FJ Khoza | ID Kirkman | U Kondile | JG Kruger | JP Kruger | R Labuschagne | FB Laher | HY Laher | T Laubscher | DA Lotter | KS Makapane | M Makola | A McAllister | JM McKinnell | JY Meijer | PH Modi | SNI Mokose | TL Mongae | RPM Morson | AV Munro-Smith | UEBU Naumann | HB Ngcobo | TH Nichols | MAJ Oppenheim | AJ Pike | P Pillay | JD Prain | MA Purchase | Y Ram | LV Raphulu | CL Reidy | JB Ripley-Evans | MS Rusa | GI Rushton | JW Sahli | MY Sass | CG Schafer | JI Schlosberg | DE Serchuk | RZ Shein | CEC Smith | CD Stein | PW Stelling | R Straughan | BGM Strydom | V Subban | CFN Todd | CE Tucker | CL van Heerden | MR van Velden | RJ van Voore | NC van Zuylen | MG Vermaak | L Verster | SHE Voigt | DS Webb | DCJ Wessels | RS Wessels | PE Whelan | HJ Wilsenach | SG Wilson | DD Yuill | D Zussa Consultants JWD Brand | S Esterhuyse | ND Rissik Special Counsel CL Valkin
Practice Partner and Head of Africa JL Lang Group COO RJ Smith CFO GJ Karolus

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and the Public Finance Management Act, No. 1 of 1999. In addition, we have considered Eskom's Memorandum of Incorporation ("the MoI"), Eskom's shareholders compact, a document entitled the Governance Oversight Role Over State-Owned Enterprises (SOE's) ("the SOE Governance Oversight document") and a document entitled the Protocol on Corporate Governance in the Public Sector (Department of Public Enterprises) ("the Protocol on Corporate Governance document").

2. THE APPLICABLE LEGISLATION

2.1 Chapter 2 of the Companies Act regulates the Formation, Administration and Dissolution of Companies. Under the part of this chapter which deals with Governance of Companies is section 66 which governs the Board, Directors and Prescribed Officers of a Company. Sections 66(1) and 66(4) provides as follows:

> *"1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.*
>
> ...
>
> *4) A company's Memorandum of Incorporation –*
>
> *a) may provide for –*
>
> *i) the direct appointment and removal of one or more directors by any person who is named in, or determined in terms of, the Memorandum of Incorporation;*
>
> *ii) a person to be an ex officio director of the company as a consequence of that person holding some other office, title, designation or similar status, subject to*

subsection (5)(a); or

iii) the appointment or election of one or more persons as alternate directors of the company; and

b) in the case of a profit company other than a state-owned company, must provide for the election by shareholders of at least 50% of the directors, and 50% of any alternate directors."

2.2 Section 68 further provides as follows:

"1) Subject to subsection (3), each director of a profit company, other than the first directors or a director contemplated in section 66(4)(a)(i) or (ii), must be elected by the persons entitled to exercise voting rights in such an election, to serve for an indefinite term, or for a term as set out in the Memorandum of Incorporation.

2) Unless a profit company's Memorandum of Incorporation provides otherwise, in any election of directors –

a) the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board at that time have been filled; and

b) in each vote to fill a vacancy –

i) each voting right entitled to be exercised may be exercised once; and

ii) the vacancy is filled only if a majority of the voting rights exercised support the candidate.

3) Unless the Memorandum of Incorporation of a profit company provides otherwise, the board may appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a director of the company on a temporary basis until the vacancy has been filled by election in terms of subsection (2), and during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other director of the company."

2.3 It is clear from the above that unless the MoI provides otherwise, the appointment by Eskom of its CE would be conducted in terms of section 68(2) of the Companies Act, as set out above. In the circumstances, it is therefore necessary to consider the provisions of the MoI.

2.4 We note that aside from section 69 which governs the "Ineligibility and Disqualification of Persons to be Director or Prescribed Officer", which we understand not to be applicable in this case, we do not consider any other provisions of the Companies Act to be applicable to the advice sought.

2.5 We confirm further that we have considered all other legislation which we thought may possibly be relevant to this instruction, including the Eskom Conversion Act and the Public Finance Management Act, and confirm that there are no provisions therein which we consider applicable to this advice sought. Accordingly, the next step is to consider what is provided in the MoI.

3. THE MEMORANDUM OF INCORPORATION

3.1 The first clause from Eskom's MoI which we consider relevant for the purposes of this advice is clause 13.1.4 which states:

"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."

3.2 "Shareholder" is defined in clause 1.2.42 of the MoI as "the Government" as represented by "the Minister", which is further defined in clause 1.2.27 to mean "the Minister of Public Enterprises".

3.3 Clause 13.3 of Eskom's MoI is headed "Process of appointment of the CE and FD" and states the following in respect of appointing a CE:

"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."

3.4 The MoI simply provides that the Board of Eskom shall identify, nominate and evaluate potential candidates for appointment as the CE and that the Shareholder should then appoint the CE from the shortlist of candidates provided by the Board. This is however subject to "the Guidelines".

3.5 Clause 1.2.23 of the MoI defines the "Guidelines'" as the "*guidelines for the appointment of a Chief Executive for a State Owned Enterprise' as issued by the Minister from time to time*".

3.6 We have contacted the Department of Public Enterprises and have been informed that there is no document specifically entitled "*guidelines for the appointment of a Chief Executive for a State Owned Enterprise*" or anything similar. However, our own research conducted revealed two documents, namely, the SOE Governance Oversight document and the Protocol on Corporate Governance document, which provide further guidelines on the

appointment of the CE. It appears that these are the documents referred to in the MoI.

3.7 The SOE Governance Oversight document provides an overview of Government's governance oversight over SOE's and sets out the following summary at item 2:

> *"Corporate governance embodies processes and systems by which SOE's are directed, controlled and held to account. In addition to legislative requirements based on a SOE's enabling legislation, and the Companies Act, corporate governance with regard to SOE's is applied through the precepts of the Public Finance Management Act (PFMA) and run in tandem with the Protocol on Corporate Governance, which encapsulates the principles contained in the King II Report on Corporate Governance."*

3.8 Item 6.4 then addresses the Protocol on Corporate Governance document further and states as follows:

> *"The Protocol on Corporate Governance was accepted by Cabinet in 2003 and all Public Entities have been informed that they must comply with the principles contained therein. The Protocol is a code of conduct similar to the King Report on Corporate Governance and has not been legislated. It encapsulates the King II Report and aligns corporate governance principles to the PFMA, while striving to maintain the independence of SOE's."*

3.9 Having regard to the above, it is necessary to also consider the Protocol on Corporate Governance document. Item 5.1.1.1 of this document sets out the Roles of the Board of a SOE and provides as follows:

> *"The board of the SOE has absolute responsibility for the performance of the SOE and is fully accountable to the shareholder for such performance. As a result, the board should give strategic direction to the SOE, and in concurrence with the Executive Authority*

appoint the chief executive officer and ensure that an effective succession plan for all directors and key executives is in place and adhered to."

3.10 Item 5.1.3 of the Protocol on Corporate Governance document further states:

"Unless otherwise agreed in the shareholders agreement or shareholder compact (as the case may be) the Executive Authority should appoint the chief executive officer whose role should, preferably, be separate from that of the chairperson. The Executive Authority should consult with the board about its preferred candidate for the position of Chief Executive Officer and provide sufficient time for the board to consider the candidate and respond prior to an appointment being made. The chief executive officer's role should focus mainly on the operations of the SOE, ensuring that the SOE is run efficiently and effectively and in accordance with the strategic decisions of the board. The chief executive officer is accountable to the board".

3.11 We have had sight of Eskom's shareholders compact and confirm that it does not provide otherwise in relation to what is in the Protocol on Corporate Governance document. We deem only the above provisions from the documentation considered outside of the legislation to be applicable to the reference made to it in Eskom's MoI and for the purposes of the advice sought herein. It is therefore within the context of the above provisions that the advice sought must be considered.

4. OUR ADVICE

4.1 We have considered the various legislation, documentation and guidelines applicable to the process of Eskom appointing its CE, and having considered all the relevant provisions, we advise that the process that must be followed in appointing the CE is as set out in clauses 13.3.1 and 13.3.2 of the MoI. The legislation and guidelines (or any other documentation) have not altered this process in any manner.

4.1 The process that Eskom must follow in appointing a CE essentially requires that the Board of Eskom must identify, nominate and evaluate potential candidates for appointment as the CE and that the Minister of Public Enterprises, as the Executive Authority, should then appoint the CE from the shortlist of candidates provided by the Board. There is no requirement that the candidates should be publicly invited to apply for this position.

4.2 Having considered the above requirements, we advise that the Board should resolve a shortlist of candidates for the position of CE. Further, the Board must in accordance with the provisions of item 5.1.3 of the Protocol on Corporate Governance indicate its preferred candidate for the position for consultation with the Minister of Public Enterprises prior to the appointment being made.

4.3 One of the issues of concern emanating from the reading of clauses 13.3.1 and 13.3.2 of the MoI is that the MoI suggests that a shortlist should be compiled which suggests that more than one candidate should be included on this list, thereby allowing the Minister of Public Enterprises some discretion in terms of who to appoint. Having considered this aspect, we are of the view that if a list of only one person was compiled and a recommendation made to the Minister of Public Enterprises on the appointment of such candidate, the Minister would still have discretion on whether or not to appoint the preferred candidate. Therefore, we are of the view that an argument can be sustained that a list of only one person will not be in breach of clauses 13.3.1 and 13.3.2 of the MoI.

4.4 However, in order to err on the side of caution in this regard, we would suggest that whilst the preferred candidate is shortlisted and nominated for appointment, a second option should, to the extent possible, be identified, evaluated and nominated as well. In the event that a second candidate cannot be identified, evaluated and nominated within the timeframe Eskom wishes to appoint the CE, a list of one person can be compiled and

a recommendation made to the Minister of Public Enterprises for appointment.

5. We trust that the above addresses your instruction to us. Should you have any queries in regard to the above or any other queries, please do not hesitate to contact us as we remain at your service to ensure that the best interests of Eskom are achieved.

Yours faithfully

Bowman Gilfillan Inc.
Jerry Kaapu / Luway Mongie

BSN 9

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Daniels.suzanne@eskom.co.za

Dear Dr. Ngubane

Appointment of Chief Executive of Eskom

Your letter dated 23 June 2015 has reference.

In essence, I concur with your request to extend the period of the secondment agreement of Mr Brian Molefe.

Following the announcement of the resignation of Mr Tshediso Matona as Chief Executive, the Board is required to provide me with a report thereon, as well as expected timelines and milestones for the recruitment and appointment process of a new Chief Executive.

I am of the view is that the Eskom Board must deal expeditiously with the process, in line with the Memorandum of Incorporation, Labour Relations Act, Eskom's employment policies and procedures.

BSN 9

The position of the Chief Executive is critical, hence, the attraction and retention of a candidate with a right mix of qualifications, leadership, experience and technical knowledge is vital. In consideration of the business imperatives and the need to build public confidence, I urge the Board to observe the acceptable procedure so that the recruitment process and submission is managed with integrity and transparency and is able to withstand scrutiny.

It will therefore be useful for me to have sight of the legal opinion and recommendation on the optimal route to follow. Feedback as soon as the Board has applied its mind to the issue will be appreciated.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 27/06/2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

'BSN 10' & 'BSN11'

Kamogelo Khatle

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Monday, September 14, 2015 8:04 AM
To: Orcilla Ruthnam
Subject: RE: CE and CFO appointments
Attachments: SKM_C224e15091407530.pdf

Importance: High
Sensitivity: Confidential

Good morning Orcilla

Herewith the qualifications for Brian Molefe.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Monday, September 14, 2015 7:47 AM
To: Suzanne Daniels
Cc: Venete Klein; Baldwin.Ngubane@gmail.com
Subject: RE: CE and CFO appointments
Sensitivity: Confidential

Dear Suzanne
Thank you for the info. It will be included in the submission. Please provide me with the exact amounts of the guaranteed pay for each Executive.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
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From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 13 September 2015 08:01 PM
To: Orcilla Ruthnam
Cc: Venete Klein; Baldwin.Ngubane@gmail.com
Subject: CE and CFO appointments
Importance: High
Sensitivity: Confidential

Good evening Orcilla

On behalf of the Chairperson of the People and Governance Committee, in consultation with the Chairperson of the Board of Eskom, please find the replies to your request below:

1. Please find attached hereto the legal opinion obtained by the People and Governance Committee in the consideration of whether to follow the competitive recruitment process.
2. Given the performance track record of both incumbents at another SOC (Transnet), coupled with their continued performance in a new environment (Eskom) – the Board does not deem this evaluation necessary. The evaluations will not give the Board input into any areas that it has not already been able to assess during their secondments.
3. The standard DPE policies will apply here, so the Board will be comfortable with the 5 year fixed term.
4. As senior executives of the same ministry – the Board would like the salaries to remain at the same level as it was at Transnet. The Board would like to review their participation in the Long Term Incentive programme in line with the steep commitments in our turnaround plan.

Should you have any further queries, please let me know.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Sunday, September 13, 2015 2:28 PM
To: Annelize Van Wyk; Suzanne Daniels
Cc: Kim Davids
Subject: RE: Dr Ngubane's CV
Sensitivity: Confidential

Hi
It would also be appreciated if I can receive the following info:

- Is there a relevant clause in the HR policy which were considered by Eskom when making the recommendation to appoint without going through the competitive recruitment process? If so, please provide.
- Notwithstanding the right of the Board to recommend the current incumbents be appointed, there is a need for a competency assessment. Usually, the SOC would undertake a psychometric evaluation. Was this done? If so, please provide copies.
- Can we confirm that both Executives are to be appointed on a 5 year fixed term contract, subject to annual review?
- What is the remuneration package to be offered to the candidates?

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
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From: Annelize Van Wyk
Sent: 13 September 2015 02:07 PM
To: Orcilla Ruthnam; Suzanne Daniels
Cc: Kim Davids

Subject: Re: Dr Ngubane's CV
Sensitivity: Confidential

Thanks Orcilla. Suzanne please note that it must be very early tomorrow morning as everything needs to go through tomorrow.

Annelize van Wyk
Special Advisor to Minister Lynne Brown
Minister of Public Enterprises

-------- Original message --------
From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Date:13/09/2015 13:55 (GMT+02:00)
To: Suzanne Daniels <DanielSM@eskom.co.za>
Cc: Kim Davids <Kim.Davids@dpe.gov.za>, Annelize Van Wyk <Annelize.VanWyk@dpe.gov.za>
Subject: RE: Dr Ngubane's CV

Hi Suzanne
I will use this for today, but it needs to be updated to included appointment to Eskom Board as NED on 11 December 2014. The copy is also difficult to see. It would be appreciated if the CV could be updated and a better copy sent to me by tomorrow morning.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 13 September 2015 01:07 PM
To: Orcilla Ruthnam
Cc: Kim Davids
Subject: Dr Ngubane's CV
Importance: High
Sensitivity: Confidential

Dear Orcilla

Herewith Dr Ngubane's CV.

Best regards
Suzanne

SUZANNE DANIELS
Office of the Chairman
Eskom Holdings SOC Ltd

Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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GUIDELINES FOR THE APPOINTMENT OF A CHIEF EXECUTIVE OFFICER FOR A STATE OWNED ENTERPRISE ("SOE")

INTRODUCTION

South African company law authorizes the shareholders of a company to appoint the Board of Directors to represent the shareholders and act in the best interests of the company. The shareholders' authority includes appointing the executive directors of a company, which include the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as *ex officio* Board members. The CEO provides the critical link between management, the Board and the shareholder.

Therefore, the Minister of Public Enterprises ("the Minister") has prepared a guideline for the appointment of SOE CEOs. This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure.

The guideline is further intended to ensure effective oversight and monitoring of SOE as strategic national instruments intended to grow and develop the SA economy. This is in recognition of the fact that a CEO is central to the performance and the ability of an enterprise to deliver on its expected performance and to provide economic value to its shareholder. The Governance and Nominations Committee of the Board (composed only of non-executive directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates, in order of priority, to the shareholder.

1. SUCCESSION PLAN

1.1 The Board, through its Governance and Nominations Committee, must develop an ongoing process to identify, develop and/or seek a CEO candidate with the relevant skills required to meet the challenges likely to be faced by the SOE in the foreseeable future and to implement Government's strategic objectives relative to such SOE. Accordingly, the Board shall prepare and submit an annual report to the shareholder Minister on its succession planning which must include, but not be limited to, the status of the CEO's contract, the CEO's performance and exit plans.

1.2 The Board must, at the earliest possible stage, seek the shareholder Minister's view on whether re-appointment of an incumbent is likely to be considered. If the Board recommends that the incumbent continue, the Board must submit the

CEO's performance report for the last 3 years and the reasons for continuing with such incumbent.

1.3 In the event re-appointment of an incumbent is not being considered, the Board, through the Governance and Nominations Committee, shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates.

2. DUE PROCESS

2.1 The Board shall endeavor to commence and complete its recruitment and appointment process of a new CEO at least 3 months before the intended departure of the incumbent CEO. In this way the Board should avoid, as far as possible, appointing an 'acting' CEO.

2.2 The Board must disclose to the shareholder Minister the recruitment process to be used by the Board in identifying the candidates.

2.3 Prior to commencing with the recruitment process, the Board must submit a description of the key specifications of the position as well as its selection criteria that will be used to select and assess candidates to the shareholder Minister for his/her consideration. The Board shall ensure that the said key specifications are informed by the SOE specific challenges, requirements and Governments' strategic objectives. Therefore, the candidates' profiles should match those of the SOE's challenges and Government's strategic objectives.

2.4 During the assessment of the candidates, the Board should verify and confirm that all shortlisted candidates have no conflicts of interest and will be able to fully execute and carry out executive duties required of a CEO. Should the recommended candidate hold any non-executive directorships in other Boards, such Board directorships should be a maximum of two directorships and should not interfere with his/her executive duties at the SOE. The Board must also advise the candidate that his/her acceptance of nominations onto other Boards post his/her appointment as CEO shall be subject to the Board's approval.

2.5 The Board shall, through its Governance and Nominations Committee, submit a minimum of three shortlisted candidates and their preferred candidate to the shareholder Minister for further assessment and interview by the Minister if he/she deems it necessary especially if this is an external candidate.

2.6 The shareholder Minister may approve, disapprove and/or express an opinion on the shortlist. If the Minister approves the shortlist, s/he will submit his/ her recommendation to Cabinet for noting, prior to the Board appointing a candidate as CEO.

BSN 12

3. APPOINTMENT

3.1 The successful applicant should not commence with his/her duties until the contract of employment has been signed. The contract should include a performance agreement with the Board, which shall include the activities, performance measures and targets specified in the SOE's Shareholder Compact, Corporate Plan, as well as government's strategic intent communicated to the SOE from time-to-time.

3.2 The CEO of a SOE is an employee of that SOE and is accountable to its Board in terms of employment legislation. As an *ex officio* Board director, the CEO's position in this respect is governed by Company law and the Public Finance Management Act, 1 of 1999. Accordingly, to align the two offices and recognize that one arises by virtue of the other, the CEO's employment contract must ensure that the CEO's termination of employment results in the simultaneous removal as *ex officio* Board member.

3.3 The contract should specify the steps that the Board may take in the event of any alleged misconduct and specify the proposed measures to address the misconduct, including ensuring that the CEO will not be immune from prosecution in terms of applicable law.

3.4 Considering the critical and strategic role of the CEO must play in the operational success of a SOE's business, some of the key performance deliverables by the CEO, which must also for part of his/her Performance Agreement, are:

3.4.1 Developing and recommending to the Board a long-term strategy and vision for the SOE to implement Government's strategic objectives, the shareholder compact and SOE corporate plan that will generate satisfactory levels of economic value;

3.4.2 Developing annual business plans and budgets that support the SOE's long term strategy and prudently manages the SOE's resources within those budget guidelines according to the SOE's applicable regulatory framework and governing laws;

3.4.3 Striving consistently to achieve the SOE's financial and operational goals and objectives, and ensuring that the SOE's day to day business affairs are appropriately monitored and managed;

3.4.4 Ensuring continuous improvement in the quality and value of the products and services provided by the SOE, and that the SOE achieves and maintains a satisfactory competitive advantage within its industry;

3.4.5 Ensuring that the SOE has an effective management team and to actively participate in the development of management and succession planning;

3.4.6 Formulating and overseeing the implementation of major corporate policies, procedures and standards;

3.4.7 Serving as the chief spokesperson of the SOE with a full appreciation of the necessity to protect the SOE against a loss of reputation and assuring the SOE and its mission, programmes, products and services are consistently presented in a strong and positive image to relevant stakeholders; and

3.4.8 Ensuring alignment with the Minister's delivery agreement concluded with the President of the Republic of South Africa from time to time.

3.5 The Board should pay special attention to the right to terminate the employment contract as well as to any material changes to any declared material interests and conflicts of interest by the new CEO. There should be adequate mechanisms to address such changes and to allow the Board to terminate the contract, should the changes limit the CEO's ability to undertake and execute his or her duties in the interests of the SOE.

3.6 The remuneration package in the contract of employment must also be in accordance with the department's current Remuneration Guidelines for SOE. The key performance indicators in the shareholder compact should also be used to determine the CEO's remuneration and the discretionary pay.

3.7 The contract should also address any performance by the CEO that significantly and materially deviates from the SOE's strategic objectives and should provide for measures to address such material performance failures and deviations.

3.8 The notice period for termination of employment by the CEO should not be less than 6 months and should not contain an evergreen notice period.

DECEMBER 2010

BSN 13

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

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Our Reference:	Mr Jerry Kaapu	Your Reference:	Ms Venete Klein
Direct Line:	(011) 669 9519	Date:	15 September 2015
E-mail Address:	j.kaapu@bowman.co.za		

Per E-mail

ESKOM HOLDINGS (SOC) LIMITED

Attention Ms Venete Klein

E-mail address: venete@kleininc.co.za

Dear Ms Klein,

RE: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

1. BACKGROUND

1.1 We refer to the above matter and to our previous letter of advice of 18 June 2015, wherein we were instructed to urgently consider and advise Eskom Holdings (SOC) Limited ("Eskom") on the appointment process for its Chief Executive Officer ("CEO" or "CE").

1.2 At the time of compiling the aforementioned letter of advice, we were advised, during our research process, that the *Guidelines for the Appointment of a Chief Executive Officer for a State Owned Enterprise* ("the Guidelines") did not exist. Consequently, our previous advice was based on that premise, as we were unaware of the existence of the Guidelines.

1.3 However, we were recently made aware by Eskom of the existence of the Guidelines. It appears from the Guidelines that they were issued in December 2010. In the circumstances, we have been instructed to urgently consider the Guidelines and advise whether the contents thereof impact on our previous letter of advice of 18 June 2015.

Bowman Gilfillan Inc. Reg. No. 1998/021409/21 **Attorneys Notaries Conveyancers**

Directors RA Legh (Chairman) | PM Maduna (Deputy Chairman) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | LJ Anderson | M Angumuthoo | J Banoobhai | AM Barnes-Webb | TL Beira | ARL Bertrand | F Bhayat | CM Bouwer | IL Brink | REW Burman | LD Campbell | RM Carr | PM Carter | LA Chater | RA Cohen | CN Cunningham | GH Damant | RA Davey | MEC Davids | D de Klerk | ID Dhladhla | TC Dini | CR Douglas | HD Duffey | BR du Plessis | L Dyer | JE Esterhuizen | L Fleiser | KA Fulton | BJ Garven | TM Gcabashe | DJ Geral | LHM Gerstle | D Gewer | AA Gordon | TJ Gordon-Grant | CB Green | S Grimwood | A Hale | AS Harris | P Hart-Davies | PA Hirsch | JR Kaapu | G Kekesi | CP Kennedy | KM Kern | FJ Khoza | ID Kirkman | U Kondile | JG Kruger | JP Kruger | R Labuschagne | FB Laher | HY Laher | T Laubscher | DA Lotter | KS Makapane | M Makola | A McAllister | JM McKinnell | JY Meijer | SNI Mokose | TL Mongae | RPM Morson | AV Munro-Smith | UEBU Naumann | HB Ngcobo | TH Nichols | MAJ Oppenheim | AJ Pike | P Pillay | JD Prain | MA Purchase | Y Ram | LV Raphulu | CL Reidy | JB Ripley-Evans | MS Rusa | GI Rushton | JW Sahli | MY Sass | CG Schafer | JH Schlosberg | DE Serchuk | RZ Shein | CEC Smith | CD Stein | PW Stelling | R Straughan | BGM Strydom | V Subban | CFN Todd | CE Tucker | CL van Heerden | MR van Velden | RJ van Voore | NC van Zuylen | MG Vermaak | L Verster | SHE Voigt | DS Webb | DCJ Wessels | RS Wessels | PE Whelan | HJ Wilsenach | SG Wilson | DD Yuill | D Zussa **Of Counsel** S Esterhuyse | K Goss | T Jithoo **Consultant** JWD Brand **Special Counsel** CL Valkin
Practice Partner and Head of Africa JL Lang **Group COO** RJ Smith **CFO** GJ Karolus

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A LexMundi Member

1.4 We advise that due to the urgency of the requested advice, we do not set out a comprehensive overview and analysis of all the legislation and documentation which may relate to the matter but confine ourselves strictly to addressing the supplementary advice sought.

2. THE GUIDELINES

2.1 The Guidelines reiterate that South African Company Law authorizes the shareholders of a company to appoint a Board of Directors ("Board") to represent the shareholders and act in the best interests of the company.

2.2 The shareholders' authority includes appointing the executive officers of a company, which includes the Chief Executive Officer and Chief Financial Officer as *ex officio* Board members.

2.3 In terms of the Guidelines, the CEO provides a critical link between management, the Board, and the shareholder. It is for this reason that the Shareholder Minister, the Minister of Public Enterprises ("the Minister"), has prepared the Guidelines.

2.4 As set out in the introduction to the Guidelines:-

> *"This guideline is intended to set out the framework governing the roles and assist the SOE Boards of Directors ("Boards") with providing a framework for succession planning and the appointment of CEOs. Where a Board believes that the guideline or part thereof does not lend itself to implementation or application to address its requirements, and seeks to depart from such application, the Board must notify the Minister in writing of any such departure, providing reasons for any such departure"*. (own underlining)

2.5 The Guidelines further provide that:--

> *"The Governance and Nominations Committee of the Board (composed only of non-executives directors) shall administer and manage the selection process of the CEO on behalf of the Board and make recommendations on the top 3 candidates in order of priority, to the shareholder".* (own underlining)

2.6 Paragraph 1 of the Guidelines deals with a succession plan and provides, at paragraph 1.3, that in the event re-appointment of an incumbent is not being considered:-

> *"…the Board, through the Governance and Nominations Committee shall nominate and evaluate potential successors to the CEO. The CEO shall meet periodically with the Board to submit his or her recommendations and evaluations of potential successors along with a review of any development plans recommended for such individuals. The Governance and Nominations Committee will consult the CEO regarding his/her recommendations of potential successors from internal candidates".*

2.7 The Guidelines also set out, at paragraph 2, the due process to be followed by the Board of a State Owned Enterprise ("SOE") when appointing a CEO. The due process can be summarised as follows:-

2.7.1 in order to avoid as far as possible, appointing an "acting" CEO, the Board should endeavour to commence and complete its recruitment and appointment process at least three months before the departure of the incumbent CEO;

2.7.2 the Board must disclose to the Minister, the recruitment process to be used to identify the candidates;

2.7.3 the Board must submit a description of the key specifications of the position and its selection criteria to the Minister for consideration before commencing with the

recruitment process;

2.7.4 the Board should verify and confirm that all shortlisted candidates have no conflicts of interests and will be able to fully execute and carry out the duties of a CEO;

2.7.5 the Board should submit a minimum of three (3) shortlisted candidates and their preferred candidate to the Minster for further assessment and when necessary, interview by the Minister;

2.7.6 the Minister may approve, disapprove and/or express an opinion on the shortlist; and

2.7.7 if the Minister approves he/she will submit his/her recommendations to Cabinet for noting.

3. OUR ADVICE

3.1 As previously advised, the process that must be followed by Eskom in appointing a CE, is as set out in clauses 13.3.1 and 13.3.2 of Eskom's Memorandum of Incorporation ("MOI"). The MOI provides, in summary, that the Board should identify, nominate and evaluate potential candidates for the appointment as the CE and the Minister should then appoint the CE from the shortlist of candidates provided by the Board. We note and confirm that the Guidelines do not alter this process.

3.2 In so far as public invitation for application for the CE position is concerned, which is one of the issues that were raised with us, we are not aware of any legislative requirement that candidates should be publicly invited to apply for the position. Furthermore, the Guidelines and MOI do not provide any requirement that the candidates should be

publicly invited to apply for the position. Despite this, in terms of the Guidelines, the Board must disclose to the Minister the recruitment process to be used to identify the candidates. In the circumstances, we confirm our previous advice that Eskom can consider the identified candidate without engaging in a full blown "recruitment process" through public invitation and in so doing will not be acting contrary to any duties and obligations.

3.3 One of the issues of concern which was raised in our previous letter of advice, which emanates from the MOI, is that the MOI suggests that a shortlist should be compiled, which suggest that more than one candidate should be included on this list thereby allowing the Minister discretion in terms of who to appoint. Having considered the Guidelines, we note the requirement that the Board should make recommendations on the top three candidates in order of priority to the Minister. Furthermore, paragraph 2.5 provides that the Board should submit a minimum of three shortlisted candidates to the Minister.

3.4 As stated at paragraph 2.4 above, where a Board seeks to depart from the application of the Guidelines, the Board must notify the Minister in writing of such a departure, providing reasons for such departure. Therefore, we advise that if a second and third candidate cannot be identified, evaluated and nominated by the Board, then the Board is required in terms of the Guidelines to notify the Minister in writing of the departure, providing reasons for the departure. We note that the Guidelines merely require that the Board must *notify* the Minister and it does not appear that an onerous process of application and approval for the deviation must be followed, provided that the Board furnishes the Minister with reasons for the departure.

3.5 Lastly the Guidelines, at paragraph 2.3, provide that even before commencing with the recruitment process, the Board is required to submit a description of the key specifications of the position as well as its selection criteria that will be used to select and

assess candidates to the Minister for consideration. To the extent that this preliminary step has not yet been complied with, we advise that the Board should endeavour to take steps and do so. To the extent that it is not possible to do so, thereby deviating from the Guidelines, we advise that the Board should notify the Minister of the deviation in writing, providing reasons for the deviation.

4. We trust that the above addresses your instruction to us. Should you have any further queries in regard to the above or any other queries, please do not hesitate to contact us as we remain at your service to ensure that the best interests of Eskom are achieved.

Yours faithfully

P.P.

Bowman Gilfillan Inc.
Jerry Kaapu/ Keshni Pillay

'BSN 14'

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Wednesday, September 16, 2015 1:32 PM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Noted, with thanks Suzanne

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
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From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 16 September 2015 09:47 AM
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Morning Orcilla

Please find the Bowman's supplementary opinion.

In the interim, we have noted the contents of items 3.4 and 3.5 and have actioned them. You can expect the responses during the course of today.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Tuesday, September 15, 2015 11:36 AM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Noted, thanks Suzanne

I had a chat with Jerry this morning and he indicated that there would be a supplementary opinion coming to you to by tomorrow. This is merely to strengthen the current opinion and would deal with the DPE guidelines as well as the mandate of the Board and Minister to consider the options available to them on the recruitment of an ideal candidate.

Please call should you wish to discuss further.

Regards

'BSN 15' & 'BSN 16'

Kamogelo Khatle

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Wednesday, September 23, 2015 11:27 AM
To: Orcilla Ruthnam
Cc: Venete Klein
Subject: RE: Remuneration of prescribed officers
Attachments: 20150923084545411.pdf

Importance: High

Hi there

Herewith the signed original.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Thursday, September 17, 2015 9:02 AM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Thank you Suzanne, much appreciated

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
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From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 16 September 2015 06:02 PM
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Dear Orcilla

Please find the documentation in relation to items 3.4 and 3.5 attached.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Wednesday, September 16, 2015 1:32 PM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Noted, with thanks Suzanne

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 342 4146
public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

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

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 16 September 2015 09:47 AM
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Morning Orcilla

Please find the Bowman's supplementary opinion.

In the interim, we have noted the contents of items 3.4 and 3.5 and have actioned them. You can expect the responses during the course of today.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Tuesday, September 15, 2015 11:36 AM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers

Noted, thanks Suzanne

I had a chat with Jerry this morning and he indicated that there would be a supplementary opinion coming to you to by tomorrow. This is merely to strengthen the current opinion and would deal with the DPE guidelines as well as the mandate of the Board and Minister to consider the options available to them on the recruitment of an ideal candidate.

Please call should you wish to discuss further.

Regards

Kamogelo Khatle

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Wednesday, September 16, 2015 5:51 PM
To: Venete Klein
Subject: requirements for 3.4 and 3.5 of Jerry's opinion
Attachments: CE Full Specification v01.doc; 16092015 DPEMIN Motivation for Departure from Guidelines.docx

Importance: High

Hi V

Herewith the two items mentioned in the letter of advice as received from Jerry this morning.

Let me know if in order.

Best regards
Suzanne

From: Venete Klein [mailto:venete@kleininc.co.za]
Sent: Wednesday, September 16, 2015 3:06 PM
To: Suzanne Daniels
Subject: RE: CE Full Specification v01

Perfect thanks S

Venete Klein
CD(SA)
Chief Executive Officer
Klein inc
Management Consultants
Cell 082 412 5759
Office: 012 993 5856/5863
Fax: 086 636 272
Website: www.kleininc.co.za
517 Mendelssohn Street, Constantia Park, 0181
PO Box 92040, Mooikloof, 0081
Address: 517 Mendelssohn Street, Constantia Park, 0181
Kleininc Management Consultants
@Kleinincconsult

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 16 September 2015 09:56 AM
To: Venete Klein
Subject: FW: CE Full Specification v01
Importance: High

Hi V

See attached

Best regards
Suzanne

I'm part of the 49Million initiative...

http://www.49Million.co.za

NB: This Email and its contents are subject to the Eskom Holdings SOC Limited EMAIL LEGAL NOTICE which can be viewed at http://www.eskom.co.za/Pages/Email_Legal_Spam_Disclaimer.aspx

I'm part of the 49Million initiative...
http://www.49Million.co.za

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COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

NOTIFIATION OF DEPARTURE FROM THE APPLICATION OF THE GUIDELINES IN THE APPOINTMENT OF CHIEF EXECUTIVE OFFICER

This correspondence serves to notify the Honourable Minister of the departure from the application of the Guidelines and the reasons for this departure.

The rationale for the appointment of Mr Molefe as an employee, was based on the following considerations:

i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined five months ago;
ii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;
iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;
v) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of 22 July 2015, which was endorsed by the Board;
vi) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;
vii) Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to take up critical roles in Eskom which are vacant at present or may occur in the future and thereby create the confidence and predictability required of Eskom at this time;
viii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and
ix) Public confidence has increased exponentially in the period since the commencement of his secondment to 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

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Brian has placed the company on since his secondment in April this year. It is with this is mind that the board unanimously supports his appointment.

Fully cognisant of the process and procedural issues that will need to be addressed in securing such an appointment in the most effective and efficient manner, the Chairperson of the People and Governance Committee was tasked with obtaining the requisite legal opinion on the most optimal route to be followed to give effect to the resolution.

The legal opinion indicates that the process to be followed in the appointment of the Chief Executive is set out in the Memorandum of Incorporation. While the Memorandum of Incorporation contemplates that the Board must identify potential candidates, it does not preclude the Board from identifying, nominating and evaluating one candidate as the Shareholder, represented by the Honourable Minister in this instance, would still have discretion on whether or not to appoint the preferred candidate. The Memorandum of Incorporation also does not have as a requirement that the candidate should be publicly invited to apply for the position.

We also provided the Guidelines to our lawyers and it was recommended that we notify Honourable Minister, as we hereby do, of the departure from the Guidelines and the reasons therefor.

Accordingly, I hereby request Minister's support and endorsement for the permanent appointment of Brian Molefe as chief executive officer of Eskom.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Mrs. V Klein
CHAIRPERSON (PEOPLE AND GOVERNANCE COMMITTEE)
Date: 16 September 2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

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iii) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;
iv) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;
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We also provided the Guidelines to our lawyers and it was recommended that we notify Honourable Minister, as we hereby do, of the departure from the Guidelines and the reasons therefor.

Accordingly, I hereby request Minister's support and endorsement for the permanent appointment of Brian Molefe as chief executive officer of Eskom.

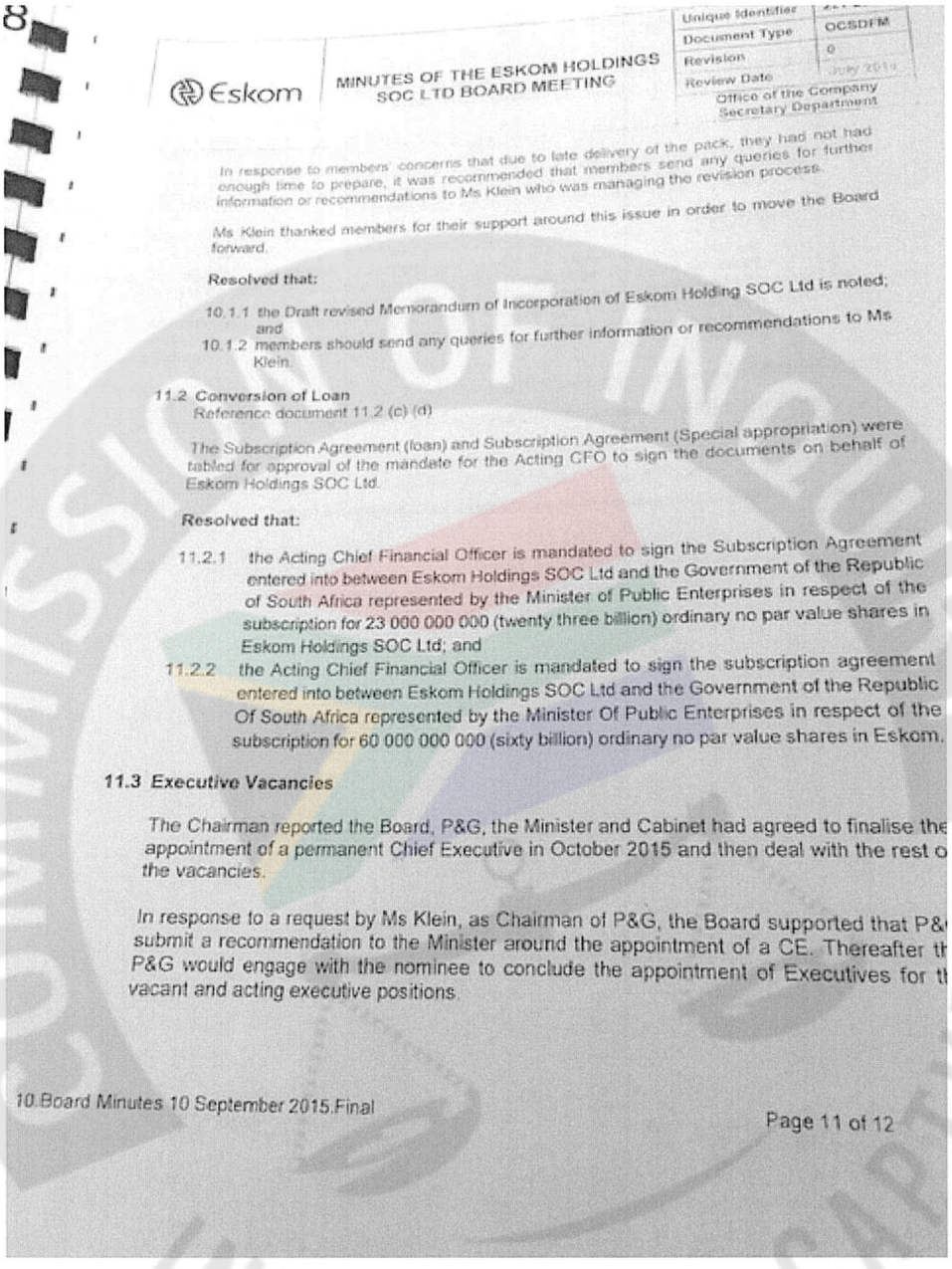
Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Mrs. V Klein
CHAIRPERSON (PEOPLE AND GOVERNANCE COMMITTEE)
Date: 9 September 2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

'BSN 17'



Eskom

MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING

Unique Identifier	
Document Type	OCSDFM
Revision	0
Review Date	July 2014

Office of the Company Secretary Department

In response to members' concerns that due to late delivery of the pack, they had not had enough time to prepare, it was recommended that members send any queries for further information or recommendations to Ms Klein who was managing the revision process.

Ms Klein thanked members for their support around this issue in order to move the Board forward.

Resolved that:

10.1.1 the Draft revised Memorandum of Incorporation of Eskom Holding SOC Ltd is noted; and

10.1.2 members should send any queries for further information or recommendations to Ms Klein.

11.2 **Conversion of Loan**
Reference document 11.2 (c) (d)

The Subscription Agreement (loan) and Subscription Agreement (Special appropriation) were tabled for approval of the mandate for the Acting CFO to sign the documents on behalf of Eskom Holdings SOC Ltd.

Resolved that:

11.2.1 the Acting Chief Financial Officer is mandated to sign the Subscription Agreement entered into between Eskom Holdings SOC Ltd and the Government of the Republic of South Africa represented by the Minister of Public Enterprises in respect of the subscription for 23 000 000 000 (twenty three billion) ordinary no par value shares in Eskom Holdings SOC Ltd; and

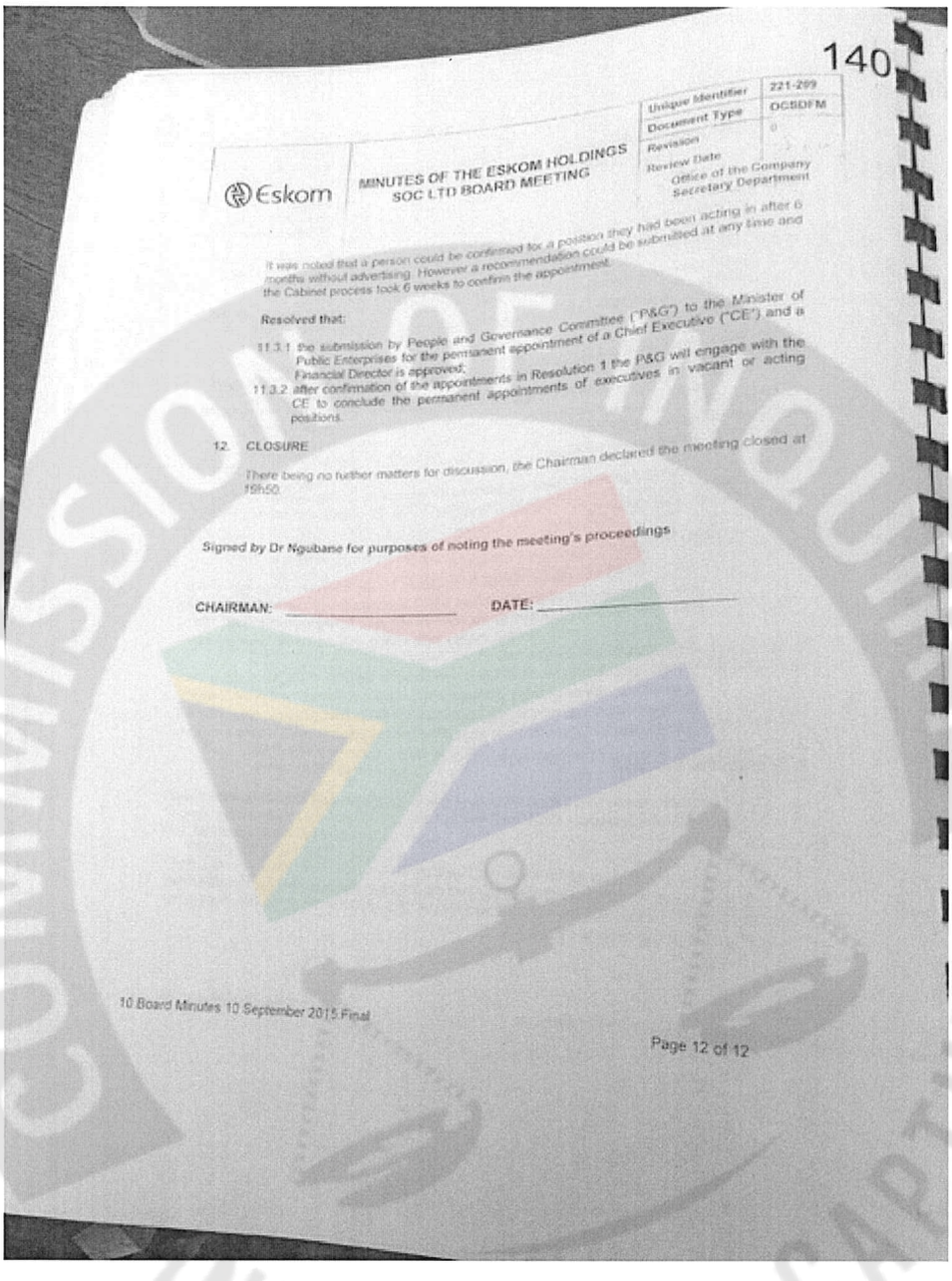
11.2.2 the Acting Chief Financial Officer is mandated to sign the subscription agreement entered into between Eskom Holdings SOC Ltd and the Government of the Republic Of South Africa represented by the Minister Of Public Enterprises in respect of the subscription for 60 000 000 000 (sixty billion) ordinary no par value shares in Eskom.

11.3 *Executive Vacancies*

The Chairman reported the Board, P&G, the Minister and Cabinet had agreed to finalise the appointment of a permanent Chief Executive in October 2015 and then deal with the rest o the vacancies.

In response to a request by Ms Klein, as Chairman of P&G, the Board supported that P& submit a recommendation to the Minister around the appointment of a CE. Thereafter th P&G would engage with the nominee to conclude the appointment of Executives for th vacant and acting executive positions.

COMMISSION OF INQUIRY INTO STATE CAPTURE



Unique Identifier	221-299
Document Type	OCSDFM
Revision	0
Review Date	

Eskom

MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING

Office of the Company Secretary Department

It was noted that a person could be confirmed for a position they had been acting in after 6 months without advertising. However a recommendation could be submitted at any time and the Cabinet process took 6 weeks to confirm the appointment.

Resolved that:

11.3.1 the submission by People and Governance Committee ("P&G") to the Minister of Public Enterprises for the permanent appointment of a Chief Executive ("CE") and a Financial Director is approved;

11.3.2 after confirmation of the appointments in Resolution 1 the P&G will engage with the CE to conclude the permanent appointments of executives in vacant or acting positions.

12. **CLOSURE**

There being no further matters for discussion, the Chairman declared the meeting closed at 15h50.

Signed by Dr Ngubane for purposes of noting the meeting's proceedings

CHAIRMAN: _____ **DATE:** _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 18

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

APPOINTMENT OF GROUP CHIEF EXECUTIVE OFFICER

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 9 September 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Group Chief Executive Officer of Eskom, be confirmed as soon as possible.

The rationale for the appointment of Mr Molefe as a permanent employee, rather than on a secondment basis, is based on the following considerations:

i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined 5 months ago;

ii) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;

iii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;

iv) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;

v) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;

vi) During his tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of 22 July 2015, which was also endorsed by the Board; and

vii) Implementation of this plan has resulted in marked improvements in all areas of the Eskom operations

a. A generation maintenance strategy with minimal load shedding is now in place and implementation is monitored;
b. Staff morale is on the uptum and an employee engagement strategy is now in place and being rolled out across the country to all Eskom employees;
c. Eskom's reputation and brand is being rebuilt with more positive stories in the media.

Public confidence has increased exponentially and Mr Molefe's ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead.

Future strategies have been developed and are in the process of being developed for final consideration by the Board. Most importantly, the quality and clarity of information presented to Board has improved and he enjoys the full support of the Board.

Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to take up critical roles in Eskom which are vacant at present or may occur in the future and thereby create the confidence and predictability required of Eskom at this time.

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Mr Molefe has placed the company on since his secondment in April this year. It is with this is mind that the board unanimously supports his appointment.

Accordingly, on behalf of the Eskom Board of Directors, I recommend to Honourable Minister that Mr Brian Molefe be appointed as Group Chief Executive Officer of Eskom Holdings SOC Ltd.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr BS Ngubane
INTERIM CHAIRMAN
Date:

INTO STATE CAPTURE

BSN 19
35

Eskom

EXECUTIVE EMPLOYMENT CONTRACT

EMPLOYMENT CONTRACT

entered into between

ESKOM HOLDINGS LIMITED

(Registration No. 2002/015527/30)

and

BRIAN MOLEFE

(Identity No. 5612285778086)

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 19
36

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COMMISSION OF INQUIRY INTO STATE CAPTURE

WHEREBY IT IS AGREED AS FOLLOWS :

1. **INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

1.1. words importing -

1.1.1. any one gender include the other gender;

1.1.2. the singular include the plural and *vice versa*; and

1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

1.2.1. "**Act**" means the Labour Relations Act, 1995 as amended;

1.2.2. "**Agreement**" means this agreement together with the annexures thereto;

1.2.3. "**Associate Company**" means an Entity in which the Company and/or its subsidiaries holds at least 30 % (thirty percent) of the interest of such Entity;

1.2.4. "**Board**" means the board of directors of the Company from time to time;

1.2.5. "**Business**" means each and every business undertaking engaged in by the Company and each and every Group Company from time to time;

1.2.6. "**Business Day**" means any week day, excluding Saturdays, Sundays and public holidays in the Republic of South Africa;

1.2.7. "**Commencement Date**" means 1 October 2014;

1.2.8. "**Company**" means Eskom Holdings Limited (Registration No. 2002/015527/30);

1.2.9. "**Executive**" means Tshediso John Matona (Identity No. 6203145604082);

1.2.10. "**Entity**" includes any association, business, close corporation, company, concern, enterprise, firm, partnership, person, trust, undertaking, voluntary association or other similar entity whether corporate or unincorporate;

1.2.11. "**Group Company**" means the Company, any Associate company of the Company, any partnership in which the Company is a partner, any company which is a subsidiary company of the Company, any company which is a holding company of the Company, any company which is a subsidiary of or is controlled by such holding company, any division of such holding company and/or any joint venture company of which the Company or such holding company is a shareholder, and collectively referred to as "**Group Companies**";

1.2.12. "**Parties**" means the Executive and the Company and a reference to "**Party**" shall embrace each one of them individually;

1.2.13. "**Pensionable Age**" means 65 (sixty five) years of age;

1.2.14. "**Signature Date**" means the date of signature of this Agreement by the last signing of the signatories hereto;

1.2.15. "**Termination Date**" means the date upon which the Executive's employment by the Company ceases or is terminated for any reason whatsoever;

1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;

1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;

1.5. when any number of days or Business Days is prescribed in this Agreement, same shall mean Business Days;

1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;

1.8. where any term is defined within the context of any particular clause in this Agreement, 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 Agreement, notwithstanding that the term has not been defined in this interpretation clause;

1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination

or which of necessity must continue to have effect after such expiration or termination notwithstanding that the clauses themselves do not expressly provide for this.

2. APPOINTMENT OF EXECUTIVE

2.1. The Executive commenced employment with the Company on 25 September 2015.

2.2. With effect from the Commencement Date, the Company appoints the Executive as the Chief Executive of the Company ("**CE**"). The Executive accepts such appointment.

2.3. To the extent that the Executive is required to become a director of any Group Company, the Executive undertakes to be bound to any such Group Company on the terms of this Agreement *mutatis mutandis*. Each undertaking provided by the Executive in this Agreement shall also constitute a *stipulatio alteri* in favour of any Group Company and is capable of acceptance at any time by it.

2.4. The Executive will be employed at the Company's premises situated at Eskom, Megawatt Park, Maxwell Drive, Sunninghill or such other location as the Company may determine from time to time on notification to the Executive.

2.5. The Executive warrants in favour of the Company that he is not contractually or otherwise prohibited or limited from fulfilling his obligations in terms of this Agreement.

3. PERIOD OF EMPLOYMENT

3.1. The Executive's employment with the Company shall continue for an indefinite period subject to either Party being entitled to terminate the employment relationship by giving the other not less than 6 (six) months' written notice. The Company may elect to pay the Executive *in lieu* of notice.

3.2. Notwithstanding anything to the contrary contained herein, the Company shall be entitled to terminate the Executive's employment with or without notice or on such other basis as it considers appropriate for any reason justified in law.

3.3. In dealing with the Executive's conduct, performance or any other issue arising from or in relation ot the Executive's employment with the Company, the Company shall be guided by, *inter alia*, the Company's disciplinary, performance management, grievance and other procedures applicable from time to time, with the Board specifically having the discretion to appoint a non-executive director to chair any disciplinary, performance, grievance or other enquiry or utlise an external third party for that purpose.

3.4. The Executive's employment shall terminate *ipso facto* upon the Executive reaching Pensionable Age.

4. **EFFECT OF TERMINATION OF EMPLOYMENT**

The termination of the Executive's employment for any reason whatsoever shall not affect the operation of any provisions of this Agreement to the extent to which they confer rights or impose obligations upon the Parties which are exercisable or enforceable after the Termination Date, and such provisions shall to that extent continue to be of full force and effect. The termination of the Executive's employment shall furthermore not prejudice any rights which have accrued to the Parties as at the Termination Date.

5. **SUSPENSION OF EMPLOYMENT**

If the Company suspects that the Executive is guilty of the conduct which may, if proved, justify his dismissal, or has committed a breach of any of the terms of this Agreement, it may, pending a duly constituted enquiry into the alleged conduct in question, but without prejudice to its right of summary dismissal and without giving rise to any claim for damages or otherwise against it, suspend the Executive for a reasonable period having regard to the common law and the provisions of the Act and other applicable statutes during which the Executive shall -

5.1. not be entitled to attend work at the premises of the Company and/or any Group Company; and

5.2. be entitled to his Remuneration Package.

6. **DUTIES OF EXECUTIVE**

The Executive shall -

6.1. satisfactorily, carry out, *inter alia*, the duties and responsibilities as are from time to time assigned to him, and which are consistent with his status, including, but not limited to, the key performance indicators which are agreed to on an annual basis with the Board;

6.2. devote the whole of his time and attention during the Company's normal business hours, and such reasonable amount of additional time as may be necessary, having regard to the exigencies of the Business, to the Business and shall not, while he is employed by the Company, without the Company's prior written consent, whether as proprietor, partner, director, shareholder, the holder of an option, member, employee, consultant, contractor, financier, agent, representative, assistant, whether for reward or not, directly or indirectly be interested or engaged in or concerned with or employed by any company, corporation, business, trade, undertaking or concern -

6.2.1. other than that of the Company and/or any Group Company; or

6.2.2. which competes with the Business.

the undertakings in clauses 6.2.1 and 6.2.2 being separate, provided that he shall not be deemed to have breached his undertakings by reason of –

6.2.3. his having *bona fide* financial interests in any business, trade, undertaking or concern which does not directly or indirectly compete with the Company and/or any Group Company and which has been disclosed to the Company in writing and/or after disclosing his intention to do so to the Company in writing, his accepting appointment as a non-executive director of or his acquiring a financial interest in any such business, trade, undertaking or concern and devoting a reasonable amount of time to such financial interests and directorships, provided that no such interests of or activities by the Executive are prejudicial to or adversely affect the performance of his duties hereunder; and/or

6.2.4. his holding shares (including derivatives) in any company the shares of which are listed on a recognised stock exchange if the shares owned by him (including indirectly through any other Entity) do not in the aggregate constitute more than 5% (five per cent) of any class of the issued share capital of such company; and/or

6.2.5. his being an officer of or holding shares in the Company and/or any Group Company;

6.3. obey the orders and directions of the Board and use his utmost endeavours to protect and promote the Business and interests of the Company and the Group Companies and to preserve their reputation and goodwill;

6.4. be true and faithful to the Company and all Group Companies in all dealings and transactions whatsoever relating to their business and interests; and

6.5. submit to the Board or to any person nominated by it, such information and reports as may be required of him in connection with the performance of his duties and the Business.

7. REMUNERATION

7.1. As remuneration for his services hereunder, the Company shall pay to the Executive a total annual guaranteed remuneration package of R7 656 000.00 (seven million six hundred and fifty six rand) (**"Remuneration Package"**), less tax and other lawful deductions. The specific structure of the Executive's Remuneration Package will be agreed upon by the Company and the Executive as soon as possible after the Signature Date. The salary element of such amount shall be paid in 12 (twelve) equal monthly instalments and directly into the Executive's bank account monthly in arrears.

7.2. The Remuneration Package referred to in clause 7.1 shall be subject to annual review by the Company's remuneration committee in October of each year. The Company's remuneration committee may within its sole and absolute discretion grant an increase on review.

8. SHORT TERM INCENTIVE SCHEME

8.1. The Executive will be entitled to participate in the Company's short term incentive scheme in accordance with the rules applicable thereto from time to time.

8.2. The payment of any short term incentive will be taxable in the hands of the Executive but will not form part of the Executive's pensionable remuneration.

9. LONG TERM INCENTIVE SCHEME

9.1. The Executive be entitled to participate in the Company's long term incentive ("**LTI**") scheme in accordance with the rules applicable thereto from time to time. The broad principles of the LTI scheme have already been furnished to the Executive.

9.2. The payment of any LTI will be taxable in the hand of the Executive but will not form part of the Executive's pensionable remuneration.

9.3. On resignation by mutual agreement all Grants allocated will be payable on a pro-rated basis.

10. PENSION AND PROVIDENT FUND

10.1. The Executive shall continue as a member of the Eskom Pension and Provident Fund or any other such fund established or participated in by the Company from time to time, subject to the rules thereof.

10.2. The Company shall pay the Executive's monthly contributions to the fund on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

11. MEDICAL AID

11.1. The Executive shall continue as a member of the Company's Medical Aid Scheme or any other medical aid scheme that the Company may contract with from time to time, subject to the rules and regulations of that scheme.

11.2. The Company shall pay the Executive's monthly premiums to that scheme on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

12. **GROUP LIFE ASSURANCE AND FUNERAL BENEFIT**

12.1. The Executive shall continue to be entitled to Group Life Assurance and Funeral Benefit Cover, subject to the rules and regulations applicable thereto from time to time.

12.2. The Company shall pay the Executive's contribution thereto on behalf of the Executive, monthly in arrears, the cost of which forms part of the Remuneration Package contemplated in clause 8 above.

13. **ADDITIONAL BENEFITS**

13.1. The Executive shall be entitled to the following additional benefits which are in addition to the Executive's Remuneration Package contemplated in clause 8 above :

13.1.1. **Bank Fleet Card**

13.1.1.1. The Executive shall be entitled to use the Company's Bank Fleet Card, in order to conduct his duties and responsibilities for the Company, the use of which is governed by the Company's rules and policies applicable thereto from time to time.

13.1.1.2. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

13.1.2. **Financial/Tax Planning Fees**

13.1.2.1. The Executive shall be entitled to receive both financial and tax planning advice, the reasonable costs of which will be borne by the Company in accordance with the rules and policies applicable thereto from time to time.

13.1.2.2. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.3. **Personal Security**

13.1.3.1. The Company is desirous of ensuring the safety of the Executive and the security of the Executive's residence.

13.1.3.2. The Company will bear the reasonable costs associated with the Executive's home security system, the installation and maintenance thereof, the monthly subscription to a security company, guards,

vehicle tracking and armed response, in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.3.3. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.4. **Telephone Services**

13.1.4.1. The Company will bear the costs of the Executive's telephone that is utilised for business purposes at the residence of the Executive and in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.4.2. The Executive is issued with a cell phone and the Company will bear the business usage costs thereof in accordance with the Company's rules and policies applicable thereto from time to time.

13.1.4.3. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

14. **ANNUAL LEAVE**

The Executive shall continue to qualify for annual leave in accordance with the Company's annual leave policy. The Executive acknowledges that he has had sight of that policy.

15. **SICK LEAVE**

The Executive shall continue to qualify for sick leave in accordance with the Company's sick leave policy. The Executive acknowledges that he had sight of that policy.

16. **CONFIDENTIALITY**

16.1. In performing his duties and responsibilities with the Company and/or any Group Company, the Executive will have access to non-public information or materials describing or relating to the Company and/or any Group Company, its clients and/or third parties to whom the Company and/or any Group Company has a duty of confidentiality (the "**Third Parties**") including, but not limited to, materials describing or relating to the business, affairs, processes, trade secrets, client lists, trade connections, policies and/or procedures of the Company and/or any Group Company, its clients and/or the Third Parties; formulae, strategies, methods, processes, computer materials (including but not limited to source or object codes, data files, computer listings, computer programs and other computer materials regardless of the medium in which they are stored), and/or other confidential information of the Company

and/or any Group Company, its clients and/or the Third Parties (the "**Confidential Information**").

16.2. With respect to such Confidential Information, the Executive agrees that during his employment by the Company and thereafter in perpetuity, regardless of the reason for the termination of his employment, he shall:

16.2.1. hold the Confidential Information in strict confidence and will not, nor will he permit any other person to, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give and/or disclose the Confidential Information to any unauthorised person;

16.2.2. take all reasonable steps to minimise the risk of disclosure of the Confidential Information to unauthorised persons, and to ensure the proper and secure storage of any such Confidential Information;

16.2.3. not, during his employment by the Company or thereafter, use for his own benefit or for the benefit of any other person or divulge or communicate to any person or persons, except to those officials of the Company and/or any Group Company whose province it is to know same, any of the Company's or such Group Company's secrets or any other Confidential Information which he may receive or obtain in relation to its affairs or its clients.

16.3. Upon the termination of his employment for any reason whatsoever, the Executive shall return to the Company any documents, papers and other materials relating to the Company or obtained or developed in the course of his employment by the Company and/or whilst providing services to any Group Company or containing or derived from the Confidential Information in his possession, and all copies thereof.

17. INVENTIONS, DISCOVERIES, COPYRIGHT AND DOCUMENTS

17.1. Any discovery or invention or secret process or improvement in procedure made or discovered by the Executive in the course and scope of his employment by the Company in connection with or in any way affecting or relating to the Business or capable of being used or adapted for use by the Company and/or any Group Company or in connection with its business shall be disclosed to the Company and/or any Group Company and shall belong to and be the absolute property of the Company and/or any Group Company or any other company nominated by it.

17.2. The Executive shall, if and when required by the Company and/or any Group Company, apply or join with the Company and/or any Group Company concerned at its expense in applying for Letters Patent or other equivalent protection in the Republic of South Africa or in any other part of the world for such discovery, invention, process or improvement and shall at the expense of the Company and/or any Group Company concerned execute all instruments and do all things necessary for vesting the said Letters Patent or other equivalent protection in the name of the Company and/or any Group Company as sole beneficial owner or in the name of such other company as the Company and/or Group Company may nominate.

17.3. Insofar as may be necessary the Executive hereby assigns to the Company and/or any Group Company the copyright in all present and future works eligible for copyright, including, without limitation, literary or artistic works or software programmes of which he may be the author, which works were or are created, compiled, devised or brought into being during the course and scope of his employment by the Company and/or whilst providing services to any Group Company. No consideration shall be payable by the Company to the Executive in respect of this assignment.

17.4. All reports, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the aforegoing items) which are created, compiled or devised or brought into being by the Executive or come into the Executive's possession during the course and scope of his employment by the Company (including whilst providing services to any Group Company) and all copies thereof will be the property of the Company and/or any Group Company and, upon the Termination Date or earlier if required by the Company and/or any Group Company, such documents and all copies shall be returned to the Company and/or any Group Company.

18. **STIPULATIO ALTERI**

Without derogating from the generality of clause 2.3 above, the undertakings given by the Executive in clauses 16 and 17 of this Agreement constitute a *stipulatio alteri* in favour of any Group Company and are capable of acceptance at any time by such Group Company, whether before or after the Termination Date.

19. **GENERAL**

19.1. The Executive shall adhere to the Company's written policies, procedures or the like which are applicable from time to time, save for where they have been amended by this Agreement.

19.2. No remedy granted by this Agreement shall exclude any other remedy available at law.

19.3. No amendment of this Agreement or any consensual cancellation thereof or any part thereof shall be binding on the parties unless reduced to a written document and signed by them.

19.4. If any of the terms of this Agreement, such as the rate of remuneration payable to the Executive, are varied, the other terms shall, unless otherwise agreed in writing, remain of full force and effect.

19.5. No relaxation or indulgence which either Party may show to the other shall in any way prejudice or be deemed to be a waiver of its rights hereunder nor shall such relaxation or indulgence preclude or estop the other Party from exercising its rights in terms of this Agreement in respect of any further breach.

19.6. This Agreement constitutes the whole agreement between the Parties and no warranties or representations whether express or implied have been given or made by the Company to the Executive.

19.7. The Company shall be entitled to cede and delegate all or any of its rights and obligations under this Agreement to any Group Company, whether such cession and delegation takes place before or after the Termination Date.

20. **DOMICILIA CITANDI ET EXECUTANDI**

20.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses -

20.1.1. the Company:

Physical:	Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg
Postal:	P.O. Box 1091, Johannesburg, 2000
Telefax:	011 800 6132

20.1.2. the Executive:

Physical:	759 Camelford Road, Cornwall Hill Estate, Irene, 0178
Postal:	
Telephone:	012 6671885

20.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

20.3. Either Party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in Gauteng or its postal address or its telefax number, provided that the change shall become effective on the 10th (tenth) Business Day from the deemed receipt of the notice by the other party.

20.4. Any notice to a Party -

20.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 10th (tenth) Business Day after posting (unless the contrary is proved) and provided that any notice to a party sent by prepaid registered post shall only be valid if such notice is simultaneously sent by telefax to the chosen telefax number stipulated in clause 20.1;

20.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

20.4.3. sent by telefax to its chosen telefax number stipulated in clause 20.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

20.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

21. **RESIGNATION**

21.1. On the Termination Date, the Executive will *ipso facto* be deemed to have resigned as a director of the Company and any other Group Company of which he is a director at that date.

21.2. The Executive hereby irrevocably appoints the then auditors of the Company as his agent *in rem suam* to sign all such documents and to do all such acts as may be necessary to effect and implement such resignation.

22. **ELECTRONIC AND OTHER COMMUNICATIONS**

The Executive hereby expressly gives the Company permission to intercept, monitor, read, block or act upon any of the Executive's electronic and other communications made from the Company telephone, Company computer and other Company devices which shall include, but not be limited to, telephonic conversations, e-mails and any stored files.

23. **RULES, REGULATIONS AND POLICIES**

The Company has various rules, regulations, policies and procedures (**"the Policies"**) in place which may be amended from time to time in the sole discretion of the Company. The Policies may be accessed via the Company's intranet, alternatively copies may be requested from the Company's

human resources department. It is the Executive's obligation to familiarise himself with all of the Policies and ensure that he complies therewith.

24. **SEVERABILITY**

If any provision of this Agreement is found by a court of law to be invalid or void, such provision shall be severed from the remaining provisions, which shall continue to be of force and effect.

25. **COSTS**

The costs of and incidental to the drawing of this Agreement shall be paid by the Company.

26. **ARBITRATION**

In the event that the Company's internal mechanisms contemplated in clause 3.3 above have been exhausted, then any dispute concerning the fairness or otherwise of the termination of the Executive's employment, the Executive's performance, a grievance lodged by the Executive, or any other dispute arising out of the Executive's employment that would, save for this clause, fall to be determined by the CCMA or a Court having the requisite jurisdiction, shall be finally resolved by arbitration conducted in accordance with the rules of the Arbitration Foundation of South Africa, by an arbitrator agreed to by the Parties or, failing such agreement, appointment by that Foundation. The Company will be responsible for the costs of the arbitrator, the venue and any recording or transcription services related to any such arbitration.

Signed at ***Megawatt Park*** this _____ day of _____ 2015.

FOR: **ESKOM HOLDINGS LIMITED**

Signature: _____

who warrants that he / she is duly authorised thereto

Name: B S Ngubane CHAIRMAN

Date: _____

Place: Megawatt Park

Witness: _____

Witness: _____

BSN 20

Did not receive this letter.

"AM 10"

02-10-2015

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118/1150 Fax: 012 431 1039
Private Bag X9079, Cape Town, 8000 Tel: 021 461 5378/7469 Fax: 021 465 2381/461 1741

Mr Brian Molefe
Chief Executive Officer
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938.
Email: [redacted]

Dear Mr Molefe

Appointment as Chief Executive Officer and *Ex Officio* Member of the Eskom Board of Directors

I am pleased to inform you of your appointment to Eskom as Chief Executive Officer and *ex officio* member of the Board of Directors.

Your appointment to the Eskom Board is *ex officio* and therefore the following stipulations apply:

- Your appointment to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon the date of notice of termination of employment or notice of resignation or notice of suspension;
- You shall not be entitled to any additional remuneration, other than that provided for in your contract of employment as Chief Executive Officer of Eskom; and
- All Board activities you perform, including but not limited to preparing for Board meetings, travelling time to and from Board meetings, and participation in Board activities/responsibilities, whether within or outside normal working

BSN 20

hours, are regarded as official duties and do not require you to take leave to attend to them.

I have requested the Chairperson to facilitate, in consultation with you, the alignment of your contract of employment in accordance with the above stipulations. I have no doubt that you will make a real contribution to the future success of Eskom.

Please confirm your acceptance as *ex officio* to the Board by signing the attached statement and returning a copy to myself.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 02/10/2015

CC: Dr Ngubane, Interim Chairperson of the Eskom Board

COMMISSION OF INQUIRY INTO STATE CAPTURE

"AM9"

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: 012 431 1118/1150 Fax: 012 431 1039
Private Bag X9078, Cape Town, 8000 Tel: 021 461 6378/7469 Fax: 021 465 2381/461 1741

Dr. B Ngubane
Interim Chairperson
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com /
DanielSM@eskom.co.za
venete@kieninc.co.za

Dear Dr. Ngubane

Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Your letters regarding the above-mentioned matter, dated 11 September 2015, have reference.

Subsequent to receiving Cabinet's endorsement, I approve the appointments of Mr Brian Molefe as the Chief Executive Officer and Mr Anoj Singh as Chief Financial Officer of Eskom and *ex-officio* Directors of the Eskom Board of Directors. Please extend my congratulations to Mr Molefe and Mr Singh on their appointments.

I have enclosed herewith, letters to Mr Molefe and Mr Singh confirming their appointments. Kindly ensure that it is delivered to and signed after finalising their appointments to Eskom.

The Board must ensure that the employment and performance contract is aligned to meet strategic objectives within, but not limited to, the following stipulations:

COMMISSION OF INQUIRY INTO STATE CAPTURE

- Their appointment as ex officio to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon date of notice of termination of employment, notice of resignation or notice of suspension, in line with the provisions of the MOI.
- As ex officio to the Board, the Executives shall not be entitled to any additional remuneration, other than that provided for in the contract of employment.

In drafting the contracts, kindly liaise with the Department in the finalisation of the employment and performance contract of the CEO and provide me with a copy within three (3) months of the date of my letter.

In terms of remuneration, in line with the DPE Remuneration Guidelines, I approve a guaranteed remuneration of R7, 032,000.00 for Mr Molefe and a guaranteed remuneration R4, 607,000.00 for Mr Singh.

I trust that these appointments will add to the much needed leadership stability at Eskom and further encourage the Board and CEO designate to finalise, amongst other immediate priorities, the filling of vacancies at Executive level.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 02/10/2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 22
35

Eskom

EXECUTIVE EMPLOYMENT CONTRACT

EMPLOYMENT CONTRACT

entered into between

ESKOM HOLDINGS LIMITED

(Registration No. 2002/015527/30)

and

BRIAN MOLEFE

(Identity No. 5612285778086)

COMMISSION OF INQUIRY INTO STATE CAPTURE

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COMMISSION OF INQUIRY INTO STATE CAPTURE

WHEREBY IT IS AGREED AS FOLLOWS :

1. **INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

1.1. words importing -

1.1.1. any one gender include the other gender;

1.1.2. the singular include the plural and *vice versa*; and

1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

1.2.1. "**Act**" means the Labour Relations Act, 1995 as amended;

1.2.2. "**Agreement**" means this agreement together with the annexures thereto;

1.2.3. "**Associate Company**" means an Entity in which the Company and/or its subsidiaries holds at least 30 % (thirty percent) of the interest of such Entity;

1.2.4. "**Board**" means the board of directors of the Company from time to time;

1.2.5. "**Business**" means each and every business undertaking engaged in by the Company and each and every Group Company from time to time;

1.2.6. "**Business Day**" means any week day, excluding Saturdays, Sundays and public holidays in the Republic of South Africa;

1.2.7. "**Commencement Date**" means 1 October 2014;

1.2.8. "**Company**" means Eskom Holdings Limited (Registration No. 2002/015527/30);

1.2.9. "**Executive**" means Tshediso John Matona (Identity No. 6203145604082);

1.2.10. "**Entity**" includes any association, business, close corporation, company, concern, enterprise, firm, partnership, person, trust, undertaking, voluntary association or other similar entity whether corporate or unincorporate;

1.2.11. "**Group Company**" means the Company, any Associate company of the Company, any partnership in which the Company is a partner, any company which is a subsidiary company of the Company, any company which is a holding company of the Company, any company which is a subsidiary of or is controlled by such holding company, any division of such holding company and/or any joint venture company of which the Company or such holding company is a shareholder, and collectively referred to as "**Group Companies**";

1.2.12. "**Parties**" means the Executive and the Company and a reference to "**Party**" shall embrace each one of them individually;

1.2.13. "**Pensionable Age**" means 65 (sixty five) years of age;

1.2.14. "**Signature Date**" means the date of signature of this Agreement by the last signing of the signatories hereto;

1.2.15. "**Termination Date**" means the date upon which the Executive's employment by the Company ceases or is terminated for any reason whatsoever;

1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;

1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;

1.5. when any number of days or Business Days is prescribed in this Agreement, same shall mean Business Days;

1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;

1.8. where any term is defined within the context of any particular clause in this Agreement, 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 Agreement, notwithstanding that the term has not been defined in this interpretation clause;

1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination

or which of necessity must continue to have effect after such expiration or termination notwithstanding that the clauses themselves do not expressly provide for this.

2. APPOINTMENT OF EXECUTIVE

2.1. The Executive commenced employment with the Company on 25 September 2015.

2.2. With effect from the Commencement Date, the Company appoints the Executive as the Chief Executive of the Company ("**CE**"). The Executive accepts such appointment.

2.3. To the extent that the Executive is required to become a director of any Group Company, the Executive undertakes to be bound to any such Group Company on the terms of this Agreement *mutatis mutandis*. Each undertaking provided by the Executive in this Agreement shall also constitute a *stipulatio alteri* in favour of any Group Company and is capable of acceptance at any time by it.

2.4. The Executive will be employed at the Company's premises situated at Eskom, Megawatt Park, Maxwell Drive, Sunninghill or such other location as the Company may determine from time to time on notification to the Executive.

2.5. The Executive warrants in favour of the Company that he is not contractually or otherwise prohibited or limited from fulfilling his obligations in terms of this Agreement.

3. PERIOD OF EMPLOYMENT

3.1. The Executive's employment with the Company shall continue for an indefinite period subject to either Party being entitled to terminate the employment relationship by giving the other not less than 6 (six) months' written notice. The Company may elect to pay the Executive *in lieu* of notice.

3.2. Notwithstanding anything to the contrary contained herein, the Company shall be entitled to terminate the Executive's employment with or without notice or on such other basis as it considers appropriate for any reason justified in law.

3.3. In dealing with the Executive's conduct, performance or any other issue arising from or in relation ot the Executive's employment with the Company, the Company shall be guided by, *inter alia*, the Company's disciplinary, performance management, grievance and other procedures applicable from time to time, with the Board specifically having the discretion to appoint a non-executive director to chair any disciplinary, performance, grievance or other enquiry or utlise an external third party for that purpose.

3.4. The Executive's employment shall terminate *ipso facto* upon the Executive reaching Pensionable Age.

4. **EFFECT OF TERMINATION OF EMPLOYMENT**

The termination of the Executive's employment for any reason whatsoever shall not affect the operation of any provisions of this Agreement to the extent to which they confer rights or impose obligations upon the Parties which are exercisable or enforceable after the Termination Date, and such provisions shall to that extent continue to be of full force and effect. The termination of the Executive's employment shall furthermore not prejudice any rights which have accrued to the Parties as at the Termination Date.

5. **SUSPENSION OF EMPLOYMENT**

If the Company suspects that the Executive is guilty of the conduct which may, if proved, justify his dismissal, or has committed a breach of any of the terms of this Agreement, it may, pending a duly constituted enquiry into the alleged conduct in question, but without prejudice to its right of summary dismissal and without giving rise to any claim for damages or otherwise against it, suspend the Executive for a reasonable period having regard to the common law and the provisions of the Act and other applicable statutes during which the Executive shall -

5.1. not be entitled to attend work at the premises of the Company and/or any Group Company; and

5.2. be entitled to his Remuneration Package.

6. **DUTIES OF EXECUTIVE**

The Executive shall -

6.1. satisfactorily, carry out, *inter alia*, the duties and responsibilities as are from time to time assigned to him, and which are consistent with his status, including, but not limited to, the key performance indicators which are agreed to on an annual basis with the Board;

6.2. devote the whole of his time and attention during the Company's normal business hours, and such reasonable amount of additional time as may be necessary, having regard to the exigencies of the Business, to the Business and shall not, while he is employed by the Company, without the Company's prior written consent, whether as proprietor, partner, director, shareholder, the holder of an option, member, employee, consultant, contractor, financier, agent, representative, assistant, whether for reward or not, directly or indirectly be interested or engaged in or concerned with or employed by any company, corporation, business, trade, undertaking or concern -

6.2.1. other than that of the Company and/or any Group Company; or

6.2.2. which competes with the Business.

the undertakings in clauses 6.2.1 and 6.2.2 being separate, provided that he shall not be deemed to have breached his undertakings by reason of –

6.2.3. his having *bona fide* financial interests in any business, trade, undertaking or concern which does not directly or indirectly compete with the Company and/or any Group Company and which has been disclosed to the Company in writing and/or after disclosing his intention to do so to the Company in writing, his accepting appointment as a non-executive director of or his acquiring a financial interest in any such business, trade, undertaking or concern and devoting a reasonable amount of time to such financial interests and directorships, provided that no such interests of or activities by the Executive are prejudicial to or adversely affect the performance of his duties hereunder; and/or

6.2.4. his holding shares (including derivatives) in any company the shares of which are listed on a recognised stock exchange if the shares owned by him (including indirectly through any other Entity) do not in the aggregate constitute more than 5% (five per cent) of any class of the issued share capital of such company; and/or

6.2.5. his being an officer of or holding shares in the Company and/or any Group Company;

6.3. obey the orders and directions of the Board and use his utmost endeavours to protect and promote the Business and interests of the Company and the Group Companies and to preserve their reputation and goodwill;

6.4. be true and faithful to the Company and all Group Companies in all dealings and transactions whatsoever relating to their business and interests; and

6.5. submit to the Board or to any person nominated by it, such information and reports as may be required of him in connection with the performance of his duties and the Business.

7. REMUNERATION

7.1. As remuneration for his services hereunder, the Company shall pay to the Executive a total annual guaranteed remuneration package of R7 656 000.00 (seven million six hundred and fifty six rand) (**"Remuneration Package"**), less tax and other lawful deductions. The specific structure of the Executive's Remuneration Package will be agreed upon by the Company and the Executive as soon as possible after the Signature Date. The salary element of such amount shall be paid in 12 (twelve) equal monthly instalments and directly into the Executive's bank account monthly in arrears.

7.2. The Remuneration Package referred to in clause 7.1 shall be subject to annual review by the Company's remuneration committee in October of each year. The Company's remuneration committee may within its sole and absolute discretion grant an increase on review.

8. SHORT TERM INCENTIVE SCHEME

8.1. The Executive will be entitled to participate in the Company's short term incentive scheme in accordance with the rules applicable thereto from time to time.

8.2. The payment of any short term incentive will be taxable in the hands of the Executive but will not form part of the Executive's pensionable remuneration.

9. LONG TERM INCENTIVE SCHEME

9.1. The Executive be entitled to participate in the Company's long term incentive ("**LTI**") scheme in accordance with the rules applicable thereto from time to time. The broad principles of the LTI scheme have already been furnished to the Executive.

9.2. The payment of any LTI will be taxable in the hand of the Executive but will not form part of the Executive's pensionable remuneration.

9.3. On resignation by mutual agreement all Grants allocated will be payable on a pro-rated basis.

10. PENSION AND PROVIDENT FUND

10.1. The Executive shall continue as a member of the Eskom Pension and Provident Fund or any other such fund established or participated in by the Company from time to time, subject to the rules thereof.

10.2. The Company shall pay the Executive's monthly contributions to the fund on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

11. MEDICAL AID

11.1. The Executive shall continue as a member of the Company's Medical Aid Scheme or any other medical aid scheme that the Company may contract with from time to time, subject to the rules and regulations of that scheme.

11.2. The Company shall pay the Executive's monthly premiums to that scheme on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

12. **GROUP LIFE ASSURANCE AND FUNERAL BENEFIT**

12.1. The Executive shall continue to be entitled to Group Life Assurance and Funeral Benefit Cover, subject to the rules and regulations applicable thereto from time to time.

12.2. The Company shall pay the Executive's contribution thereto on behalf of the Executive, monthly in arrears, the cost of which forms part of the Remuneration Package contemplated in clause 8 above.

13. **ADDITIONAL BENEFITS**

13.1. The Executive shall be entitled to the following additional benefits which are in addition to the Executive's Remuneration Package contemplated in clause 8 above :

13.1.1. **Bank Fleet Card**

13.1.1.1. The Executive shall be entitled to use the Company's Bank Fleet Card, in order to conduct his duties and responsibilities for the Company, the use of which is governed by the Company's rules and policies applicable thereto from time to time.

13.1.1.2. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

13.1.2. **Financial/Tax Planning Fees**

13.1.2.1. The Executive shall be entitled to receive both financial and tax planning advice, the reasonable costs of which will be borne by the Company in accordance with the rules and policies applicable thereto from time to time.

13.1.2.2. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.3. **Personal Security**

13.1.3.1. The Company is desirous of ensuring the safety of the Executive and the security of the Executive's residence.

13.1.3.2. The Company will bear the reasonable costs associated with the Executive's home security system, the installation and maintenance thereof, the monthly subscription to a security company, guards,

vehicle tracking and armed response, in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.3.3. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.4. **Telephone Services**

13.1.4.1. The Company will bear the costs of the Executive's telephone that is utilised for business purposes at the residence of the Executive and in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.4.2. The Executive is issued with a cell phone and the Company will bear the business usage costs thereof in accordance with the Company's rules and policies applicable thereto from time to time.

13.1.4.3. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

14. **ANNUAL LEAVE**

The Executive shall continue to qualify for annual leave in accordance with the Company's annual leave policy. The Executive acknowledges that he has had sight of that policy.

15. **SICK LEAVE**

The Executive shall continue to qualify for sick leave in accordance with the Company's sick leave policy. The Executive acknowledges that he had sight of that policy.

16. **CONFIDENTIALITY**

16.1. In performing his duties and responsibilities with the Company and/or any Group Company, the Executive will have access to non-public information or materials describing or relating to the Company and/or any Group Company, its clients and/or third parties to whom the Company and/or any Group Company has a duty of confidentiality (the "**Third Parties**") including, but not limited to, materials describing or relating to the business, affairs, processes, trade secrets, client lists, trade connections, policies and/or procedures of the Company and/or any Group Company, its clients and/or the Third Parties; formulae, strategies, methods, processes, computer materials (including but not limited to source or object codes, data files, computer listings, computer programs and other computer materials regardless of the medium in which they are stored), and/or other confidential information of the Company

and/or any Group Company, its clients and/or the Third Parties (the "**Confidential Information**").

16.2. With respect to such Confidential Information, the Executive agrees that during his employment by the Company and thereafter in perpetuity, regardless of the reason for the termination of his employment, he shall:

16.2.1. hold the Confidential Information in strict confidence and will not, nor will he permit any other person to, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give and/or disclose the Confidential Information to any unauthorised person;

16.2.2. take all reasonable steps to minimise the risk of disclosure of the Confidential Information to unauthorised persons, and to ensure the proper and secure storage of any such Confidential Information;

16.2.3. not, during his employment by the Company or thereafter, use for his own benefit or for the benefit of any other person or divulge or communicate to any person or persons, except to those officials of the Company and/or any Group Company whose province it is to know same, any of the Company's or such Group Company's secrets or any other Confidential Information which he may receive or obtain in relation to its affairs or its clients.

16.3. Upon the termination of his employment for any reason whatsoever, the Executive shall return to the Company any documents, papers and other materials relating to the Company or obtained or developed in the course of his employment by the Company and/or whilst providing services to any Group Company or containing or derived from the Confidential Information in his possession, and all copies thereof.

17. INVENTIONS, DISCOVERIES, COPYRIGHT AND DOCUMENTS

17.1. Any discovery or invention or secret process or improvement in procedure made or discovered by the Executive in the course and scope of his employment by the Company in connection with or in any way affecting or relating to the Business or capable of being used or adapted for use by the Company and/or any Group Company or in connection with its business shall be disclosed to the Company and/or any Group Company and shall belong to and be the absolute property of the Company and/or any Group Company or any other company nominated by it.

17.2. The Executive shall, if and when required by the Company and/or any Group Company, apply or join with the Company and/or any Group Company concerned at its expense in applying for Letters Patent or other equivalent protection in the Republic of South Africa or in any other part of the world for such discovery, invention, process or improvement and shall at the expense of the Company and/or any Group Company concerned execute all instruments and do all things necessary for vesting the said Letters Patent or other equivalent protection in the name of the Company and/or any Group Company as sole beneficial owner or in the name of such other company as the Company and/or Group Company may nominate.

17.3. Insofar as may be necessary the Executive hereby assigns to the Company and/or any Group Company the copyright in all present and future works eligible for copyright, including, without limitation, literary or artistic works or software programmes of which he may be the author, which works were or are created, compiled, devised or brought into being during the course and scope of his employment by the Company and/or whilst providing services to any Group Company. No consideration shall be payable by the Company to the Executive in respect of this assignment.

17.4. All reports, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the aforegoing items) which are created, compiled or devised or brought into being by the Executive or come into the Executive's possession during the course and scope of his employment by the Company (including whilst providing services to any Group Company) and all copies thereof will be the property of the Company and/or any Group Company and, upon the Termination Date or earlier if required by the Company and/or any Group Company, such documents and all copies shall be returned to the Company and/or any Group Company.

18. **STIPULATIO ALTERI**

Without derogating from the generality of clause 2.3 above, the undertakings given by the Executive in clauses 16 and 17 of this Agreement constitute a *stipulatio alteri* in favour of any Group Company and are capable of acceptance at any time by such Group Company, whether before or after the Termination Date.

19. **GENERAL**

19.1. The Executive shall adhere to the Company's written policies, procedures or the like which are applicable from time to time, save for where they have been amended by this Agreement.

19.2. No remedy granted by this Agreement shall exclude any other remedy available at law.

19.3. No amendment of this Agreement or any consensual cancellation thereof or any part thereof shall be binding on the parties unless reduced to a written document and signed by them.

19.4. If any of the terms of this Agreement, such as the rate of remuneration payable to the Executive, are varied, the other terms shall, unless otherwise agreed in writing, remain of full force and effect.

19.5. No relaxation or indulgence which either Party may show to the other shall in any way prejudice or be deemed to be a waiver of its rights hereunder nor shall such relaxation or indulgence preclude or estop the other Party from exercising its rights in terms of this Agreement in respect of any further breach.

19.6. This Agreement constitutes the whole agreement between the Parties and no warranties or representations whether express or implied have been given or made by the Company to the Executive.

19.7. The Company shall be entitled to cede and delegate all or any of its rights and obligations under this Agreement to any Group Company, whether such cession and delegation takes place before or after the Termination Date.

20. **DOMICILIA CITANDI ET EXECUTANDI**

20.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses -

20.1.1. the Company:

Physical:	Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg
Postal:	P.O. Box 1091, Johannesburg, 2000
Telefax:	011 800 6132

20.1.2. the Executive:

Physical:	759 Camelford Road, Cornwall Hill Estate, Irene, 0178
Postal:	
Telephone:	012 6671885

20.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

20.3. Either Party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in Gauteng or its postal address or its telefax number, provided that the change shall become effective on the 10th (tenth) Business Day from the deemed receipt of the notice by the other party.

20.4. Any notice to a Party -

20.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 10th (tenth) Business Day after posting (unless the contrary is proved) and provided that any notice to a party sent by prepaid registered post shall only be valid if such notice is simultaneously sent by telefax to the chosen telefax number stipulated in clause 20.1;

20.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

20.4.3. sent by telefax to its chosen telefax number stipulated in clause 20.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

20.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

21. **RESIGNATION**

21.1. On the Termination Date, the Executive will *ipso facto* be deemed to have resigned as a director of the Company and any other Group Company of which he is a director at that date.

21.2. The Executive hereby irrevocably appoints the then auditors of the Company as his agent *in rem suam* to sign all such documents and to do all such acts as may be necessary to effect and implement such resignation.

22. **ELECTRONIC AND OTHER COMMUNICATIONS**

The Executive hereby expressly gives the Company permission to intercept, monitor, read, block or act upon any of the Executive's electronic and other communications made from the Company telephone, Company computer and other Company devices which shall include, but not be limited to, telephonic conversations, e-mails and any stored files.

23. **RULES, REGULATIONS AND POLICIES**

The Company has various rules, regulations, policies and procedures (**"the Policies"**) in place which may be amended from time to time in the sole discretion of the Company. The Policies may be accessed via the Company's intranet, alternatively copies may be requested from the Company's

human resources department. It is the Executive's obligation to familiarise himself with all of the Policies and ensure that he complies therewith.

24. SEVERABILITY

If any provision of this Agreement is found by a court of law to be invalid or void, such provision shall be severed from the remaining provisions, which shall continue to be of force and effect.

25. COSTS

The costs of and incidental to the drawing of this Agreement shall be paid by the Company.

26. ARBITRATION

In the event that the Company's internal mechanisms contemplated in clause 3.3 above have been exhausted, then any dispute concerning the fairness or otherwise of the termination of the Executive's employment, the Executive's performance, a grievance lodged by the Executive, or any other dispute arising out of the Executive's employment that would, save for this clause, fall to be determined by the CCMA or a Court having the requisite jurisdiction, shall be finally resolved by arbitration conducted in accordance with the rules of the Arbitration Foundation of South Africa, by an arbitrator agreed to by the Parties or, failing such agreement, appointment by that Foundation. The Company will be responsible for the costs of the arbitrator, the venue and any recording or transcription services related to any such arbitration.

Signed at ***Megawatt Park*** this _____ day of _____ 2015.

FOR: **ESKOM HOLDINGS LIMITED**

Signature: _____
who warrants that he / she is duly authorised thereto

Name: B S Ngubane CHAIRMAN

Date: _____

Place: Megawatt Park

Witness: _____

Witness: _____

'BSN 23'

Kamogelo Khatle

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, October 9, 2015 3:30 PM
To: Venete Klein
Subject: FW: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Fyi

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Thursday, October 8, 2015 2:29 PM
To: Suzanne Daniels
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Hi Suzanne
I have checked the appointment letters and see that it is silent on the term of contract. You will recall our email exchange on the 5 year contract term. The term is mentioned in the decision memo and was a requirement from Cabinet. I will revert as to whether Minister must write back to the Board on the matter.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 342 4146
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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 08 October 2015 01:13 PM
To: Orcilla Ruthnam
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Hi Orcilla

Will you please check as the letter we received form the Minister does not mention a 5 year contract? Also, all the executives prior to this were permanent employees so I will need to advise the chairperson of the P&G.

Please call if you need to.

Best regards
Suzanne

From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Thursday, October 8, 2015 11:09 AM

To: Suzanne Daniels; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Hi Suzanne

Just to confirm, in view of the Minister's approval of a 5 year contract, subject to annual performance review, the appointment dates will be from 1 October 2015 to 30 September 2020.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
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public enterprises
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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 08 October 2015 09:19 AM
To: Orcilla Ruthnam; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Dear Orcilla

The effective date of the appointment at Eskom for the Group Chief Executive and Group Chief Financial Officer is 1 October 2015.

Best regards
Suzanne

SUZANNE DANIELS
Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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From: Orcilla Ruthnam [mailto:Orcilla.Ruthnam@dpe.gov.za]
Sent: Thursday, October 8, 2015 8:41 AM
To: Suzanne Daniels; Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za

Cc: Lawrence Nevondo; Keromamang Mhlongo; Jumarie Botha
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Dear Suzanne
For purposes of record kindly confirm the effect date of appointment at Eskom for both the CEO and CFO.

The information is required before 10h00 today. Hence, just a response with the effective date will suffice for now.

Your prompt response will be highly appreciated.

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance
+27 (0)82 567 3408 | +27 (0)12 431 1144 | +27 (0)12 342 4146 | Orcilla.Ruthnam@dpe.gov.za
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public enterprises
Department:
Public Enterprises
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Click on the following link to view directions to DPE http://www.dpe.gov.za/home.asp?id=1053

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 02 October 2015 03:22 PM
To: Masenya Selatswa; Baldwin.ngubane@gmail.com; venete@kleininc.co.za
Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Good afternoon

Receipt is hereby confirmed.

Regards
Suzanne

SUZANNE DANIELS
Senior Manager
Office of the Group Executive, Technology and Commercial
Eskom Holdings SOC Limited
Megawatt Park A3E35
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za

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From: Masenya Selatswa [mailto:Masenya.Selatswa@dpe.gov.za]
Sent: Friday, October 2, 2015 2:55 PM
To: Baldwin.ngubane@gmail.com; Suzanne Daniels; venete@kleininc.co.za
Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject: Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Good day

On behalf of Minister Lynne Brown the Minister of Public Enterprises, kindly find attached a letter on the above mentioned subject for the attention of Dr B Ngubane, Interim Chairperson of Eskom.

Please acknowledge receipt.

Thank you,

Kind regards,

Mr Selatswa Masenya
Registry
Ministry of Public Enterprises

+27 (0)12 431 1158 | +27 (0) 21 469 6760 +27 (0) 12 431 1039 | ministry.registry@dpe.gov.za

1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 431 1000

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BSN 24 Am 11 "

"ESKI"

Eskom

The Honourable Ms Lynne Brown (MP)
Minister of Public Enterprises
Infotech Building, Suite 401
1090 Arcadia Street
Hatfield
Pretoria
0001

Dear Minister

REMUNERATION: MR B MOLEFE

The appointment of Mr. B Molefe as Chief Executive of Eskom with effect from 1 October 2015 has reference.

Please find set out herein, a proposal on his remuneration for your consideration.

The table below reflects the September 2015 benchmarks conducted by Mercer, PE Corporate Services and Deloitte Consulting for a Chief Executive of a large company.

Initial & Surname	Description	Current Package	Median	Average	Average	PE Corporate Services	PE Corporate Services	PE Corporate Services	Deloitte
		2015	Mercer	Mercer	Mercer	2015	2015	2015	Comment
			50	75	90	50	75	90	
B Molefe	CHIEF EXECUTIVE	7656008	8581445	9465256	12539152	7538305	8038792	9261995	12350000

The benchmarks reflect that the current remuneration, as paid by Transnet, of Mr. Molefe is below the following statistical measurements, that is:

- 10.6% below the median of Mercer
- 5.4% below the median of PE Corporate Services and
- 37.9% below the average of Deloitte Consulting. The Deloitte benchmark is based on listed JSE companies of similar size.

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Tel +27 11 800 2656 Fax +27 11 800 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/06

RMK

BSN 24

In keeping with his current remuneration paid by Transnet and taking the benchmarks into consideration, I submit for your approval the following annual recommended total guaranteed remuneration package:

EXECUTIVE	POSITION	TOTAL GUARANTEED PACKAGE
B Molefe	Chief Executive	R7 658 000.00

Minister's favorable consideration hereof would be appreciated. Should Minister have any queries hereon, please do not hesitate to contact me.

Thanking you in anticipation.

Yours sincerely

Dr Baleka Ngubane
CHAIRMAN
Date: 15/01/17

APPROVED

Ms Lynne Brown (MP)
MINISTER OF PUBLIC ENTERPRISES
Date:

M.E

BSN 25

"AM 13"

MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15, Hatfield, 0028 Tel: (012) 431 5178/5150 Fax: (012) 431 1039
Private Bag X9079, CAPE TOWN, 8000 Tel: (021) 461 8275/7/469 8760 Fax: (021) 465 2381/461 1741

Dr. B Ngubane
Chairperson
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com/
Danie.Stw@eskom.co.za

Dear Dr Ngubane

Re: Remuneration of Mr B Molefe: Chief Executive of Eskom

Your letter regarding the above-mentioned matter, dated 16 October 2015, has reference.

After having seen the contract of employment between Mr Brian Molefe and Transnet SOC Limited and the recommendations of the Board, I hereby approve the total guaranteed remuneration of R7 656 000.00 to Mr Molefe with effect from the date of appointment.

Following my letter to you, dated 2 October 2015, Cabinet further noted the appointment, subject to the period of employment being confirmed. In this regard, it is my view and that of Cabinet that the period of employment be stipulated as five (5) years, subject to annual performance reviews.

The specified term of the employment contract must also apply to the Chief Financial Officer.

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 25

I look forward to receiving the draft employment contract and performance agreement as requested in the aforementioned letter.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 1/11/2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 27 55

The Hon Ms Lynne Brown (MP)
Minister of Public Enterprises
Infotech Building, Suite 401
1090 Arcadia Street
Hatfield
Pretoria
0001

Dear Minister

RETIREMENT ARRANGEMENTS –BRIAN MOLEFE

As requested by the minister, Eskom is currently drafting the Group Chief Executive's 5 year contract for the minister's input.

As part of the drafting process, however, an important principle regarding Mr Molefe's retirement fund needs to be addressed and I request the minister's prior approval before we submit the draft contract for further input.

It is a fact that the growth in retirement investments and pension funds start off slow but increases exponentially towards the end of an employee's working life. Mr. Molefe has served in numerous high ranking South African organisations at executive level, essentially to stabalise and ensure the future sustainability and performance of those organisations. Due to the nature of these engagements and the short term contractual obligations in Mr Molefe's case, he has not been able to benefit from the growth opportunity in a single pension fund.

To breach this gap, the following contractual stipulations are proposed:

- Regardless of Mr Molefe age after the 5 year termination date, he be allowed to retire from Eskom's service on the basis that he is aged 63.
- That the penalties prescribed by the Eskom Pension and Provident Fund (EPPF) for retirement prior to age 63, be waived.

Head Office
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Eskom Holdings SOC Ltd Reg No 2002/015527/30

M.K

Brug

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 27 56

RETIREMENT ARRANGEMENTS –BRIAN MOLEFE (Continued)

That Eskom carries the cost of such penalties (to be paid over to the EPPF).

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 SOC or government pension fund.

Should the contract be extended, however, it is important to note that the cost of any subsequent penalties (actuarial value) will decrease proportionately.

I trust that this will receive the minister's favorable approval.

Yours sincerely

Dr Ba[illegible]n Ngu[illegible]ane
CHAIRMAN
Date: 25/11/1[illegible]

M-K
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BSN 28 89

Suzanne Daniels

From: Keromamang Mhlongo <Keromamang.mhlongo@dpe.gov.za>
Sent: Thursday, 26 November 2015 10:23 AM
To: Suzanne Daniels
Cc: Masenya Selatswa
Subject: Retirement Arrangements - Brian Molefe

Good morning Sir/Madam.

On behalf of Minister Lynne Brown, Minister of Public Enterprises receipt of your letter is hereby acknowledged with thanks.

The letter will be forwarded to the Minister for her attention.

Thank you.

Kind regards.

Keromamang Mhlongo
Registry
Ministry of Public Enterprises

+27 (0)12 431 1118 +27 (0) 21 469 8760 +27 (0) 12 431 1039 | ministry.registry@dpe.gov.za

1090 Arcadia Street | InfoTech Building Hatfield Pretoria | Switchboard: +27 12 431 1000

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

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COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 29

Suzanne Daniels

From:	Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent:	Thursday, 26 November 2015 10:06 PM
To:	Suzanne Daniels; Kim Davids
Cc:	Zandi Mbilase
Subject:	RE: Retirement Arrangements - Brian Molefe
Attachments:	image003.png; image004.jpg

Noted, Suzanne

From: Suzanne Daniels [DanielSM@eskom.co.za]
Sent: 25 November 2015 08:33 PM
To: Kim Davids; Orcilla Ruthnam
Cc: Zandi Mbilase
Subject: Retirement Arrangements - Brian Molefe

Good evening Kim

On behalf of the Chairman of Eskom, please find attached hereto correspondence for the Honourable Minister's attention.

Please confirm receipt hereof.

Best Regards
Suzanne

Suzanne Daniels
Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327
Email: daniels.suzanne@eskom.co.za<mailto:daniels.suzanne@eskom.co.za>

[eskom2] [cid:image003.png@01D127C0.90803360]

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http://www.49Million.co.za

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Eskom	ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary	

MINUTES OF THE BOARD PEOPLE & GOVERNANCE IN-COMMITTEE MEETING 07-2015/16 HELD ON TUESDAY 9 FEBRUARY 2016 IN THE HUVO NKULU BOARD ROOM, EXECUTIVE FLOOR, MEGAWATT PARK

STRICTLY CONFIDENTIAL

PRESENT

Members

Ms V Klein	Chairperson
Ms N Carrim	Member
Mr B Molefe	Group Chief Executive ("GCE")
Dr B S Ngubane	Member
Mr Z Khoza	Member
Ms C Mabude	Member

Officials

Mr A Minnaar	Executive Support Manager
Ms S Daniels	Company Secretary

APOLOGIES

Mr L Giovanni	Member

1. OPENING AND WELCOME

The Chairperson opened the meeting and welcomed all those present.

2. APOLOGIES

Apologies as above were noted.

3. QUORUM

A quorum being present, the Chairperson declared the meeting duly constituted.

4. DECLARATION OF INTERESTS

There were no declarations pertaining to items on the agenda and a declaration of interest register was circulated for signature.

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5. SAFETY AND EVACUATION

The safety and evacuation procedure to be followed in the event of an emergency had been presented in the standard Committee meeting.

6. ADOPTION OF THE AGENDA

The agenda as tabled was adopted.

7. MATTERS FOR APPROVAL OR INFORMATION

7.1. Office of the Group Chief Executive
F Band and Non-Executive Directors' Remuneration Review

Mr Minnaar addressed the meeting and reported on the status of the implementation of the DPE Remuneration Standards. He reminded the meeting that at the in-committee meeting held in September 2015 it had been resolved that Eskom would implement the revised DPE Remuneration Standards and a letter from the Chairman of the Board to the Minister in October 2015 requested approval for the proposed approach. To date no response had been received on the letter from DPE which resulted in a delay in the finalisation of the Eskom remuneration policy. This situation has now posed a number of challenges including:

- outstanding non-executive directors' fees;
- no salary adjustments made in respect of the F Band employees in 2015;
- no LTI awards were made for the financial years 2013/14 and 2014/15 resulting in no further pay-outs after 31 March 2016;
- delays in finalising the Eskom executive remuneration policy.

All of the above was resulting in Eskom lagging behind the market.

The following resolutions were thus being requested:

- to continue with the existing Eskom remuneration practices in the absence of a response from the Minister;
- to issue the outstanding 2013/14 and 2014/15 LTI grants; and
- to recommend an increase in the fees for non-executive directors, executive directors and prescribed officers.

The meeting discussed the matter, including the remuneration practices relating to the STI and LTI schemes. The GCE enquired over the triggers for LTI grants. In response to a request from the meeting, Mr Minnaar presented the salient features of the LTI as previously approved noting that it covered a three year period. He explained that the STI looked at performance over a 12 month period. Mr Minnaar noted the discretion of the GCE in the award of LTI grants. The GCE enquired over the detail of the said discretion considering the past performance of the business. He explained that individual performance in the STI had no impact on allocations related to the LTI. The annual grant allocations were purely based on the Group Chief Executive's discretion. These allocations were made between 0 to 2 times pensionable earnings as per the scheme rules In the absence of performance, no grants

would be issued to an executive and such individual would therefore not be incentivised to stay on in the company.

The Chairperson noted that the rules could not be changed retrospectively but only going forward. The GCE noted that in his view guidance would be required as to the extent and the exercise of the discretion in this regard. The Chairperson again noted that in her opinion in respect of the past two years, the rules that were in place had to be applied. The GCE suggested that the focus should be on the way forward rather on the historic position. He noted that he had a particular view on the matter but required expert guidance as to the practical implications thereof.

The Chairperson again pointed out that the non-allocation over the past 2 years needed to be considered. Mr Minnaar explained the thinking behind the moratorium on grants while DPE approval was awaited. The Chairperson suggested that a special Committee meeting be arranged in order to finalise this matter. She enquired as to whether the Committee was comfortable with the same principles underlying grants being applied retrospectively in respect of the 2013/14 and 2014/15 grants. In response to a question from Ms Mabude, Mr Minnaar explained that grants for 2014 and 2015 would be paid-out in 2017 and 2018.

The Chairperson enquired over the approach in respect of employees who were no longer in the company's employment and where settlements had been agreed. It was noted that there should be no further obligations to such employees. The Chairperson also noted that no payments would be made now but only awards made. The meeting debated the matter and the Chairperson enquired over whether the matter should be held back for now.

RESOLVED THAT:

7.1.1 the GCE considers the outstanding 2013/14 and 2014/15 grants and apply the same allocations as previously if comfortable; and

7.1.2 a new proposal be made on the 2016 /17 grant allocations.

7.2. Office of the Group Chief Executive
Implementation date for increases of F Bands

Mr Minnaar explained the background to the matter. Increases were now being approved by the Minister at the Annual General Meeting each year but only implemented in October of every year. From a chronological point of view this was not making sense and needed to be synchronised. He noted that no increase was awarded in 2015. The request was for increases of F Band salaries to be implemented with effect from 1 April each year.

The Chairperson noted that bringing the increase date forward would to some extent soften the blow of no increase having been given in 2015. However, this matter needed to be further discussed with the Minister. The GCE tabled his views in this regard, sharing the concern expressed by the Chairperson.

RESOLVED THAT:

7.2.1 the increase date of F Bands be brought forward to 1 April each year.

7.3. Office of the Group Chief Executive
Proposed salary increases

Mr Minnaar explained the nature and extent of market survey that had been undertaken in October 2015 and had been submitted to the Committee for information purposes. He noted that the request now was to consider the level of increases going forward. The overall executive increases for 2014/15 was 6.6% while the actual increases recorded were 7.1%. The market trend seemed to be way above CPI. Preliminary indications for increases of executive remuneration packages for 2015/16 were around 6.5%. Mr Minnaar noted that he had done a comparison from August 2010 between market trends, CPI and Eskom increases. He presented the findings to the meeting noting the sources of benchmarking information.

Mr Minnaar proposed a 5% increase on executive remuneration effective 1 April 2016 to be submitted to the Minister. The Chairperson requested that the letter to the Minister should acknowledge the pressure currently being exerted in this regard by various parties.

RESOLVED THAT:

7.3.1 a proposed increase of 5% on executive remuneration effective 1 April 2016 be recommended to the Minister of Department of Public Enterprises for approval.

7.4 Office of the Group Chief Executive
Non-executive directors' fees

Mr Minnaar presented the matter, noting that members were in fact conflicted as this matter related to their own income. Notwithstanding, in his view the matter needed to again be raised as current payment practices were not aligned with market trends or King III recommendations. Again, the lack of response from the office of the Minister was resulting in a delay in implementation of the revised DPE Remuneration Standards as far as board fees were concerned.

The GCE was excused from the meeting.

Mr Minnaar presented the current fee structure based on the old guidelines. In the absence of a response from the Minister, the request was to align the Eskom Board fee structure with that of Transnet as approved by DPE. He compared the fee structures of these two entities and proposed that the Minister be requested to align the fee structures. The Chairperson noted that this matter had been informally discussed with the Minister the previous year who had noted her support for such a proposal subject to due process being followed. However, again considering the current challenges, the timing of these increases was a major concern to the Minister.

RESOLVED THAT:

7.4.1 the alignment of the Board fee structure between that of Eskom and Transnet be recommended to the Minister of Department of Public Enterprises for approval.

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The Chairperson noted the significant efforts of the Board Chairman to date to correct the misaligned Board fee structure.

7.5 Group Chief Executive: Conclusion of contract

Mr Minnaar reminded the meeting that the Minister had requested that the contract be concluded for a 5 year period and that she had also requested to have oversight over the contract. In addition, Eskom was given until the end of January 2015 to conclude the matter. A letter had however been addressed to the Minister regarding the retirement of the GCE and a response was awaited.

Mr Minnaar noted that a fixed term contract of 5 years at this level was a first for Eskom and was also not aligned with best practice. He explained the negative impact of this on the retirement benefits of the relevant individuals (GCE and CFO) and proposed that approval be granted for remedial action based on past practices and precedents in Eskom to counter this impact, which could include additional pensionable service being granted and/or penalties being waived. Mr Minnaar quoted a number of examples where this had been done in Eskom in the past.

Mr Minnaar thereafter spelled out the required resolution noting the current rule that staff over 50 years of age with at least 10 years' service were entitled to retire as per the Eskom Pension and Provident Fund rules. The request was for the Eskom rules to be amended in respect of executive directors with fixed term contracts to make up the shortfall in years, wave the penalties and refund to the Pension and Provident Fund the actual cost relating to the additional service. He explained that refunding the cost would not reflect as emoluments of the executive director in question as this would constitute a transaction between Eskom and the Fund only with no money being paid to the individual.

The Chairperson summarised her understanding of the proposal as far as it would relate to the GCE. In respect of the CFO, the matter would be more complicated as he would not be 50 years of age at the time that the fixed term contract came to an end. The meeting enquired whether a proposal could be considered for the CFO and tabled for consideration in due course.

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 costs for additional service added, plus penalties applicable to early retirement; and

7.5.3 a proposal in respect of the Chief Financial Officer to be considered and submitted to the Committee in due course.

8. CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

8.1 Minutes of the Previous Meeting

Reference Document 5.1(a)

The minutes of the In-Committee meeting No. 06-2015/16 held on 22 October 2015, having been circulated, were considered. The Chairperson requested that the minutes be carefully reviewed to ensure correctness. She noted, for example, an error in the minutes that needed to be corrected. The Company Secretary confirmed that the wording of the relevant item would be revised accordingly. The Chairperson furthermore noted that discussions around the travel policy and appointment of non-executive directors on the board of subsidiary companies had been discussed. The Company Secretary was requested to consider the matter based on the provisions of the Eskom Memorandum of Incorporation.

RESOLVED THAT:

8.1.1 the minutes of the People and Governance Committee In-Committee meeting No. 06-2015/16 held on 22 October 2015 are approved as an accurate reflection of the proceedings, subject to the proposed amendments; and

8.1.2 the Chairperson of this meeting is duly authorised to sign the minutes.

9. MATTERS ARISING FROM PREVIOUS MINUTES

9.1 Matters arising

Reference Document 6.1(a)

The Action List as included in the meeting papers was **NOTED.**

10. GENERAL

There were no further matters for discussion.

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11. CLOSURE

There being no further matters for discussion the Chairperson declared the meeting closed.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRPERSON

25/5/2016
DATE

BSN 31

11 Apr 2011

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Eskom

EXECUTIVE EMPLOYMENT CONTRACT

Contract was only signed in March 2016.

EMPLOYMENT CONTRACT

entered into between

ESKOM HOLDINGS SOC LIMITED

(Registration No. 2002/015527/30)

and

BRIAN MOLEFE

(Identity No. 6812285775085)

BSN 31

C13.1

WHEREBY IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

1.1. words importing -

1.1.1. any one gender include the other gender;

1.1.2. the singular include the plural and vice versa; and

1.1.3. natural persons include created entities (corporate or unincorporate) and the state and vice versa;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

1.2.1. "Act" means the Labour Relations Act, 1956 as amended;

1.2.2. "Agreement" means this agreement together with the annexures thereto;

1.2.3. "Associated Company" means an Entity in which the Company and/or its subsidiaries holds at least 20 % (thirty percent) of the interest of such Entity;

1.2.4. "Board" means the board of directors of the Company from time to time;

1.2.5. "Business" means each and every business undertaking engaged in by the Company and each and every Group Company from time to time;

1.2.6. "Business Day" means any week day, excluding Saturdays, Sundays and public holidays in the Republic of South Africa;

1.2.7. "Commencement Date" means [illegible];

1.2.8. "Company" means Eskom Holdings Limited (Registration No. 2002/015527/06);

1.2.9. "Executive" means Brian Molefe (identity no. [illegible]);

1.2.10. "Entity" includes any association, business, close corporation, company, concern, enterprise, firm, partnership, person, trust, undertaking, voluntary association or other similar entity whether corporate or unincorporate;

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1.2.11. "Group Company" means the Company, any Associate company of the Company, any partnership in which the Company is a partner, any company which is a subsidiary company of the Company, any company which is a holding company of the Company, any company which is a subsidiary of or is controlled by such holding company, any division of such holding company and/or any joint venture company of which the Company or such holding company is a shareholder, and collectively referred to as "Group Companies";

1.2.12. "Parties" means the Executive and the Company and a reference to "Party" shall embrace each one of them individually;

1.2.13. "Pensionable Age" means 60 (sixty) years of age;

1.2.14. "Signature Date" means the date of signature of this Agreement by the last signing of the signatories hereto;

1.2.15. "Termination Date" means the date upon which the Executive's employment by the Company ceases or is terminated for any reason whatsoever;

1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;

1.4. if any provision in a definition is a substantive provision conveying rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;

1.5. when any number of days or Business Days is prescribed in this Agreement, same shall mean Business Days;

1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;

1.8. where any term is defined within the context of any particular clause in this Agreement, 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 Agreement, notwithstanding that the term had not been defined in this "interpretation clause";

1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination

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or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. APPOINTMENT OF EXECUTIVE

2.1. The Executive commenced employment with the Company on 1 October 2015.

2.2. With effect from the Commencement Date, the Company appoints the Executive as Group Chief Executive of the Company. The Executive accepts such appointment.

2.3. To the extent that the Executive is required to become a director of any Group Company, the Executive undertakes to so accept to any such Group Company on the terms of this Agreement and/or mutatis mutandis. Such undertaking granted by the Executive in this Agreement shall also constitute a stipulation alter's in favour of any Group Company and is capable of acceptance at any time by it.

2.4. The Executive will be employed at the Company's premises situated at Eldoret, Megawatt Park, Maxwell Drive, Sandhurst or such other location as the Company may determine from time to time on notification to the Executive.

2.5. The Executive warrants in favour of the Company that he is not contractually or otherwise prohibited or limited from fulfilling the obligations in terms of this Agreement.

3. PERIOD OF EMPLOYMENT

3.1. The Executive's employment with the Company is based on a fixed term contract that expires on 30 September 2020 (the Termination Date). The employment shall continue until the date subject to either Party being entitled to terminate the employment relationship by giving the other not less than 6 (six) months' written notice. The Company may elect to pay the equivalent in monetary value.

3.2. Notwithstanding anything to the contrary contained herein, the Company shall be entitled to terminate the Executive's employment with or without notice or on such other terms as considers appropriate (in any reason) justified in law.

3.3. In dealing with the Executive's [illegible] entitlements or any other issue arising from or relation to the Executive's employment with the Company, the Company shall be guided by inter alia, the Company's disciplinary, performance management, grievance and all other HR, the Company's disciplinary, performance management, grievance and all other procedures applicable from time to time, with the Board specifically having the discretion

[illegible]

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appoint a non-executive director to chair any disciplinary, performance, grievance or other enquiry or utilise an external third party for that purpose.

4. EFFECT OF TERMINATION OF EMPLOYMENT

The termination of the Executive's employment for any reason whatsoever shall not affect the operation of any provisions of this Agreement to the extent to which they confer rights or impose obligations upon the Parties which are exercisable or enforceable after the Termination Date, and such provisions shall to that extent continue to be of full force and effect. The termination of the Executive's employment shall be without prejudice any rights which have accrued to the Parties as at the Termination Date.

5. SUSPENSION OF EMPLOYMENT

If the Company suspects that the Executive is guilty of the conduct which may, if proved, justify his dismissal, or has committed a breach of any of the terms of this Agreement, it may, pending a duly conducted enquiry into the alleged conduct in question, but without prejudice to its right of summary dismissal and without giving rise to any claim for damages or otherwise against it, suspend the Executive on a reasonable paid basis having regard to the common law and the provisions of the Act and other applicable statutes during which the Executive shall:-

5.1. not be entitled to attend work at the premises of the Company and/or any Group Company; and

5.2. be entitled to his Remuneration Package.

6. DUTIES OF EXECUTIVE

The Executive shall:-

6.1. satisfactorily, carry out, inter alia, the duties and responsibilities as are from time to time assigned to him, and which are consistent with his status, including, but not limited to, the key performance indicators which are agreed to on an annual basis with the Board;

6.2. devote the whole of his time and attention during the Company's normal business hours, or such reasonable amount of additional time as may be necessary, having regard to the obligations of the Business, to the Business and shall not, while he is employed by the

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Company, without the Company's prior written consent, whether as proprietor, partner, director, shareholder, the holder of an option, member, employee, consultant, contractor, financier, agent, representative, assistant, whether for reward or not, directly or indirectly be interested or engaged in or concerned with or employed by any company, corporation, business, trade, undertaking or concern –

6.2.1. other than that of the Company and/or any Group Company; or

6.2.2. which competes with the business,

the undertakings in clauses 6.2.1 and 6.2.2 being separate, provided that he shall not be deemed to have breached the undertakings by reason of –

6.2.3. his having been the financial interests in any business, trade, undertaking or concern which does not directly or indirectly compete with the Company and/or any Group Company and which has been disclosed to the Company in writing and/or after disclosing his intention to do so to the Company in writing, his accepting appointment as a non-executive director of or his acquiring a financial interest in any such business, trade, undertaking or concern and devoting a reasonable amount of time to such financial interests and directorships, provided that no such interests of or activities by the Executive are prejudicial to or adversely affect the performance of his duties hereunder; and/or

6.2.4. his holding shares (carrying ~~out~~ voting) in any company the shares of which are listed on a recognised stock exchange if the shares owned by him (including indirectly through any other Entity) do not in the aggregate constitute more than 5% (five per cent) of any class of the issued share capital of such company; and/or

6.2.5. his being an officer of or holding shares in the Company and/or any Group Company;

6.3. ~~allow the actions and directions of the Board and with the utmost endeavours to protect and promote the business and interests of the Company and the Group Companies and to preserve their reputation and goodwill;~~

6.4. be true and faithful to the Company and all Group Companies in all dealings and transactions whatsoever relating to their business and interests; and

6.5. submit to the Board or to any person nominated by it such information and reports as may be required of him in connection with the performance of his duties and the business.

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7. REMUNERATION

7.1. As remuneration for the services hereunder, the Company shall pay to the Executive a total annual guaranteed remuneration package of R7 [illegible] 000.00 (seven million [illegible] hundred and fifty six thousand rand) ("Remuneration Package"), less tax and other lawful deductions. The specific structure of the Executive's Remuneration Package will be agreed upon by the Company and the Executive as soon as possible after the Signature Date. The salary element of such package shall be paid in 12 (twelve) equal monthly instalments and directly into the Executive's bank account monthly in arrears.

7.2. The Remuneration Package referred to in clause 7.1 shall be subject to annual review by the Company's remuneration committee in April of each year.

8. SHORT TERM INCENTIVE SCHEME

8.1. The Executive will be entitled to participate in the Company's short term incentive scheme in accordance with the rules applicable thereto from time to time.

8.2. The payment of any short term incentive will be taxable in the hands of the Executive but will not form part of the Executive's pensionable remuneration.

9. LONG TERM INCENTIVE SCHEME

9.1. The Executive be entitled to participate in the Company's long term incentive ("LTI") scheme in accordance with the rules applicable thereto from time to time. The broad principles of the LTI scheme have already been furnished to the Executive.

9.2. The payment of any LTI will be taxable in the hand of the Executive but will not form part of the Executive pensionable remuneration.

9.3. In the event of the vesting date occurring beyond the agreement term of the contract, and the contract terminating on the Termination Date, all such granted values will be deemed to have accrued on the Termination Date and will be calculated as part of the final payment to you hereto as vesting after the specified term of the contract is dependent on targets/ performance criteria the performance will be deemed to be "on target". Such final payment shall be fully inclusive of any amounts owed to you in terms of Edcon's Long Term Incentive Scheme rules.

9.4. On resignation by mutual agreement all awards allocated will be payable on a [illegible] basis

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10. PENSION AND PROVIDENT FUND

10.1. The Executive shall continue as a member of the Bidvest Pension and Provident Fund or any other such fund established or participated in by the Company from time to time, subject to the rules thereof.

10.2. The Company shall pay the Executive's monthly contributions to the fund on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

11. MEDICAL AID

11.1. The Executive shall continue as a member of the Company's Medical Aid Scheme or any other medical aid scheme that the Company may contract with from time to time, subject to the rules and regulations of that scheme.

11.2. The Company shall pay the Executive's monthly premiums to that scheme on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

12. GROUP LIFE INSURANCE AND FUNERAL BENEFIT

12.1. The Executive shall continue to be entitled to Group Life Assurance and Funeral Benefit Cover, subject to the rules and regulations applicable thereto from time to time.

12.2. The Company shall pay the Executive's contributions thereto on behalf of the Executive, monthly in arrears, the cost of which forms part of the Remuneration Package contemplated in clause 7 above.

13. ADDITIONAL BENEFITS

13.1. The Executive shall be entitled to the following additional benefits which are in addition to the Executive's Remuneration Package contemplated in clause 8 above:

13.1.1. Bank Fleet Card

13.1.1.1. The Executive shall be entitled to use the Company's Bank Fle Card, in order to conduct his duties and responsibilities for t

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Company, the use of which is governed by the Company's rules and policies applicable thereto from time to time.

13.1.1.2. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

13.1.2. Financial/Tax Planning Fees

13.1.2.1. The Executive shall be entitled to receive both financial and tax planning advice, the reasonable costs of which will be borne by the Company in accordance with the rules and policies applicable thereto from time to time.

13.1.2.2. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.3. Personal Security

13.1.3.1. The Company is desirous of ensuring the safety of the Executive and the security of the Executive's residence.

13.1.3.2. The Company will bear the reasonable costs associated with the Executive's home security system, the installation and maintenance thereof, the monthly subscriptions to a security company, guards, vehicle tracking and armed response, in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.3.3. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.4. Telephone Services

13.1.4.1. The Company will keep the lines of the Executive's telephone that is utilized for business purposes at the residence of the Executive and in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.4.2. The Executive is issued with a cell phone and the Company will bear the business usage costs thereof in accordance with the Company's rules and policies applicable thereto from time to time.

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13.1.4.3. The Executive shall be responsible for any taxes payable by him in respect of any taxable personal benefit which he derives therefrom.

14. ANNUAL LEAVE

The Executive shall continue to qualify for annual leave in accordance with the Company's annual leave policy. The Executive acknowledges that he has had sight of that policy.

15. SICK LEAVE

The Executive shall continue to qualify for sick leave in accordance with the Company's sick leave policy. The Executive acknowledges that he has sight of that policy.

16. CONFIDENTIALITY

16.1. In performing his duties and responsibilities with the Company and/or any Group Company, the Executive will have access to confidential information or materials describing or relating to the Company and/or any Group Company, its clients and/or third parties to whom the Company and/or any Group Company has a duty of confidentiality (the "Third Parties") including, but not limited to, materials describing or relating to the business, affairs, processes, trade secrets, client lists, trade connections, policies and/or procedures of the Company and/or any Group Company, its clients and/or the Third Parties, formulae, strategies, materials, processes, computer materials (including but not limited to source or object codes, data files, computer listings, computer programs and other computer materials regardless of the medium in which they are stored), and/or other commercial information of the Company and/or any Group Company, its clients and/or the Third Parties (the "Confidential Information").

16.2. With respect to such Confidential Information, the Executive agrees that during his employment by the Company and thereafter in perpetuity, regardless of the reason for its termination of his employment, he shall:

16.2.1. hold the Confidential Information in strict confidence and will not, nor will it permit any other person to, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give and/or disclose the Confidential Information to an unauthorised person;

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16.2.2. take all reasonable steps to minimise the risk of disclosure of the Confidential Information to unauthorised persons, and to ensure the proper and secure storage of any such Confidential Information;

16.2.3. not, during his employment by the Company or thereafter, use for his own benefit or for the benefit of any other person or divulge or communicate to any person or persons, except to those officials of the Company under any Group Company whose province it is to know same, any of the Company's or such Group Company's secrets or any other Confidential Information which he may receive or obtain in relation to its affairs or its clients.

16.3. Upon the termination of his employment for any reason whatsoever, the Executive shall return to the Company any documents, papers and other materials relating to the Company or obtained or developed in the course of his employment by the Company and/or whilst providing services to any Group Company or containing or derived from the Confidential Information in his possession, and all copies thereof.

17. INVENTIONS, DISCOVERIES, COPYRIGHT AND RECORDINGS

17.1. Any discovery or invention or secret process or improvement in processes made or discovered by the Executive in the course and scope of his employment by the Company in connection with or in any way affecting or relating to the business or capable of being used or adapted for use by the Company and/or any Group Company or in connection with its business shall be disclosed to the Company and/or any Group Company and shall belong to and be the absolute property of the Company and/or any Group Company or any other company nominated by it.

17.2. The Executive shall, if and when required by the Company and/or any Group Company, apply or join with the Company and/or any Group Company concerned at its expense in applying for Letters Patent or other equivalent protection in the Republic of South Africa or in any other part of the world for such discovery, invention, process or improvement and shall at the expense of the Company and/or any Group Company concerned execute all instruments and do all things necessary for vesting the said Letters Patent or other equivalent protection in the name of the Company and/or any Group Company as sole beneficial owner or in the name of such other company as the Company and/or any Group Company may nominate.

17.3. Insofar as may be necessary the Executive hereby assigns to the Company and/or any Group Company the copyright in all present and future works eligible for copyright, belonging within

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invention, literary or artistic works or software programmes of which he may be the author, which works were or are created, compiled, devised or brought into being during the course and scope of his employment by the Company and/or whilst providing services to any Group Company. No consideration shall be payable by the Company to the Executive in respect of this assignment.

17.4. All reports, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the foregoing items) which are created, compiled or devised or brought into being by the Executive or come into the Executive's possession during the course and scope of his employment by the Company (including whilst providing services to any Group Company) and all copies thereof will be the property of the Company and/or any Group Company and, upon the Termination Date or earlier if required by the Company and/or any Group Company, each downloadable and all copies shall be returned to the Company and/or any Group Company.

18. **SURVIVAL AFTER TERMINATION**

Without derogating from the generality of clause 2.3 above, the undertakings given by the Executive in clauses 16 and 17 of this Agreement constitute a stipulatio alteri in favour of any Group Company and are capable of acceptance at any time by such Group Company, whether before or after the Termination Date.

19. **GENERAL**

19.1. The Executive shall adhere to the Company's written policies, procedures or rules which are applicable from time to time, save for where they have been amended by this Agreement.

19.2. No remedy granted by this Agreement shall exclude any other remedy available at law.

19.3. No amendment of this Agreement or any concession, permission, waiver or any provision thereof shall be binding on the parties unless reduced to a written document and signed by them.

19.4. If any of the terms of this Agreement, such as the rate of remuneration payable to the Executive, are varied, the other terms shall, unless otherwise agreed in writing, remain in full force and effect.

19.5. No relaxation or indulgence which either Party may show to the other shall in any way prejudice or be deemed to be a waiver of its rights hereunder or prevent such relaxation or

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indulgence precludes or estops the other Party from exercising its rights in terms of this Agreement in respect of any further breach.

19.6. This Agreement constitutes the whole agreement between the Parties and no warranties or representations whether express or implied have been given or made by the Company to the Executive.

19.7. The Company shall be entitled to cede and delegate all or any of its rights and obligations under this Agreement to any Group Company, whether such cession and delegation takes place before or after the Termination Date.

20. DOMICILIA CITANDI ET EXECUTANDI

20.1. The Parties choose as their domicilia citandi et executandi for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:-

20.1.1. The Company:

Physical: Mediterranean Bank, Mutual Drive, Strijdompark, Johannesburg
Postal: P.O. Box 2061, Johannesburg, 2000
Telefax: 011 350 5152

20.1.2. The Executive:

Physical: 7th Corniglione Road, Corniglione Hill Estate, Ivory, 0179
Postal: P.O. Box 78, Corniglione Hill, 0179
Telephone: 012 567 1555

20.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

20.3. Either Party may by notice to the other party change its physical address chosen as its domicilium citandi et executandi to another physical address where postal delivery occurs in Gauteng or its postal address or its telefax number, provided that the change shall become effective on the 10th (tenth) Business Day from the deemed receipt of the notice by the other party.

20.4. Any notice to a Party -

20.4.1. sent by prepaid registered post (by airmail if appropriate) to a seventy kilometre envelope to it at its physical address chosen as its domicilium citandi et executandi at which post is delivered shall be deemed to have been received on the

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10th (tenth) Business Day after posting (unless the contrary is proved) and provided that any notice to a party sent by prepaid registered post shall only be valid if such notice is simultaneously sent by telefax to the chosen telefax number stipulated in clause 20.1;

20.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

20.4.3. sent by telefax to its chosen telefax number stipulated in clause 20.1, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

20.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice of communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

21. RESIGNATION

21.1. On the Termination Date, the Executive will (and shall be deemed to have resigned as a director of the Company and any other Group Company of which he is a director at that date.

21.2. The Executive hereby irrevocably appoints the then auditors of the Company as his agent *in rem suam* to sign all such documents and to do all such acts as may be necessary to effect and implement such resignation.

22. ELECTRONIC AND OTHER COMMUNICATIONS

The Executive hereby expressly gives the Company permission to intercept, examine, read, block or act upon any of the Executive's electronic and other communications made from the Company telephone, Company computer and other Company devices which shall include, but not be limited to, telephonic communications, e-mails and any stored files.

BSN 31

CBIS

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FOR: BISCOM HOLDINGS LIMITED

Signature: _____

Name: S O Nduka CHAIRMAN

Date: 15/03/16

Place: Maiduguri

Witness: _____

Witness: _____

Signed at Sandton this 7th day of March, 2016

BRAM NDLEPE

Signature: _____

Name: B Ndlela GROUP CHIEF EXECUTIVE

Date: 7.3.16

Place: Sandton

Witness: _____

Witness: _____

BSN 32 AM26"

RESOLUTION

AT ITS MEETING ON 9 FEBRUARY 2016, THE PEOPLE AND GOVERNANCE COMMITTEE OF THE ESKOM BOARD RESOLVED THE FOLLOWING:

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.

2. In cases where Executive Director's (appointed on fixed term contracts) 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

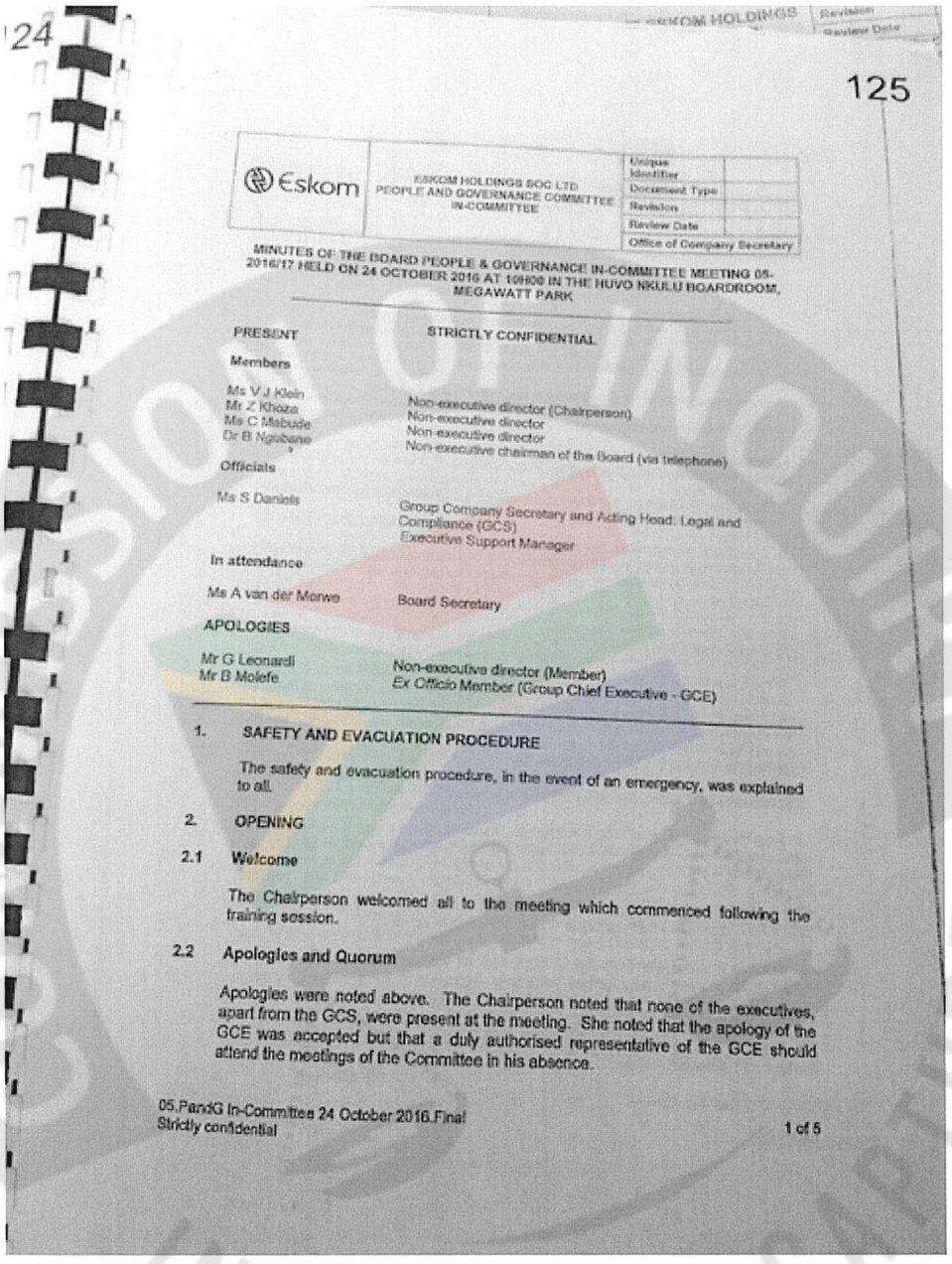
   iii. Refund EPPF actual costs for additional service added, plus penalties applicable to early retirement

Dr B S Ngubane
CHAIRMAN: ESKOM

Ms V J Klein
CHAIRPERSON: PEOPLE AND GOVERNANCE COMMITTEE

COMMISSION OF INQUIRY INTO STATE CAPTURE

'BSN 34'



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ESKOM HOLDINGS

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ESKOM HOLDINGS SOC LTD
PEOPLE AND GOVERNANCE COMMITTEE
IN-COMMITTEE

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MINUTES OF THE BOARD PEOPLE & GOVERNANCE IN-COMMITTEE MEETING 05-2016/17 HELD ON 24 OCTOBER 2016 AT 10H00 IN THE HUVO NKULU BOARDROOM, MEGAWATT PARK

STRICTLY CONFIDENTIAL

PRESENT

Members

Ms V.J Klein	Non-executive director (Chairperson)
Mr Z Khoza	Non-executive director
Ms C Mabude	Non-executive director
Dr B Ngubane	Non-executive chairman of the Board (via telephone)

Officials

Ms S Daniels	Group Company Secretary and Acting Head: Legal and Compliance (GCS) Executive Support Manager

In attendance

Ms A van der Merwe	Board Secretary

APOLOGIES

Mr G Leonardi	Non-executive director (Member)
Mr B Molefe	*Ex Officio* Member (Group Chief Executive - GCE)

1. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation procedure, in the event of an emergency, was explained to all.

2. OPENING

2.1 Welcome

The Chairperson welcomed all to the meeting which commenced following the training session.

2.2 Apologies and Quorum

Apologies were noted above. The Chairperson noted that none of the executives, apart from the GCS, were present at the meeting. She noted that the apology of the GCE was accepted but that a duly authorised representative of the GCE should attend the meetings of the Committee in his absence.

COMMISSION OF INQUIRY INTO STATE CAPTURE

A quorum being present, the Chairperson declared the meeting duly constituted.

2.3 **Adoption of Agenda**

The agenda as tabled was accepted with the following amendments:

3. **DECLARATIONS OF INTEREST**

No interests were declared pertaining to the matters on the agenda.

4. **MATTERS FOR INFORMATION**

4.1 **Office of the Group Chief Executive**
Executive Directors Remuneration

Mr Minnaar informed the meeting that the following matters would be dealt with at the meeting in February 2017:

- Grant allocations for Grant 12
- Grant 12 and 13 vesting conditions for 3 year vesting period
- A review of variable remuneration to align with best practice
- Salary increases

4.2 **Office of the Group Chief Executive**
F Band Remuneration

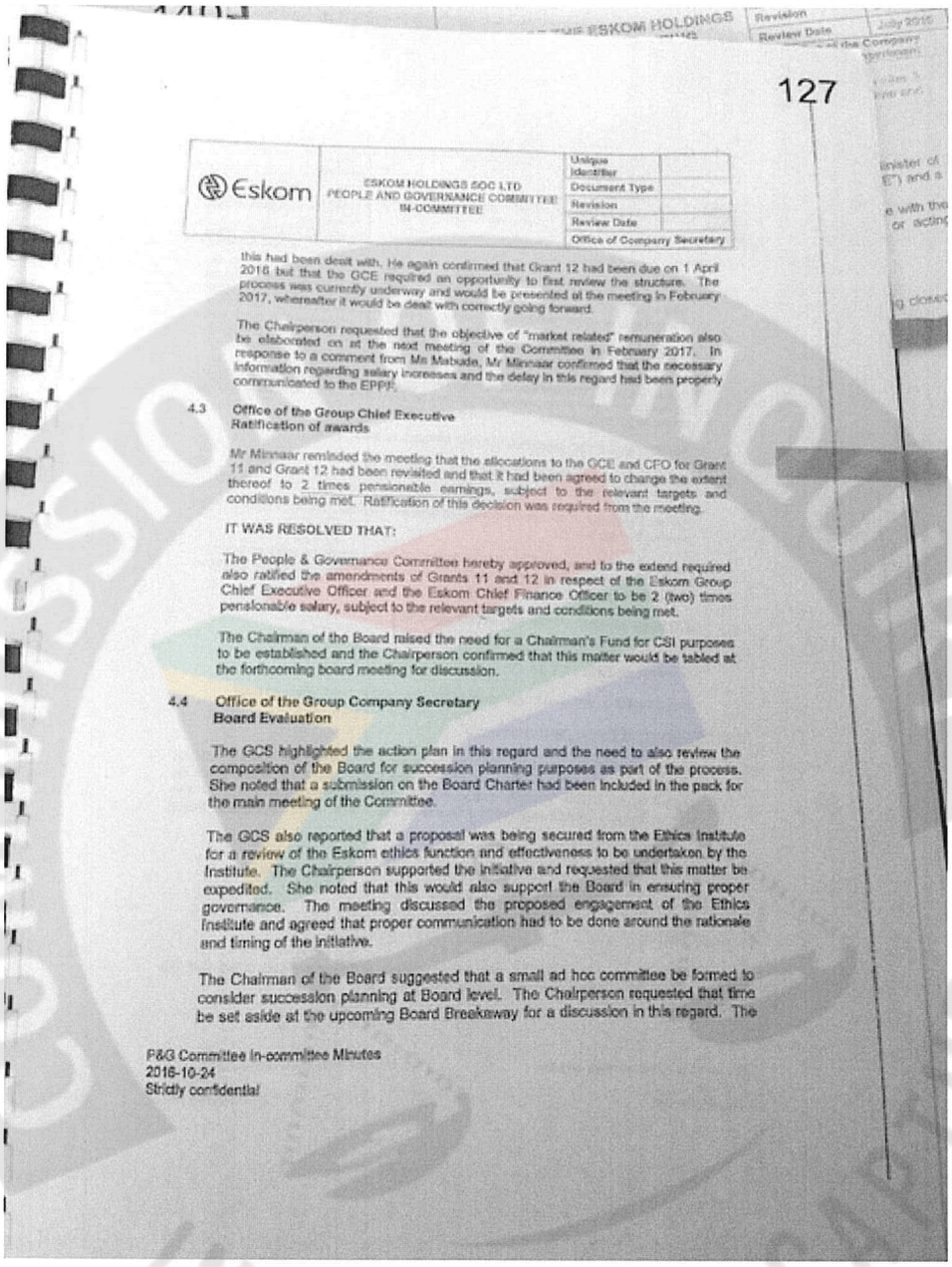
In response to a request from the Chairperson, the GCS provided an update on the status of the F Band remuneration following the decision of the Minister at the AGM on 1 July 2016. She confirmed that a letter had been sent and that a request for indulgence had been received in response. The Chairperson noted that this was the second year with no increases for F Band employees. She suggested that a follow up letter be sent, highlighting the challenges to the business as a result of the delay and imploring the Minister to look at this favourably. The Chairman of the Board supported the proposal for such a letter for him to sign.

In response to a question from Ms Mabude, it was confirmed that the amount of the proposed increase (based on a 5% increase) had been accrued with effect from 1 April 2016.

Mr Khoza commented on the fiduciary duties of the Board in this regard. It was noted that a 9.2% increase had been agreed to in the bargaining unit.

In response to a question from the Chairperson, Mr Minnaar confirmed that Grant 12 would under normal circumstances have been allocated in 2016. The Chairperson again expressed her concern over the delay. She acknowledged the need for the GCE to still sign off on the awards but noted that it would have been preferable for the proposed awards to have also been tabled as part of the submission to the Minister. Mr Minnaar explained why Grants 10 and 11 had been held back and how

COMMISSION OF INQUIRY INTO STATE CAPTURE



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IN-COMMITTEE

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this had been dealt with. He again confirmed that Grant 12 had been due on 1 April 2016 but that the GCE required an opportunity to first review the structure. The process was currently underway and would be presented at the meeting in February 2017, whereafter it would be dealt with correctly going forward.

The Chairperson requested that the objective of "market related" remuneration also be elaborated on at the next meeting of the Committee in February 2017. In response to a comment from Ms Matsabe, Mr Minnaar confirmed that the necessary information regarding salary increases and the delay in this regard had been properly communicated to the EPPF.

4.3 **Office of the Group Chief Executive**
Ratification of awards

Mr Minnaar reminded the meeting that the allocations to the GCE and CFO for Grant 11 and Grant 12 had been revisited and that it had been agreed to change the extent thereof to 2 times pensionable earnings, subject to the relevant targets and conditions being met. Ratification of this decision was required from the meeting.

IT WAS RESOLVED THAT:

The People & Governance Committee hereby approved, and to the extend required also ratified the amendments of Grants 11 and 12 in respect of the Eskom Group Chief Executive Officer and the Eskom Chief Finance Officer to be 2 (two) times pensionable salary, subject to the relevant targets and conditions being met.

The Chairman of the Board raised the need for a Chairman's Fund for CSI purposes to be established and the Chairperson confirmed that this matter would be tabled at the forthcoming board meeting for discussion.

4.4 **Office of the Group Company Secretary**
Board Evaluation

The GCS highlighted the action plan in this regard and the need to also review the composition of the Board for succession planning purposes as part of the process. She noted that a submission on the Board Charter had been included in the pack for the main meeting of the Committee.

The GCS also reported that a proposal was being secured from the Ethics Institute for a review of the Eskom ethics function and effectiveness to be undertaken by the Institute. The Chairperson supported the initiative and requested that this matter be expedited. She noted that this would also support the Board in ensuring proper governance. The meeting discussed the proposed engagement of the Ethics Institute and agreed that proper communication had to be done around the rationale and timing of the initiative.

The Chairman of the Board suggested that a small ad hoc committee be formed to consider succession planning at Board level. The Chairperson requested that time be set aside at the upcoming Board Breakaway for a discussion in this regard. The

COMMISSION INTO STATE CAPTURE

Chairperson reported on her discussions with the GM: HR regarding Group succession planning and her discomfort in this regard. She noted that the GCE had also expressed discomfort on the subject matter. Extension had been granted until the first quarter of the new financial year for a detailed succession plan for the Group to be submitted to the Committee for consideration. The Chairman of the Board noted the urgency around emergency succession in respect of the GCE and CFO. He confirmed that this matter would be addressed during the course of the week.

In conclusion, the Chairperson requested that a peer review of directors' performance be included as part of the evaluation process as previously done. The GCS agreed to look at this as part of the 2017 evaluation process.

5. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETINGS

5.1 **Minutes of Meeting No. 01-2016/17 held on 24 May 2016**
Reference document 5.1

The draft minutes of the previous meeting held on 24 May 2016 as included in the meeting file was **NOTED**.

The Chairperson requested the Company Secretary to review the minutes based on the meeting notes and/or recording and to thereafter present to her for signature. The Committee supported the proposal.

6. MATTERS ARISING FROM PREVIOUS MINUTES

6.1 **Action List up to 24 May 2016**
Reference document 6.1 (a)

The action list as included in the meeting file was **NOTED** and taken as read.

6.1.1 Feedback: NED Security Assessments

Mr Strauss joined the meeting and the Chairperson expressed her dismay with the time it had taken just to be informed that only the Chairman of the Board would be covered by the Eskom security arrangements. She demanded that the GCE and head of Security should address the Board in this regard at the upcoming Board Breakaway.

7. GENERAL

There were no further matters for discussion.

8. CLOSURE

The Chairperson thanked the members for their participation and noted that the formal meeting of the Committee would now commence.

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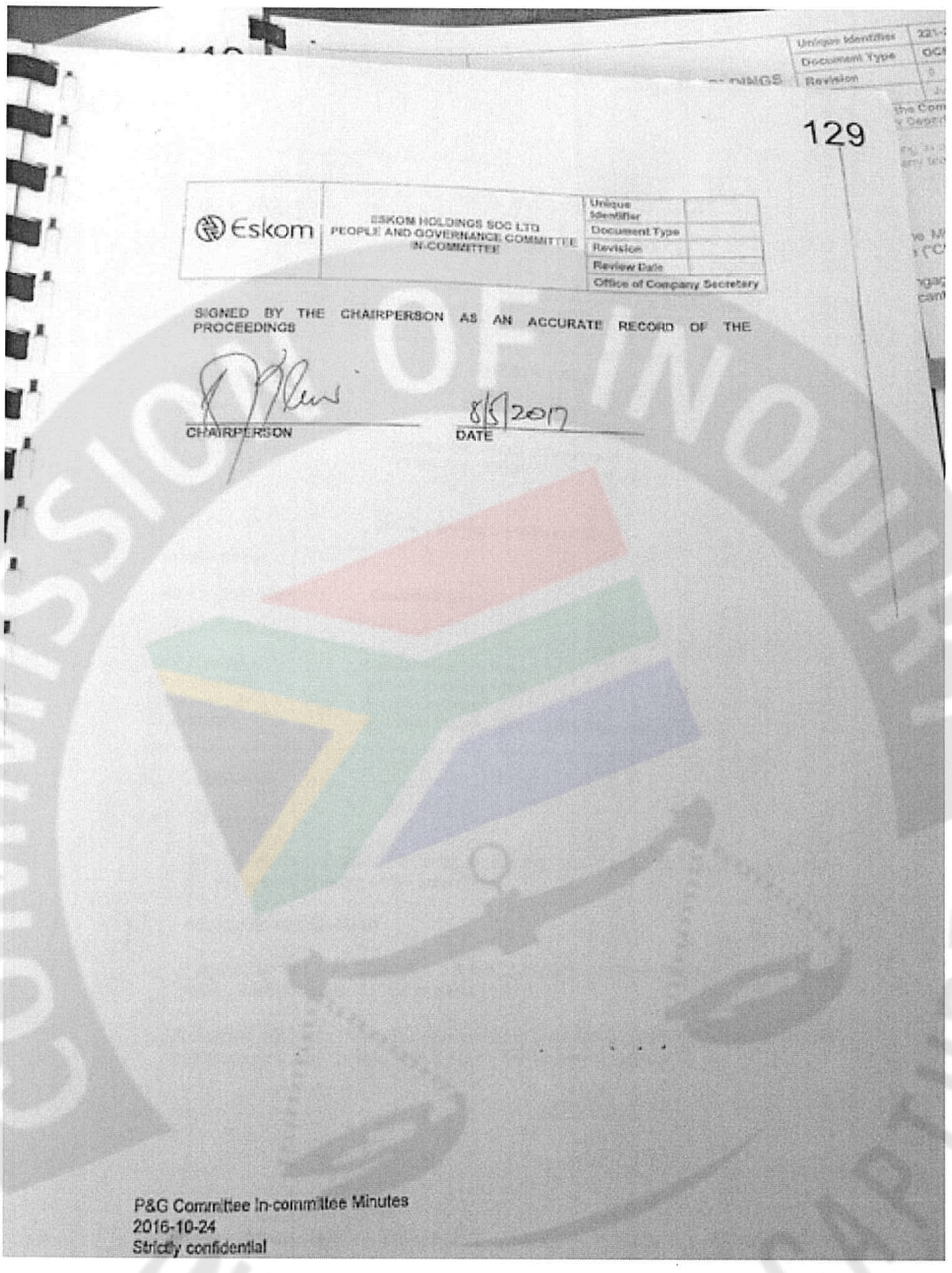

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SIGNED BY THE CHAIRPERSON AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRPERSON

8/5/2017
DATE

P&G Committee In-committee Minutes
2016-10-24
Strictly confidential

COMMISSION OF INQUIRY INTO STATE CAPTURE

U19-BSN-0051.143

"AM 34"

BSN 35

Brian MOLEFE
P. O Box 18, Cornwall Hill, 0178.
mbm1@mweb co za

11 November 2016

Dr. B Ngubane
Chairman
Eskom SOC
Megawatt Park
SUNNINGHILL

Sir

EARLY RETIREMENT – EMPLOYEE NO 4610263

I hereby request for approval for early retirement in terms of the rules of the Eskom Pension Fund read in conjunction with a resolution of the People and Governance subcommittee of the board dated 09 February 2016.

My last day of service will be 31 December 2016.

I would like to take this opportunity to thank the board for its guidance and leadership through very difficult times during my tenure as Froup Chief Executive of Eskom.

Yours Sincerely,

Brian MOLEFE 11.11.16.

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 36
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Mr B Molefe
UN: 06102515

Dear Brian

EARLY RETIREMENT

Your letter dated 11 November 2016 is hereby acknowledged and it is confirmed that your last day in service will be 31 December 2016.

In terms of the rules of the Eskom Pension and Provident Fund (EPPF) and Board resolution, your early retirement is approved.

The following payments are due to you:

- Salary up to 31 December 2016 (also refer "Suspense Account" below).
- Accrued leave pay.
- Short Term Bonus calculated on your Pensionable Earnings (nine months proportional bonus based on a 50% on-target performance).
- Payments in terms of the LTI Scheme. Currently, there are two grants outstanding according to the letter dated November 2016, namely:
  - Grant 11 that was awarded in April 2015 and vests in March 2018
  - Grant 12 that was awarded in April 2016 and vests in March 2019

  In terms of the rules of the scheme, the LTI payments will be made as soon as possible after the two vesting dates. Both grants will vest at 50%.

1. <u>Pension Fund</u>

   Your early retirement has been approved in terms of EPPF rule 28 and 21.4, which means that penalties will be waivered and that potential service to age 63 is granted.

M.L
89

BSN 36 87

2. **Suspense Account**

To make provision for any other unforeseen costs after your retirement date, an amount of R15,000.00 will be retained in a suspense account for this purpose. Costs incurred after resignation normally relate to taxable expenses associated with the Bank Fleet card and security services.

3. **Occupational Diseases**

Any claims against Eskom for occupational diseases is subject to an Eskom exit medical examination report issued by your nearest Eskom medical centre. Otherwise, no claims will be considered.

4. **Certificate of Service**

A certificate of service covering the period of your employment with Eskom will be handed to you on 31 December 2016.

5. **Eskom Property**

Any other Eskom equipment in your possession, including the following should be returned to Executive Support (Megawatt Park, C3 U41) on 31 December 2016.

- Eskom security permit
- Banidin petrol card and e-tag
- Samsung Slate
- 3G card

Eskom has copyright on all documents, records and any other material which you may have prepared or have come into possession since your employment starting date with Eskom. It is necessary that this should remain in Eskom's possession.

6. **Tax Certificate**

An IRP5 tax certificate in respect of the 2016 / 2017 tax year will be issued.

I wish you every success for the future.

Yours sincerely

Dr Baldwin Ngubane
CHAIRMAN
Date: 24/11/16

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 38

Gmail baldwin ngubane <baldwin.ngubane@gmail.com>

Re: Re: I am sharing 'Draft Position Statement forward payment to Tegeta 19 June 2016.doc' with you

2 messages

Business Man <infoportal1@zoho.com> Sat, Jun 11, 2016 at 12:32 PM
To: Suzanne Daniels <suzannedaniels584@gmail.com>
Cc: "baldwin.ngubane" <baldwin.ngubane@gmail.com>

My version attached...please advise

---- On Sat, 11 Jun 2016 13:54:59 +0400 **Suzanne Daniels** <suzannedaniels584@gmail.com> wrote ---

let me know what you think.

we don't have exxaro volumes for 2016 as the contract ended in 2015.

On 10 June 2016 at 21:23, Business Man <infoportal1@zoho.com> wrote:
We must add the point that exxaro wanted 1300 for 2016 supply and the tons bought elsewhere has therefore saved Eskom xxx billions

--- On Fri, 10 Jun 2016 23:20:42 +0400 Suzanne Daniels<suzannedaniels584@gmail.com> wrote ---

my first attempt at editing.

On 10 June 2016 at 20:14, Business Man <infoportal1@zoho.com> wrote:
It's too long. Needs to be half pager in total. Without too much detail. And highlight the rand savings achieved as opposed to buying from exxaro please

---- On Fri, 10 Jun 2016 21:36:58 +0400 Suzanne Daniels<suzannedaniels584@gmail.com> wrote ----

This is what came back from comms team. Going to read through it now. At home office now.

Shared from Word for Android
https://office.com/getword

--
Suzanne Daniels
Phone: +2782 580 7832
Fax: +2712 349 8006
Email: suzanne.daniels584@gmail.com

--

BSN 38

Suzanne Daniels
Phone: +2782 580 7832
Fax: +2712 349 8006
Email: suzanne.daniels584@gmail.com

Version2.doc
357K

---

baldwin.ngubane <baldwin.ngubane@gmail.com>
To: Business Man <infoportal1@zoho.com>

Sat, Jun 11, 2016 at 1:11 PM

Much better agree

Sent from my Samsung device
[Quoted text hidden]

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 39

Eskom

Dr Thibedi Ramontja
Director General
Department of Mineral Resources
Private Bag X59
ARCADIA
0007

Dear Dr Ramontja

OPTIMUM COAL MINE (PROPRIETARY) LIMITED: COAL SUPPLY TO HENDRINA POWER STATION

As you may be aware, Eskom has been involved in a legal wrangle with the above supplier from about August this year.

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 purportedly sought constructive engagement between the parties.

From Eskom's perspective, it was expected that as a Glencore operation, Optimum Coal Mine ("Optimum") would enjoy far more support than the conditional funding for limited time periods that was on offer.

Optimum supplies one of Eskom's key contributors to the national power system as Hendrina Power Station is a stalwart in the Eskom fleet, supplying approximately 2000MW 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.

At the latest meeting of the parties, the business rescue practitioners, together with the Glencore representative, indicated that Optimum is being rescued and that it would honour the contract in its current form with no amendments. They further advised that they will follow the contract route to process the Eskom claim of R2.2 billion. They made it very clear that they are not insisting on the extension of the Koornfontein coal supply contract with Eskom. They insisted that the extension of Koornfontein coal supply contract is at the discretion of Eskom.

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.

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PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 4585 Fax +27 11 800 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

BSN 39

In parallel, you are aware that we have similar challenges at Arnot Power Station ("Arnot"). The current supply contract with Exxaro Resources expires on 31 December 2015 and we are discussing the winding down of operations with Exxaro hereon.

While Eskom has issued Request for Proposals to the open market, the tender submissions indicate that we will not have sufficient volumes to meet the requirements of Arnot. Based on previous tests, Eskom can confirm that the coal qualities at Optimum are suitable for Arnot's burn requirements and will pass the necessary combustion tests. Based on Optimum's current mine plans, there should be sufficient coal volume to service both power stations. Therefore Optimum becomes a highly sought after source for Arnot as well.

I also put it to you that Komati Power Station receives 180 000 tons per month of coal from Koornfontein mine. A subsidiary of Optimum Coal Holdings. This contract expires at the end of January 2016. As a result of the rescue proceedings this power station is also at risk post January 2016.

As at date of this letter, we have not as yet received the formal notification of the status of Optimum.

While Eskom fully appreciates the turnaround of the business, it remains concerned that such erratic display of business stability may compromise the security of supply to Hendrina Power Station in the short to medium term. Therefore Eskom would require a firm resolution on Optimum by mid December 2015.

The risk of security of supply for Hendrina Power Station, Komati Power Station and Arnot Power Station is of such key national interest that we thought it appropriate to bring it to your attention. This upcoming adversity facing Eskom will require some form of intervention on the part of the Department of Mineral Resources to assist Eskom in leveraging the necessary key authorities to assist in assuring resolution to the coal supply situation and certainty going forward.

I would request your assistance in this regard. Should you require any information, please do not hesitate to contact me.

Yours sincerely

Matshela Koko
GROUP EXECUTIVE: GENERATION
Date: 6/12/15

STATE CAPTURE INQUIRY INTO STATE CAPTURE

BSN 40 DMR 10

mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

Enquiries: Mr J Raphela **Tel**: (012) 444 3977
Email: Joel.Raphela@dmr.gov.za & Mantebu.Lengoabala@dmr.gov.za

Group Executive: Generation
Eskom Holdings
PO Box 1091
JOHANNESBURG
2000
Email: KokoMM@eskom.co.za

Dear Mr Koko

RE: OPTIMUM COAL MINE (PTY) LTD: POWER SUPPLY TO HENDRINA POWER STATION

Receipt of your letter addressed to the Department pertaining to the intervention required from the Department, refers.

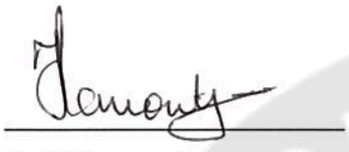
Having regard to the above, we would like to advise as follows: In respect of Hendrina power station, the Department will prioritize and fast track approvals for transfer of the Mining Right on an urgent basis, should this be lodged. We have already requested an urgent meeting with competition commission to go and plead the case and explain the urgency with which it must be treated, as it is indeed a special case, given the consequences for our country.

Financial provision due to historical liabilities at OCH level, is estimated at R1,7 billion. The amount still has to be confirmed through a process which will involve the parties concerned. We would also request for Eskom to play an active role in providing support for the project to proceed. In return for the new owners honouring the current contract up

BSN 40

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.

Kind regards



Dr T Ramontja
Director-General:
Department of Mineral Resources
Date:……/……./2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

BSN 41

Eskom	RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	October 2012
		Office of the Company Secretary	

RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD

STRICTLY CONFIDENTIAL

URGENT REQUEST TO APPROVE THE PREPURCHASE OF COAL FROM OPTIMUM COAL (PTY) LTD

Having had due regard for the following factors:

1. Eskom faces a supply risk of coal to the Hendrina Power Station of 5.5 Mtpa by OCM as a result of business rescue proceedings.
2. There is a potential proposal from the business rescue practitioner supported by the Department of Mineral Resources.
3. The solution relates to a prepurchase of coal to the value of R1.68 billion which mitigates supply risk.
4. The funding of the prepurchase will be made by an inventory working capital reduction of 54 days to approximately 40 days.
5. The proposal will result in a net present value benefit to Eskom of R238.9 million.
6. In conclusion, this proposal provides much needed coal for business operations; mitigates the supply risk and provides commercial benefit to Eskom.

RESOLUTION REQUIRED:

It is hereby resolved that:

2.1.1 The request from the Department of Mineral Resources is hereby noted.

2.1.2 The Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, are hereby authorised to negotiate and conclude a prepurchase of coal agreement with the proposed owners of OCM (coal supplier).

2.1.3 This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary.

2.1.4 The Chief Financial Officer 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.

BSN 41

Eskom	RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	October 2012
		Office of the Company Secretary	

The resolutions above are approved / not approved:

BOARD MEMBER	APPROVED (Signature)	NOT APPROVED (Signature)	DATE
BS Ngubane	×		
M Pamensky	Declared conflict of interest		
Z Khoza	×		
C Mabude	×		
V Klein	×		
R Khumalo	×		
P Naidoo	×		
V Naidoo	×		
N Carrim	×		
M Cassim	×		
G Leonardi	×		
B Molefe	Off sick		
A Singh	×		

PLEASE FAX OR E-MAIL THE COMPLETED ROUND ROBIN REQUEST BY NO LATER THAN 12h00 ON 9 DECEMBER 2015

THE GROUP COMPANY SECRETARY
TEL: +2711 800 3091 / +2782 5807832
FAX: +2786 662 7327
EMAIL: danielsm@eskom.co.za

BSN 42

Eskom	RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
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RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD

STRICTLY CONFIDENTIAL

URGENT REQUEST TO APPROVE THE PREPURCHASE OF COAL FROM OPTIMUM COAL (PTY) LTD

Having had due regard for the following factors:

1. Eskom faces a supply risk of coal to the Hendrina Power Station of 5.5 Mtpa by OCM as a result of business rescue proceedings.
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3. The solution relates to a prepurchase of coal to the value of R1.68 billion which mitigates supply risk.
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6. In conclusion, this proposal provides much needed coal for business operations; mitigates the supply risk and provides commercial benefit to Eskom.

RESOLUTION REQUIRED:

It is hereby resolved that:

2.1.1 The request from the Department of Mineral Resources is hereby noted.

2.1.2 The Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, are hereby authorised to negotiate and conclude a prepurchase of coal agreement with the proposed owners of OCM (coal supplier).

2.1.3 This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary.

2.1.4 The Chief Financial Officer 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.

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V Klein	×		
R Khumalo	×		
P Naidoo	×		
V Naidoo	×		
N Carrim	×		
M Cassim	×		
G Leonardi	×		
B Molefe	Off sick		
A Singh	×		

PLEASE FAX OR E-MAIL THE COMPLETED ROUND ROBIN REQUEST BY NO LATER THAN 12h00 ON 9 DECEMBER 2015

THE GROUP COMPANY SECRETARY
TEL: +2711 800 3091 / +2782 5807832
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Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	4
		Effective Date	December 2015
		Office of the Company Secretary	

EXECUTIVE SUMMARY

ROUND ROBIN SUBMISSION TO BOARD OF DIRECTORS (BOD)

1. TITLE OF THE SUBMISSION

Prepurchase of coal from Optimum Coal Mine (Pty) Ltd ("OCM")

2. RESOLUTION REQUIRED

It is hereby resolved that:

2.1.1 The request from the Department of Mineral Resources is hereby noted.

2.1.2 The Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, are hereby authorised to negotiate and conclude a prepurchase of coal agreement with the proposed owners of OCM (coal supplier).

2.1.3 This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary.

2.1.4 The Chief Financial Officer 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.

2.2 Executive summary and conclusion

2.2.1 Eskom faces a supply risk of coal to the Hendrina Power Station of 5.5Mtpa by OCM as a result of business rescue proceedings.

2.2.2 There is a potential proposal from the business rescue practitioner supported by the Department of Mineral Resources.

2.2.3 The solution relates to a prepurchase of coal to the value of R1.68 billion which mitigates supply risk. Counterparty risk is mitigated via a cession of the coal to Eskom.

2.2.4 The funding of the prepurchase will be made by an inventory working capital reduction of 54 days to approximately 40 days.

2.2.5 This proposal will result in a net present value benefit to Eskom of R238.9 million.

2.2.6 In conclusion this proposal provides much needed coal for business operations; mitigates the supply risk and provides a commercial benefit to Eskom.

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3. SUMMARY OF FACTS

3.1 Background

3.1.1 OCM was placed into business rescue around August 2015.

3.1.2 Eskom requires continuity of supply to the Hendrina Power Station of 5.5Mtpa at an average price of R150 per tonne. OCM cannot produce coal at a price of less than R450 per tonne.

3.1.3 The business rescue practitioners have maintained that the only manner in which the business could survive is that Eskom increase the price paid for coal received in terms of this contract.

3.1.4 Eskom maintained its position that it will not look at an increased coal price and that the supplier is expected to continue supplying at the contracted price.

3.1.5 On 24 November 2015, the Group Executive Generation met with the business rescue practitioners to discuss the way forward.

3.1.6 The business rescue practitioners indicated that they were looking at disposing the interest to the proposed purchaser. The Due Diligence commenced around the 10th November 2015 and is currently underway. The purpose of the meeting was to understand Eskom's concerns.

3.1.7 The proposed purchaser representatives present at the meeting confirmed that the company had commenced the Due Diligence and that it was committed to a 30 day due diligence with a definitive agreement to be in place by 15 December 2015.

3.1.8 The business rescue practitioners advised that an extension of the current arrangement was anticipated and that a formal request for the extension of the current dispensation until such time as there is a definitive agreement in place, would be sought from Eskom.

3.1.9 At the latest meeting of the parties, the business rescue practitioners, together with the Glencore representative, indicated that OCM is being taken out of business rescue proceedings and that it would honour the contract in its current form with no amendments.

3.1.10 They further advised that they will follow the contract route to process the Eskom claim of R2.2 billion.

3.1.11 As at date of this submission, Eskom has not yet received the formal notification of the status of OCM from the business rescue practitioner.

3.1.12 Koornfontein Mine, a subsidiary of OCM, currently supplies Komati Power Station and this contract expires 31 January 2016 with supply commitments to be met by mid-January 2016.

3.1.13 While Eskom fully appreciates the turnaround of the business, it remains concerned that such erratic display of business stability has compromised the security of supply to Hendrina Power Station in the short to medium term. Therefore Eskom would require a firm resolution on OCM by mid December 2015.

3.1.14 The risk of security of supply for Hendrina Power Station and Komati Power Station is of such key national interest that Eskom thought it appropriate to bring it to the attention of the Department of Mineral Resources.

3.1.15 This upcoming adversity facing Eskom will require some form of intervention on the part of the Department of Mineral Resources to assist Eskom in leveraging the necessary key authorities to assist in assuring resolution to the coal supply situation and certainty going forward.

3.1.16 A copy of the correspondence addressed to the Director General, Department of Mineral Resources, is attached hereto.

3.1.17 The reply from the Department of Mineral Resources is attached hereto.

3.1.18 The Department of Mineral Resources has requested that Eskom consider solutions to ensure the security of supply risk is mitigated in National Interest.

3.2 Key assumptions

The submission and decision required set out herein, is based on the following key assumptions:

3.2.1 OCM is formally declared not to be in business rescue as required by the provisions of the Companies Act.

3.2.2 The transaction between OCM and the proposed purchaser is formally approved by the regulatory authorities.

3.2.3 Eskom is securing its coal supply for two Power Stations facing imminent adversity, based on the mine plan provided by OCM.

3.3 Financial implications

3.3.1 Koornfontein Mine had offered a 9% increase on the current price to R415 per tonne. The proposed buyer has advised Eskom that it will adhere to the current price of R380 per tonne for the next 12 months as compared to the R415 per tonne proposed. This will translate into a net present value benefit of R72 million over the year.

3.3.2 The proposed buyer has also committed to providing a 5% discount to the current OCM price which amounts to R88.7 million.

3.4 Benefits of the advance purchase of coal

3.4.1 The advance purchase of R1.68 billion will secure a future supply of coal to Eskom and will be funded by a reduction of Eskom's coal stockpile from 54 days to 40 days.

3.4.2 OCM will cede the unsupplied portion of coal under the prepurchase agreement as security.

3.4.3 The net present value of the proposed transaction results in cash benefit of circa R238.9 million

Net present value of cash flows	
Cost of funding R1.68 billion for 12 months (*1)	(R135.8m)
Reduction in working capital at WACC – 14.5%	R213.4m
5% discount on pre-purchased coal from OCM	R88.7m
Discount received from Koornfontein Colliery	R72.6m
Net present value benefit to Eskom	**R238.9m**

1. Funded at 3 month JIBAR plus 140 basis points over a period of 12 months as a bullet redemption

3.5 Human Resource implications

No implications.

3.6 Risks (including Environment, Legal or Contractual risks) and other considerations

The risk identified at this stage relate to security of supply being compromised, regulatory approvals not timeously obtained and that there would be no contract in place by end December 2016. It is submitted that the strategy set out herein goes a long way to mitigating the identified risks.

3.6.1 Operational and supplier risk mitigation by pledge and cession of coal purchased.

3.6.2 Proceeds of R1.68 billion prepayment of coal are to be used by OCM to extinguish existing liabilities to ensure the business continues as a going concern.

3.6.3 Proposed purchaser will lift current empowerment ownership from 30% to 51%.

3.6.4 The shutdown of OCM could potentially result in thousands of job losses and add to the negative publicity surrounding Eskom.

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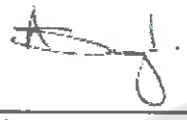
3.7 Verification by independent party (if applicable)

Regiments Capital (Proprietary) Limited

SIGNED



Anoj Singh — 8/12/2015
CHIEF FINANCIAL OFFICER — **DATE**
Who hereby represents that the above information is correct.

8/12/15

Matshela Koko — **DATE**
GROUP EXECUTIVE: GENERATION
Who hereby represents that the above information is correct.

Submission prepared by: M Koko
Contact Number: +2782 859 9334

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 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 respond to specific queries relating to the email trail annexed hereto marked "**BSN1**" pertaining to my tenure as Chairman and member of the Board of Directors ("**the Board**") of the Land Bank ("**the Bank**").

2.3. I have agreed to provide this statement to the Commission freely and voluntarily.

3. Kanhaym Deal with the Bank

3.1. Kanhyam had approached the Bank for funding in respect of its business operations. The application became a long drawn out matter.

3.2. Ms Patience Nomavuso, as I recall, was the Chairperson of the Credit Committee at the Bank. She sent me the email in BSN1 because Mr Ngcobo of Kanhaym had brought the matter directly to me as Chairman of the Bank. Mr Ngcobo felt very strongly that he was being unfairly

treated by the Bank.

3.3. I had never met nor known Mr Sashank Singala before. He was not working at the Bank. From my email to him, he must have been someone close to the Minister of Finance either as advisor or consultant. I cannot now remember how I got his address or his position. It is however clear to me that he was someone who could help the Board get to a point of a new dispensation with regard to the Bank's relationship with black farmers. The CEO was trying very much to develop policies that support emerging black farmers but he was hitting a stonewall.

3.4. Mr Ngcobo was a constant feature at the Bank complaining of discrimination against black farmers. I always tried to convince him that the Bank was trying to find ways to help black farmers.

3.5. The CEO and CFO wanted to help him, however the credit rules could not deal with his problem as his collateral and insurance was inadequate.

3.6. I only became involved as Chairman of the Board because many black farmers held the view that the Board was not sympathetic to their plight. Mr Ngcobo was not the only black farmer who had complained to me.

There were others as well. I was Chairman of the Bank at the difficult period in the Bank's transition from what it was prior to 1994 to the democratic order, which was driven by the transformation agenda of government. Black farmers' expectations were very high that change was going to come.

3.7. I hope the Bank subsequently managed to create lending policies that took care of the needs of the giant commercial cooperatives while at the same time advancing emerging black farmers. I do not know what became of the Kanhyam application.

4. **Conclusion**

4.1. I believe this statement gives a fair account, to the best of my knowledge or recollection, of the issues raised with me by the Commission in relation to the Kanhyam matter.

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 ____ day of Umhlali Postoffice 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

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Sashank Singhala <sashank.singhala@gmail.com>
Sent: Friday, 03 October 2014 17:51
To: Tony Gupta
Subject: Fwd: Kanhaym deal

Sent from my iPhone

Begin forwarded message:

From: baldwin ngubane <baldwin.ngubane@gmail.com>
Date: October 3, 2014 at 14:42:55 GMT+2
To: sashank.singhala@gmail.com
Subject: Fwd: Kanhaym deal

My Brother,
This is a black owned farm. The Land Bank COO and CFO are happy to loan money to this project but the credit people are refusing. This is very unfair not to support black farmers. Can you help with the Minister.
Ben
---------- Forwarded message ----------
From: **Nomavuso** <nomavusop@gmail.com>
Date: Thu, Oct 2, 2014 at 10:18 AM
Subject: Fwd: Kanhaym deal
To: baldwin ngubane <baldwin.ngubane@gmail.com>

Sent from my iPad

Begin forwarded message:

From: Lindiwe Mdlalose <lindiwe.mdlalose@gmail.com>
Date: 01 October 2014 at 2:54:40 PM SAST
To: Nomavuso Petiance <nomavusop@gmail.com>
Subject: Fwd: FW: Kanhaym deal

---------- Forwarded message ----------
From: **Mdlalose, Lindiwe** <LVMdlalose@landbank.co.za>
Date: Friday, September 12, 2014
Subject: FW: Kanhaym deal
To: "lindiwe.mdlalose@gmail.com" <lindiwe.mdlalose@gmail.com>

From: Coetzee, Theunis
Sent: 11 September 2014 12:21 PM
To: Jansen van Vuuren, Pierre-Jaqce; Baloyi, Millicent; Ndou, Marcia; Rampe, Goboang

Cc: Potloane, Vincent; Serithi, Lebogang; Mthembu, Jerome; Dlamini, Gilly
Subject: RE: Kanhaym deal

Thanks for you're your inputs Pierre.

However the following is not clear from your pre-liminary assessment:-

1. We involved Credit in a one day workshop with the client to look at the forecasted financials and assumptions underlying the major cash flow drivers. Credit requested further detail on the assumptions and the client has provided same. In my view we are in a no better position than 18 months ago to assess this application, because it seems from your advice below that you still want B&CB to recommend a proposal and then you will in all likelihood judging from discussions with you so far not support any recommendation due to doubts around repayment ability (Client has not been profitable for many years and assumptions on forecasts seem to be the worst case scenario if one look industry averages and research material). The question remains how does one trust the current management to get things right, that they have lost money on before (Nobody else in the market does, save for a newly established mezzanine fund at interest rates of 13% plus fees). In my view this is even worse than the situation we were in with Rumibyte, (a new business for which DBSA already funded the factory) where the assumptions were also on the high end of the industry averages, but we looked at funding them based purely on Government assistance which were to give us an equity buffer which turned out to be 70% lower than what we should have received given that the default risk is between 40-90% (insurance only covers 60% and assumptions were generous) and we needed at least rand for rand equity support for debt,

2. If Government does in fact assist with the capex should the recommended facilities not be only the RLF. And then again, is the amount asked for on the RLF justified, because your memo does not provide any assessment on the achievement of their planned cash flows like Rudi did for the Afrifresh forecasts which is the crucial part of the credit input we needed to avoid the previous back and forth process (6 or 7 refer backs if I remember correctly),

For me personally and one can spend a lot of time backing it up with detailed analysis, but fundamentally to business is too big and integrated and we do not have the products (commodity finance with collateral management) to get involved on a small scale and make sure our funds are'nt used exclusively for the intended purposes and not to pay for the sunken costs and fixed overhead on the loss-making Mills and ancillary businesses. Other clients we were already financing that ran into trouble, turned their businesses around by focussing on core business, but Kanhym has demonstrated no inclination to outsource the procurement function that landed them in a loss-making spiral. The Bank should also be carefull to demand this or to approve finance with a lot of other CP's, because we might be found wanting if the business

still does not succeed. It reminds me of Mr. Potgieter, one of our previous Board Members, story of the pig farm he inherited whilst he was a relationship banker at Standard Bank.

Mr. Ngobo himself advised that there are guys willing to support them with mezzanine type facilities (with independant collateral management) for the piggeries and to start the feedlot again. My view would be to give them an opportunity and to see if Kanhym are willing to make the hard decisions on their procurement function and the future of the Mills and to look at them once they have posted operating profits and positive cash flows again that they can put back into business instead of just asking the Land Bank to fund their shortfalls and in essence take all the risk.

If one has to classify this application from a risk point of view and try to classify it at a start-up, distressed going concern, distressed or close to BRP I am not convinced that they are better than the problem accounts we already have such as Afrifresh, Summerpride, Rumibyte and RBL. At best they are distressed (technically insolvent), because although they are still solvent, they have liquidity problems and if the owner did not sell all the Middelburg properties they would have been in forced to apply for BRP.

Given the abovementioned we in B&CB must first know whether the Bank has the appetite to provide mezzanine type facilities to this client and Credit must be honest and tell us if they believe that the current jockey can turn things around and we would be able to realize a higher mezzanine return. Secondly everyone must appreciate that as Pierre alluded to in the past, this is not business as usual as with any other new application for finance as the client has no profit history and there should be concerns about liquidity. In other words this is an external Workout and Restructuring application. Just to give context to last-mentioned two statements: remember that only the piggeries are barely profitable, so if we put money into the piggeries there are no indications that profits would improve significantly enough to put the client in a cash flow surplus position to make any payments to Land Bank. The Client still has to pay its overheads on other loss-making business units and have applied for funding to get these businesses and the entire value chain from procurement of raws (whether procured only or produced partly in the agronomy division), Milling to animal feed, converting feed to pork products, abbatoir and wholesale and retail, profitable. By just providing funding to the piggeries (still not sure how this would be ring-fenced in practice from day to day without expensive collateral management) I'm concerned that we will be in the same positions as with Rumibyte by the time the RLF reaches its limit and interest payments must be made.

If we were to look at financing them now, it will have to be on similar terms as the mezzanine financiers. As far as collateral management is concerned we would have to talk ro Rudi first to assist with the scope and assessment

thereof as we were unsuccessful in our efforts to incorporate Collateral Management as part of the appointment of a panel of valuators and Collateral Managers (a discussion for another day, because inventory valuators and Collateral Managers are often the same entities, but be that as it may we have to start a whole new RFP process for Collateral Management).

Kind Regards

Theuns

From: Jansen van Vuuren, Pierre-Jaqce
Sent: 11 September 2014 11:15 AM
To: Coetzee, Theunis; Baloyi, Millicent; Ndou, Marcia
Cc: Rampe, Goboang
Subject: FW: Kanhaym deal

From: Jansen van Vuuren, Pierre-Jaqce
Sent: 11 September 2014 09:55 AM
To: Potloane, Vincent
Cc: Serithi, Lebogang; Mthembu, Jerome; Mdlalose, Lindiwe; Dlamini, Gilly
Subject: RE: Kanhaym deal

Vincent

I had a preliminary discussion giving my views on the request from Kanhym. I gave my high level view but Theuns himself was not comfortable with the financing needs of the Client and the risk involved. I did indicate the same to the client during a meeting with Kanhym management team and chairman.

Attached my comments and analyses of information loaded on V-drive.

B&CB has not submitted any application to Credit as yet, and attached my views and comments on information loaded on the V-drive.

Outstanding issues from B&CB for the Submission to proceed:

- Structuring financing as per comments in attachment.
- Feedback from Vincent Potloane on government assistance.
- Audited Financial statements from all the shareholders
- Submission of application memo to B&CB Credit in accordance with checklist
- B&CB Credit evaluation and submission to CRMC and CRC for approval.

Regards

Pierre

Pierre Jansen van Vuuren

Land Bank

Acting CRO

B&CB Centurion

012 686 0862 Work

079 946 8233 Mobile

pjansenvanvuuren@landbank.co.za

From: Chief Executive Officer
Sent: 08 September 2014 11:27 AM
To: Potloane, Vincent; Jansen van Vuuren, Pierre-Jaqce
Cc: Serithi, Lebogang; Mthembu, Jerome
Subject: RE: Kanhaym deal

Pierre,

Please refer email from Vincent below and I propose that you table Credit's recommendation at CRMC.

Regards

From: Potloane, Vincent
Sent: 05 September 2014 01:22 PM
To: Chief Executive Officer
Cc: Serithi, Lebogang
Subject: Kanhaym deal

Afternoon CEO. I have just been informed that Pierre does not support the deal. I request that you get feedback from him and then inform other colleagues. The feedback was verbal from Theunis after all the analysis was done.

Thanks

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IN THE MATTER RELATED TO:

THE STATE PORTFOLIO COMMITTEE'S OVERSIGHT INQUIRY INTO CORPORATE GOVERNANCE AT STATE OWNED ENTERPRISES – CORPORATE GOVERNANCE AT ESKOM HOLDINGS SOC LIMITED ("ESKOM")

and

CHAIRPERSON: MS LUNGI MNGUNGA-GCABASHE

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COMMISSION OF INQUIRY INTO STATE CAPTURE

IN THE MATTER RELATING TO:

THE PORTFOLIO COMMITTEE'S OVERSIGHT INQUIRY INTO CORPORATE GOVERNANCE AT STATE OWNED ENTERPRISES – CORPORATE GOVERNANCE AT ESKOM HOLDINGS SOC LIMITED ("ESKOM")

CHAIRPERSON: MS LUNGI MNGUNGA-GCABASHE

STATEMENT OF DR BALDWIN NGUBANE

---

1. Introduction

1.1 The Chairperson of the Portfolio Committee's Oversight Inquiry into Corporate Governance at State Owned Enterprises ("**the Committee**") has invited me, in my capacity as the former Chairperson of the Board of Directors of Eskom ("**the Board**"), to appear before the Committee and give evidence on certain issues relating to governance at Eskom.

1.2 I have been requested to provide information to the Committee by way of a written submission and to further prepare to answer certain questions to be posed by members of the Committee in relation to the issues contemplated above. I note that no specific or direct questions have been made available to me or raised as part of the Committee's invitation to direct my preparation for the hearing.

1.3 A set of eight broad issues have been identified and presented for my attention. One of such issues[1] has a sub-set of two further broad issues.

1.4 The issues in question are stated as follows in the Committee's invitation:

1.4.1 The procurement process of IT services to replace the then service provider, namely T-Systems, including the Board's knowledge of the circumstances surrounding the suspension of Mr Sal Laher;

1.4.2 The procurement process of the Duvha Boiler Refurbishment and the award of the tender to Dongfang (the decision to award this tender was set aside by a Court) (sic), including:

---

[1] See para 1.4.2

(a) The involvement of the Board and its Committees in the procurement process; and

(b) The internal processes which led to the apparent irregular selection of Dongfang.

1.4.3 The circumstances surrounding the suspension of Messrs Tshediso Matona, Matshela Koko, Dan Marokane and Ms Tsholofelo Molefe and the reasons for the termination of services of the various executives who left Eskom;

1.4.4 The employment of Mr Molefe as Group Chief Executive at Eskom;

1.4.5 The construction and the eventual payment of pension benefits to Mr Molefe;

1.4.6 The employment of Mr Anoj Singh as Financial Director at Eskom;

1.4.7 Eskom's response to the Public Protector's Report on the State of Capture, dated 14 October 2016; and

1.4.8 The purchase of Optimum Coal Holdings by Tegeta from Glencore.

1.5 I deal with each of the identified issues in paragraph 2 below in the order as set out in paragraph 1.4 above, which is also the same order appearing in the Committee's invitation sent to me dated 21 November 2017.

1.6 I express my gratitude to the Committee for accommodating my request for an extension to enable me to prepare for the hearing. I have made a reasonable effort, under the circumstances, to utilise the time afforded me as well as I could, in order to assist the Committee in the best manner possible in its inquiry.

1.7 Taking into account the abovementioned issues, it is imperative for me to provide the Committee with the timeline of the tenure of my position as the former Chairperson of the Eskom Board as this appears to be the focal point of the hearing. My submission has, accordingly, been prepared taking this context into account.

1.8 In relation to my statement, as indicated in the invitation by the Chairperson of the Committee, I am the former Chairperson of the Board. I was appointed as a member of the Board in December 2014. I then served as the Chairperson of the Board from October 2015 until June 2017. Before then, I had been appointed as the Acting Chairperson of the Board from 15 March 2015. As such, my understanding is, as

already indicated above, that the context of the Committee's invitation is concerned with and limited to this period, that is between 15 March 2015 and June 2017, which is inclusive of my acting period.

1.9 Due to the open and broad nature of the issues that I am required to provide answers to, I have made an effort to focus on providing the Committee with as much of the information that falls within my personal knowledge in the said capacity as former Chairperson of the Board to the best of my recollection.

1.10 I wish to point out, however, that for various reasons, some of the issues raised in the Committee's invitation unfortunately fall outside of my personal knowledge as the former Chairperson of the Board. Some of these issues may, for example, have arisen prior to my tenure and/or, by virtue of Eskom's delegation of authority and materiality framework, did not require either the Board's approval or my direct involvement as the former Chairperson of the Board.

1.11 Furthermore, it is important to note that as part of Eskom's governance structure as a public entity or state-owned company/enterprise, the Chairperson of the Board (including myself at all relevant times, was) is not part of the procurement process and there may also be those issues that would be referred to the Board for purposes of noting only, and not necessarily for deliberation and/or approval. I am saying this whilst remaining cognisant of the Board's roles and responsibilities in the overall control and management of Eskom.

1.12 For better context, where possible, I illustrate my explanation by way of documentary evidence at my disposal. Otherwise most of the documents I rely on in this submission may already be before the Committee and/or are in the public domain and/or may be obtained directly from Eskom upon request.

1.13 For the reasons more fully set out below, I respectfully bring it to the attention of the Committee that I could not, however, collect and collate all of the documents which I refer to in this statement and which may become relevant during the hearing. Further, I may also not be able to recall all of the requisite details relating to some or all of the pertinent issues as my role as the Chairperson of the Board was not operational or executive in nature.

1.14 In certain instances, it is possible that some of the information I may provide for the purpose of this inquiry may have already been shared with the Committee by some of the former Board members and/or Eskom's executives, either by way of written submissions to, and/or question-and-answer sessions with any such former Board members and/or executives during the hearing before, the Committee. To the extent

that it is not inconsistent with, or contradictory to, what is contained in my statement and my entire evidence to the Committee, I respectfully submit that such information (including supporting documentation thereto, where applicable) may remain relevant to, and have to be taken into account as an integral part of, my submission.

1.15 In light of the abovementioned reasons, I may not be (fully) equipped to provide specific answers to specific questions which may only arise or be posed by members of the Committee, for the first time at the hearing.

1.16 Under the circumstances, I respectively reserve all the rights that I may have in terms of the Constitution of the Republic of South Africa, any other applicable law, including common law, rule of law and/or natural justice. This includes, without limitation, the opportunity, if and to the extent appropriate, or required or so advised, to consider any new information which may only be brought to my attention or become accessible to me at or after the hearing and to supplement my written submission to the Committee.

I now proceed to deal with each matter as raised by the Committee below.

2. Issues raised by the Committee

2.1 The Procurement Process of IT Services to replace the then Service Provider, namely T-Systems, including the Board's knowledge of the circumstances surrounding the suspension of Mr Sal Laher

2.1.1 To the best of my knowledge, the procurement process which was aimed at replacing T-Systems commenced before I was appointed as an ordinary member of the Eskom Board. My understanding is that in February 2015, the Executive Committee Procurement Sub-Committee ("**EXCOPS**") made a determination to cancel the procurement process of IT services aimed at replacing T-Systems.

2.1.2 EXCOPS' motivation for the abovementioned cancellation was presented before the Eskom Board Tender Committee ("**BTC**"). In my capacity then as an ordinary non-executive member of the Board, I chaired the meeting at which such presentation was made. This meeting took place on 24 February 2015.

2.1.3 During the presentation, the reasons for EXCOPS' motivation for the cancellation of the intended replacement tender process were articulated to the BTC as being the following:

2.1.3.1 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, an option which at the time had been made available to Eskom employees in general, and left Eskom;

2.1.3.2 The departure of the said employees resulted in depletion of skilled resources and thus a lack of requisite capacity within the IT Division of Eskom, as the affected positions were quite senior. This negatively affected Eskom's Generation Division;

2.1.3.3 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 simply exacerbate the electricity supply problem which was already prevalent during that entire period;

2.1.3.4 T-Systems' continued involvement, as the then existing IT service provider, which was already familiar with the power station system in Eskom[2] would be in both Eskom's and the country's best interests; and

2.1.3.5 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.

[2] I am advised that T-Systems used to be known as arivia.kom, a subsidiary of Eskom, Transnet and Denel. Arivia.kom was established following a merger of the IT divisions of the said 3 (three) state owned companies. Its main object was specifically to service the IT requirements of Eskom, Transnet and Denel. It was subsequently sold as a going concern and became known as T-Systems.

2.1.4 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 upon the BTC approving EXCOPS' recommendation as supported by the abovementioned presentation.

2.1.5 My understanding was and still remains that in terms of the Eskom SCM Procedure, Eskom was (and still remains) entitled to cancel any procurement processes. Paragraph 3.4.5.7 of the SCM Procedure states, *inter alia*, that *Cancellation/re-issuing of tenders may occur any time after the tender has been issued to the market and before contract award.*

2.1.6 I point out, however, that these events, which formed part of EXCOPS motivation, occurred before my appointment to lead the Eskom Board. Save for what is stated herein, I did not have any (other or further) role to play in this procurement process.

2.1.7 Please note that I have no personal knowledge relating to Mr Sal Laher's suspension. The only knowledge I have is based on the records I have seen, including statements made by some of my former co-members of the Board at Eskom.

2.1.8 In the said context, the understanding I have is that Mr Sal Laher was suspended by Eskom in November 2014 on the basis that he had failed to follow procurement processes. I do not have any knowledge as to what such procurement processes related to. My understanding is also that there was a negotiated settlement between Eskom and Mr Sal Laher, based on which he accepted, and was then paid, a settlement amount.

2.1.9 As already mentioned, save for the above, I have no personal knowledge of the circumstances surrounding Mr Laher's suspension. This matter arose and was settled prior to my time as the former Chairperson of the Board.

2.2 **The Procurement Process of the Duvha Boiler Refurbishment and the award of the tender to Dongfang (the decision to award this tender was set aside by a Court) (sic), including (a) the involvement of the Board and its committees in the Procurement Process and (b) the internal processes which led to the apparent irregular selection of Dongfang**

2.2.1 Prior to providing the Committee with details regarding the procurement process relating to the Duvha Boiler Refurbishment as well as the involvement of the Board and its Committees in this regard, I wish to clarify the factual inaccuracy contained in the Committee's invitation.

2.2.2 On 28 March 2017, Eskom awarded Tender Corp 3571, to Dongfang. Aggrieved by Eskom's decision to award the Tender to Dongfang, Alstom S & E Africa (Pty) Ltd ("**Alstom**") and Murray & Roberts/Shanghai Electric Consortium ("**MRSEC**") instituted litigation proceedings on or during April 2017, in the High Court of South Africa, Johannesburg. The litigation proceedings are categorised into two parts, namely, the Urgent Interdict (Part A) and the Review Application (Part B).

2.2.3 In part A, both Alstom and MRSEC sought to urgently interdict Eskom and Dongfang from implementing the award of the Tender, pending the final determination of the relief sought in part B of the legal proceedings. In part B, Alstom and MRSEC seek an order reviewing and setting aside Eskom's decision to award the Tender to Dongfang and remitting the submissions to Eskom for re-adjudication. Part A was heard by Judge Makume on 23 June 2017 and the outcome handed down on 30 June 2017.

2.2.4 For the convenience of the Committee, and although such document is publicly accessible, I attach hereto a copy of the court order handed down by Judge Makume on 30 June 2017 marked as annexure "**BN1**". On perusal of the court order, you will note that in paragraph 2, Judge Makume held that:

> *"2. Pending final determination of the relief sought in part B of this application and part B of the intervening application, the First and Second Respondents are interdicted from taking any steps to implement or execute any contract pursuant to the award of the Tender advertised under RFP Corp 3571*

pertaining to the manufacturing, factory acceptance testing, procurement shipping and delivery to site, installation, testing and commissioning of the pulverised coal fired boiler as part of the return to service of Unit 3 at Duvha Power Station (the tender)."

2.2.5 For the purpose of this submission, it is not necessary for me to deal with the allegations of Alstom and MRSEC, which allegations are currently being defended by Eskom in court. I am advised that the Review Application, being the main application in which the court will consider the process adopted by Eskom in awarding the Tender to Dongfang for the purpose of assessing its compliance with the relevant statutory and policy framework, is still to be heard. As such, **the decision to award the Tender to Dongfang, has not, as at the date of this submission, been set aside by a court of law**.

2.2.6 For the purpose of adequately addressing the Committee's question regarding the involvement of the Board and its Committees in the procurement of Duvha, I find it necessary to briefly explain the powers and responsibilities of the BTC, which committee was responsible for overseeing this transaction.

2.2.7 In terms of clause 22.6.2 of the Board Charter, the Eskom Board may from time to time, by resolution, establish such other Committees of the Board to assist in the discharge of its responsibilities. One of the Committees established by the Board is the BTC.

2.2.8 According to the Terms of Reference of the BTC, which Terms I annexe hereto marked "**BN2**", the BTC was established to assist the Board in its responsibility in making commercial process decisions to the benefit of Eskom. In fulfilling its mandate, the BTC is required to apply the relevant King Code Principles.

2.2.9 In terms of paragraph 2.4.2.5 of the Terms of Reference, the BTC is authorised to approve tenders and contracts with a value from R750 million up to investment decision to budget. This includes acquisition and disposal of movable and immovable property, operational expenditure and the provision and acquisition of services.

2.2.10 Paragraph 3 of the BTC Terms of Reference deals with the responsibilities of the BTC and provides that the BTC is responsible for, *inter alia*,:

(a) *approval of tenders and the awarding of contracts up to the maximum of the investment decision/budget;*

(b) *approval of procurement strategies for specific transactions from R750 million up to investment decision or budget;*

(c) *ensuring that all the above are done to ensure fair, equitable, transparent, cost-effective and competitive procurement processes; and*

(d) *ensuring inclusion of provisions in the standard conditions of tender which enable Eskom to reserve its right not to award a particular tender to the highest ranked or highest scoring tenderer and/or to not award it at all, in order to ensure that it is able to leverage and maximise the socio-economic and developmental objectives that are enshrined in various government policies, provided that the evaluation factors to be considered in the exercising of this right are clearly set out in the tender invitation for proposals.*

2.2.11 Having briefly set out the authority and responsibilities of the BTC, I now provide a summary of the internal process adopted by Eskom in implementing the Duvha refurbishment programme. In providing the said summary, I will also highlight the role played by the BTC in the eventual awarding of the Tender to Dongfang. In providing the said summary, I point out that in line with the BTC's Terms of Reference and Eskom's Delegation of Authority Framework, I, as the Chairperson of the Board, did not sit as a member of BTC.

2.2.12 As stated above, I reiterate the fact that the Review Application is still to be heard by the court. My understanding is that currently, there is a dispute, in court, between the parties as to the confidentiality of certain documents and/or the relevance thereof in the finalisation of the Review proceedings. As such, you will note that, in certain instances, the documents attached in relation to the Tender process have been redacted. This is for the purpose of ensuring the protection of such

confidential and commercially sensitive information of all the parties involved in this litigation.

2.2.13 By way of brief background, as you may be aware, on 30 March 2014, an explosion occurred at Duvha Boiler Unit 3 which caused extensive damage to the boiler and the surrounding areas. Pursuant to the damage, Eskom duly submitted a claim to its insurer[3] for compensation.

2.2.14 After various engagements with AIG, Eskom entered into a settlement agreement with the Consortium of insurers and reinsurers, who agreed to compensate Eskom for the damage to Unit 3 at Duvha. A portion of the settlement amount in the sum of R1, 698, 959, 535.00 constituted a cost differential that Eskom would be obliged to repay to the insurers and reinsurers in the event that it was unable to conclude a binding contract for the replacement of the damaged boiler at Unit 3, by 30 March 2017. It was therefore necessary for Eskom to initiate, complete and award a tender for the replacement of the damaged boiler and conclude a contract with a supplier by that date.

2.2.15 Eskom, in order to urgently replace the damaged boiler, initiated its procurement process. In this regard, on 01 August 2016, the BTC, as it was empowered to, approved the procurement strategy and mandate to negotiate and conclude a contract for engineering, procurement and construction and replacement of the boiler as part of the return to service of Duvha Unit 3.

2.2.16 As set out above, the BTC is the appropriate authority with the power to decide on the award of a tender of this magnitude, involving as it did, an expenditure in excess of R750 million. The BTC also has the power to delegate its authority for the award of the tender, should it so decide.

2.2.17 On 18 August 2016, Eskom issued the RFP with a submission deadline of 1 November 2016. Two RFP clarification meetings were held with potential bidders on 13 September 2016 and 6 October 2016 and the deadline for submission was extended to 22 November 2016 based on the bidders' requests which were accepted by Eskom. The relevant

[3] Duvha Unit 3 is insured by a consortium of insurers, with the lead insurer being AIG.

portion of the RFP is annexed hereto as "**BN3**". Paragraph 2 of the RFP describes the evaluation process and criteria for the selection of the preferred bidder.

2.2.18 Paragraph 1.5 of the RFP expressly drew the attention of the bidders to the relevant provisions of the Preferential Procurement Policy Framework Act ("**PPPFA**") and informed them that Eskom reserved the right not to award the tender to the highest scoring bidder in accordance with those provisions.

2.2.19 The evaluation process contemplated in the RFP was a two-stage approach. The first stage was termed desktop evaluation and required the evaluation of the competing bids in order to assess, among other criteria, compliance with mandatory requirements, functionality evaluation and price and preference evaluation in order to short-list the top two bidders[4] with whom Eskom would engage in the second phase of the evaluation.

2.2.20 The second stage of the evaluation contemplated negotiations with shortlisted/competing bidders. Pursuant to such negotiations, the bidders would be required to submit their best and final offers ("**BAFO**"), based on which Eskom would finally select the successful bidder with whom a contract would then be concluded.

2.2.21 By 22 November 2016, the closing date for Tender submissions, Alstom, MRSEC, Dongfang, Shany Engineering (Pty) Ltd, Sinohydro South Africa (Pty) Ltd and Rafoko SA had submitted their bids.

2.2.22 Eskom conducted tender evaluations for the mandatory criteria from 25 to 28 November 2016. The bids of Shany Engineering (Pty) Ltd and Sinohydro South Africa (Pty) Ltd were found to be non-compliant with the mandatory criteria and, on that basis, were eliminated from further evaluation.

2.2.23 Arising from phase one of the evaluation process, Eskom sought clarification from the remaining bidders concerning aspects of their bids, all of which contained several material deviations, assumptions and

[4] This was subsequently amended by Eskom in circumstances I shall set out below.

exclusions which tended to complicate the evaluation process. Such clarification was sought to aid Eskom with price normalization.

2.2.24 During December 2016, Eskom sent clarification questions to Alstom, Dongfang, MRSEC and Rafako SA, all of whom had met the mandatory requirements and satisfied the functionality threshold.

2.2.25 On or about 22 December 2016, Eskom conducted a preliminary financial evaluation of the bids. I have already indicated that all four bids had significant exclusions and deviations. Accordingly, individual interaction was required with each of the four bidders to clarify the issues identified pursuant to the preliminary financial evaluation.

2.2.26 As part of this exercise, Eskom held pre-negotiation clarification meetings with Alstom, Dongfang, MRSEC and Rafako SA from 9 to 17 January 2017. At that point in time, no short-listing referred to in the RFP could be done because of the material deviations and exclusions contained in those remaining four bids.

2.2.27 Because of the risk associated with several deviations and exclusions contained in the remaining bids, the evaluation team resolved to approach, and accordingly made a written submission, to the BTC for the amendment of paragraph 1.4 of the RFP so as to extend the short-listing of the top two bidders to a minimum of two bidders and a maximum of four bidders.

2.2.28 This amendment was considered necessary and justifiable because of the possibility that the deviations and exclusions of the remaining bids could ultimately affect the successful and timely conclusion of the Tender process, resulting in the consequential exposure for the payment of the financial penalty by Eskom to the insurers and reinsurers of approximately R1.7 billion in terms of the settlement agreement.

2.2.29 On 20 January 2017, the BTC considered the submission of the evaluation team and resolved to authorize the required amendment of the RFP. This resolution was adopted pursuant to the powers vested upon the BTC in terms of Eskom's SCM Procedure.

2.2.30 Further, the amendment was made by the BTC in accordance with the provisions of paragraph 1.5 of the RFP which empowered Eskom to (a)

modify the Tender or any part thereof, at any time before the award and (b) negotiate with any one or more suppliers.

2.2.31 I respectfully submit that the amendment was rational and justifiable, having regard to the considerations upon which it was based and the objectives sought to be achieved thereby. That amendment is recorded in paragraph 2.2 of the resolution of the BTC which is annexed hereto and marked "**BN4**".

2.2.32 After the above resolution of the BTC, the evaluation team proceeded to conduct further evaluations of the remaining four bids based on the applicable evaluation criteria. The bid of Rafako was excluded from further evaluation because Rafako had indicated in writing that their submitted price was budgetary.

2.2.33 At the conclusion of phase one, as reflected in the evaluation report Revision 1, Eskom resolved to short-list three bidders, namely Alstom, MRSEC and Dongfang and invited them to the second stage of the evaluation, namely negotiations. A copy of the evaluation report prepared by the evaluation team (Revision 1) is annexed hereto and marked "**BN5**". All of the bidders elected to participate in the negotiations unconditionally.

2.2.34 In keeping with the competitive nature of the procurement process, negotiations with each of these bidders were held separately from 27 January to 27 February 2017. The details of these negotiations were set out in the invitations to negotiations addressed to each of the short-listed bidders, agenda for the negotiations and the minutes of those negotiations.

2.2.35 After the negotiations, Eskom invited all three bidders to submit their BAFO's on 3 March 2017. All of them did so. Those offers were then evaluated by the evaluation team which thereafter prepared a submission to the BTC on 08 March 2017. A copy of that submission is annexed hereto and marked "**BN6**".

2.2.36 It is important to point out that KPMG was appointed at the commencement of the procurement process in accordance with Eskom's SCM Procedure to ensure the fairness and transparency of the entire procurement process.

2.2.37 In its report, KPMG concluded that the process followed by Eskom was fair and in line with Eskom's SCM Procedure. It raised the concern regarding the recommendation for the award of the Tender to Dongfang on the basis that there was a need for Eskom to undertake a sensitivity analysis so as to address the risk associated with the award of the Tender to either Alstom or Murray & Roberts.

2.2.38 On 8 March 2017, in its resolution, the BTC noted the Duvha Unit 3 Recovery Project status and approved the recommendation to conclude a contract with Dongfang. BTC also authorised the Group Executive: Group Capital to take all the necessary steps to give effect to the above. A copy of the resolution is annexed hereto marked "**BN7**".

2.2.39 Following upon that resolution of the BTC and as informed by the issues raised in the draft KPMG proactive assurance audit report, dated 8 March 2017, Eskom appointed SekelaXabiso to assist in undertaking the sensitivity analysis to address those issues. SekelaXabiso did so and thereafter provided a report. SekelaXabiso, in its report, confirmed the rationale adopted by Eskom in arriving at its decision.

2.2.40 Based on the sensitivity analysis that was performed by Eskom with the assistance of SekelaXabiso, the evaluation team prepared a further submission to the BTC for noting dated 27 March 2017. Verbal feedback was given to BTC on 7 April 2017, as contained in the submission of 27 March 2017. A copy of that submission is annexed hereto and marked "**BN8**".

2.2.41 Having regard to the implementation of the Tender process as set out above, I submit that at all times, the BTC acted within the scope of its mandate and that its decision to conclude the contract with Dongfang was rational and justifiable on the basis of the information presented to it. On 28 March 2017, Eskom and Dongfang signed a written contract following upon the award of the Tender, which contract is currently interdicted from being implemented, in terms of part A, the interim interdict but is now in the process of being reviewed in part B of the legal proceedings.

2.2.42 I trust that the above provides clarity regarding the internal process which led to the selection of Dongfang and the involvement of the Board and its Committees in the procurement process of Duvha.

2.3 **The circumstances surrounding the suspension of Messrs Tshediso Matona, Matshela Koko, Dan Marokane and Ms Tsholofelo Molefe and the reasons for the termination of service of the various executives who left Eskom**

2.3.1 This matter falls outside of my tenure as the former Chairperson of the Board. My understanding is that Mr Tsotsi, in his capacity then as the Chairperson of the Board, motivated for the Board to urgently authorise the appointment of an independent investigation to be conducted by an external service provider.

2.3.2 It is also my understanding that Mr Tsotsi motivated for the suspension of certain key executives, whilst the investigation was being conducted. Apparently, he had suspected such executives of wrongdoing.

2.3.3 The affected positions included those of the Group Chief Executive Officer, namely, Mr Tsediso Matona ("**Mr Matona**"), Group Executive, Commercial and Technology, namely Mr Matshela Koko ("**Mr Koko**"), Group Executive Group Capital, namely Mr Dan Marokane ("**Mr Marokane**") and the Finance Director, namely Ms Tsholofelo Molefe ("**Ms Molefe**") respectively.

2.3.4 The investigation was eventually conducted but on different terms to those which Mr Tsotsi had initially proposed to the Board. The investigation was undertaken by a different service provider, namely Dentons Attorneys, and not Mr Nick Linnel, who had been appointed by Mr Tsotsi.

2.3.5 After the investigation was concluded, however, Mr Matona, who had filed a labour dispute case against Eskom, negotiated and settled his dispute out of Court and left Eskom. Mr Marokane and Ms Molefe also left the employ of Eskom. Only Mr Koko returned to his position at Eskom.

2.4 **The employment of Mr Brian Molefe as Group Chief Executive at Eskom**:

2.4.1 Mr Brian Molefe ("**Mr Molefe**") was seconded to Eskom as the Acting Group Chief Executive Officer ("**GCEO**") on 17 April 2015, for a period of 3 months. Prior to his secondment to Eskom, Mr. Molefe was a Group Chief Executive Officer at Transnet.

2.4.2 On 23 June 2015, I addressed a letter to the Minister, Lynne Brown, requesting her support and endorsement for the extension of Mr. Molefe's secondment as Acting GCEO for a further period of 3 months. Two further aspects were also contained in the letter, namely that a) the People and Governance Committee ("**P&G Committee**") had resolved to seek the full-time appointment of Mr. Molefe to the position of GCEO and b) Ms Venete Klein ("**Ms. Klein**") was tasked with procuring a legal opinion on the most optimal approach to follow to give effect to the appointment of Mr. Molefe.

2.4.3 The legal opinion was obtained from Bowman Gilfillan on 18 June 2015. Such opinion concluded that Eskom could appoint a GCEO without having to conduct an external search 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.

2.4.4 On 27 June 2015, the Minister responded to my letter. In essence, the Minister agreed to the request for the extension of Mr. Molefe's secondment and also requested the Board to deal expeditiously with the appointment of a 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.

2.4.5 On 13 September 2015, the legal opinion was transmitted by Ms. Suzanne Daniels ("**Ms. Daniels**") to Orcillia Ruthnam ("**Ms. Ruthnam**") - Chief Director: Governance of the Legal and Governance Department at the Department of Public Enterprises.

2.4.6 On 14 September 2015, Ms. Ruthnam responded to Ms. Daniels and enquired whether or not Bowmans had considered the *"Guidelines for the appointment of a Chief Executive Officer for a State - Owned Enterprise". Ms.* Ruthnam also enclosed a copy of the guidelines in her communication to Ms. Daniels.

2.4.7 On the same day, the abovementioned Guidelines were sent to Bowmans for a supplementary opinion. The issue to be reconsidered being whether or not in light of the provision of the Guidelines, the proposed process of appointing Mr. Molefe on a permanent basis as GCEO was competent.

2.4.8 On 15 September 2015, the supplementary opinion was received. In that opinion, Bowmans advised 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 in writing together with reasons for the deviation. On 16 September 2015, the supplementary opinion was forwarded to Ms. Ruthnam.

2.4.9 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 her office by Ms. Daniels on 16 September 2015 with a signed version following thereafter, on 23 September 2015. I also understand that the Minister did not object to the departure.

2.4.10 On 10 September 2015, the Board resolved that the P&G Committee should submit a recommendation to the Minister around the appointment of Mr. Molefe as GCEO. On 11 September 2015, and pursuant to the aforesaid resolution, I addressed a letter to the Minister advising her of the Board's resolution to propose permanently employing 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 letters marked "**BN9**".

2.4.11 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 also enclosing letters addressed to Mr. Molefe and Mr Anoj Singh ("**Mr. Singh**"). The letters confirmed their appointments as GCEO and Chief Financial Officer ("**CFO**") respectively with effect from 1 October 2015. However, there was no indication of the duration of their respective appointments contained in such letters. Copies of the said letters are attached marked "**BN10**".

2.4.12 On 7 October 2015, a permanent contract of employment was prepared based on the inference drawn from the Minister's letter dated 2 October 2015 and addressed to Mr. Molefe, in that, no mention of a fixed term employment contract was made in that letter.

2.4.13 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. 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 secondly, 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, she said she would revert on whether or not 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, presumed the issue was resolved.

2.4.14 On 16 October 2015, I addressed a letter to the Minister on the proposed terms of Mr. Molefe's appointment and remuneration. The contents of the letter were informed by various inputs – P&G Committee from Mercer, PE Corporate and Deloitte on chief executive remuneration packages. The Board's understanding was that Mr. Molefe's employment would be on a permanent basis.

2.4.15 On 1 November 2015, the Minister responded to my letter of 16 October 2015, in which she approved the proposed remuneration package to Mr. Molefe, a copy of the Minister's approval is attached hereto as "**BN11**". The Minister further recorded that the term of Mr. Molefe's appointment was for a period of 5 years, subject to annual performance reviews. The Minister's letter was addressed to me as the then Chairperson of the Board, and was received by Ms. Daniels on 4 November 2015.

2.4.16 On 9 November 2015, I presented Mr. Molefe with a permanent contract of employment. For some reason or other, the Minister's letter dated 4 November 2015 sent to me and received by Ms. Daniels, did not come to my attention or the attention of the Board.

2.4.17 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. The Minister approved the proposed remuneration but confirmed that the term of employment would be for a fixed term of 5 years and the Board was tasked with the challenge of having to change the signed permanent contract to a five-year fixed term contract.

2.4.18 On or about 16 November 2015, Mr. Molefe was advised of the Minister's decision and various retirement issues were discussed between Mr. Molefe and myself. Following such discussions, I advised the Board that Mr. Molefe was willing to accept the five-year contract. I also advised the Board that Mr. Molefe had, however, expressed concerns regarding the perceived pension benefit which he understood to emanate from his permanent employment at Eskom.

2.5 **Construction of the pension benefits for Mr. Brian Molefe**

2.5.1 Upon considering the impact of losing Mr. Molefe in the event that a resolution could not be reached on the terms of his appointment, Ms. Klein and I sought the guidance of Mr Anton Minnaar ("**Mr. Minaar**"): Executive Remuneration Officer at Eskom. Mr. Minaar was involved in the appointment of 7 previous GCEOs at Eskom in the then preceding six-year period. Mr. Minaar 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.

2.5.2 Based on the abovementioned advice, it was then agreed that an arrangement could be put in place to ensure that Mr. Molefe was not adversely affected in respect of his pension benefits. On 25 November 2015, Mr. Minaar 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 "**BN12**".

2.5.3 The arrangement proposed with the guidance of Mr. Minaar was such that:

2.5.3.1 Regardless of Mr. Molefe's age after the expiry of his five-year contract, he would be allowed to retire from Eskom's service on the basis that he was aged 63;

2.5.3.2 The penalties prescribed by the Eskom Pension and Provident Fund ("**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 to be paid over to EPPF;

2.5.3.3 In the event that 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

2.5.3.4 Should the employment contract be extended, the costs of any subsequent penalties would decrease proportionately.

2.5.4 The effect of the abovementioned arrangement was considered to be such that Mr. Molefe would be in the same position that he would have been in had he retired from Eskom at the age of 63. The Board was in support of the arrangement.

2.5.5 On 25 November 2015, the terms of the arrangement were communicated by Ms. Daniels to the Minister's office. Receipt of the said letter was acknowledged and an undertaking made to bring its contents to the Minister's attention.

2.5.6 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.

2.5.7 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, Mr. Minaar guided the Board. As already mentioned, Mr. Minaar 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.

2.5.8 It was then resolved at the 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."

A copy of this resolution is attached and marked "**BN13**".

2.5.9 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 as per the resolution. Such intention was communicated to the Minister on 25 November 2017.

2.5.10 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. On 19 April 2016, the Board approved the resolution of the P&G Committee meeting of 9 February 2016.

2.5.11 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 this level.

2.5.12 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.

2.6 **The eventual payment of pension benefits to Mr Brian Molefe:**

2.6.1 On 11 November 2016, Mr. Molefe formally submitted his request for an early retirement in terms of the EPPF rules read together with the resolution of 9 February 2016. In the same letter, he also indicated that his last day of service would be on 31 December 2016, copy of the said letter is attached marked "**BN14**".

2.6.2 On 15 November 2016, EPPF provided an early retirement calculation for Mr. Molefe based on an exit date of 31 December 2016. The total cost to Eskom for early retirement would be an amount of R25, 80 204.19.

2.6.3 On 21 November 2016, Molefe's retirement letter was discussed at a Special P&G Committee meeting. During the meeting, the terms of the letter requesting early retirement were supported.

2.6.4 On 24 November 2016, the response was provided to Mr. Molefe in which I approved 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 early retirement be on the basis that Mr. Molefe be deemed to have achieved the age of 63, a copy of my approval letter is attached hereto marked "**BN15**".

2.6.5 On 23 March 2017, the amounts paid to Mr. Molefe in respect of his salary, up to December 2016, were R575, 679.91, leave due to him in an amount of R226, 278.84 and a short-term bonus to the end of December 2016 in the amount of R2, 110, 185.00. The total amount paid to Mr. Molefe was the sum of R2, 912, 143.75.

2.6.6 On 19 April 2017, the Minister called a meeting to discuss Mr. Molefe's pension pay-out. It became evident at this meeting, that my letter to the Minister dated 25 November 2015 was not accepted by the Minister. The Minister stated in no uncertain terms that funds in the amount of R30, 103, 915.62 paid to EPPF in respect of Mr. Molefe's early retirement would not be permissible and should be repaid.

2.6.7 Following the meeting with the Minister, Ms. Klein and Ms. Daniels had a meeting later on that evening with Mr. Molefe, where it became apparent that he was already paid out 30% of the pension benefit in January 2017

and was also receiving monthly pension payments of R100, 000.00 since then.

2.6.8 According to Mr. Molefe, he only received R7, 700, 000.00 from the EPPF on being admitted to the EPPF and of this sum, R4, 300, 000.00 was transferred from the Transnet Pension Fund to the EPPF.

2.7 **The Employment of Mr Singh as Financial Director at Eskom:**

2.7.1 On 1 August 2015, Mr. Singh assumed the role of CFO at Eskom on secondment from Transnet where he held the position of CFO from about July 2012, having acted as the CFO since about 2009.

2.7.2 On 28 September 2015, the Minister announced that cabinet had approved the appointment of Mr. Singh as the CFO at Eskom in conjunction with Mr. Molefe's appointment as GCEO and my appointment as Chairman.

2.7.3 On 2 October 2015, when the Minister approved the appointment of Mr. Molefe as GCEO and addressed a letter to me to this effect, a copy of Mr. Singh's appointment letter was also enclosed therein. The letter confirmed Mr. Singh's appointment as CFO from 1 October 2015. However, there was no indication of the duration of his appointment. Please also see paragraph 2.4.11.

2.8 **Eskom's response to the Public Protector's Report on the State of Capture, dated 14 October 2016:**

2.8.1 The responses to issues that were raised by the Public Protector during her investigation were prepared by, and submitted to the Public Protector, by the Company Secretary and Head of Legal Services, Ms. Daniels.

2.8.2 The Board did not respond to the Public Protector's report. When the report was published and made available to it, the Board sought and obtained legal advice and guidance from senior counsel on what its rights and obligations were. In particular, the Board sought guidance as to whether or not it could take the report on review on the basis that the Public Protector had not given the Board and/or any of the individual directors specifically mentioned in the report an opportunity to respond to the issues raised therein in relation to them.

2.8.3 Senior counsel's opinion was that the Public Protector's report did not contain any findings but instead, it contained what he referred to as being observations. On that basis, he opined, the report could not be taken on review.

2.8.4 In amplification of his views, senior counsel pointed out that the primary remedial measure employed in the Public Protector's report was that a judicial commission of inquiry had to be established and that this remedy fits logically and appropriately with an investigation that was not as detailed as it might otherwise have been.

2.8.5 In other words, as counsel concluded, the impact of the report was to record a number of potential violations of law based on the information that was made available to the Public Protector and the call for a commission of inquiry to be appointed to make the final findings on these allegations of unlawful conduct.

2.8.6 The Board accepted senior counsel's advice. Hence no further action was taken in relation to the Public Protector's report.

2.9 **The purchase of Optimum Coal Holdings by Tegeta from Glencore:**

2.9.1 **Pre-purchase of Coal from Optimum**

2.9.1.1 On 8 December 2015, a round robin resolution was submitted to the Board by management. The submission was titled: Pre-purchase of Coal from Optimum Coal Mine (Pty) Ltd ("**OCM**").

2.9.1.2 The motivation for the round robin dealt with the security of coal supply to the Hendrina Power Station in light of the fact that OCM was placed under business rescue.

2.9.1.3 As part of motivating for this transaction, Mr Koko indicated that given the serious risk of security of supply to Hendrina Power Station, Komatie Power Station and Arnot Power Station (all of which are of key national interest), he considered it appropriate to bring this 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.

2.9.1.4 The Director General of the Department of Mineral Resources responded in a letter indicating that they would engage with the parties and take certain steps to assist in considering the significant risk to the country.

2.9.1.5 The Department requested that Eskom play an active role in supporting the rescuing of the mine and return for securing the honouring of the current contract up to 2018, to consider making a pre-payment for up to one-year coal supply. This was to ensure that supply was guaranteed and averting any national crisis.

2.9.1.6 It was indicated that with the funding of the pre-purchase of coal, Eskom was going to achieve a value benefit of R238.9 million. The motivation by management further indicated that the proceeds of the R1.86 billion pre-payment of coal were to be used by OCM to extinguish existing liabilities to ensure that the business continues as a going concern. It further stated that the shutdown of OCM could potentially result in thousands of job losses.

2.9.1.7 Pursuant to the abovementioned motivation / recommendation, the pre-purchase of coal was then approved by the Board by a round robin resolution on 9 December 2015.

2.9.1.8 Based on all the submissions made by management, the Board believed that this payment was for the pre-purchase of coal from OCM. The Board only learnt from the press in July 2017 that management had, in fact, converted what was meant to be a pre-payment for coal into a guarantee.

2.9.1.9 On the 10th of December 2017, Ms Caroline Henry who was a senior general manager for the treasury department in Eskom decided that instead of laying out the R1.6 billion in cash, she would prepare a note and rather request that a guarantee in favour of Tegeta be issued through ABSA.

2.9.1.10 According to Mr Singh (Eskom's former CFO), "The issuance of this guarantee was brought to the attention of various treasury officials via emails... who all thus had knowledge that the guarantee was issued. This is over and above Ms Caroline Henry the Head of Eskom Treasury – by and large this was the Treasury EXCO. This evidences the fact that the issuing of the guarantee was not concealed or kept from the site of the responsible officials in any way" [5](*sic*).

2.9.2 **Purchase of Optimum Coal Holdings (Pty) Ltd ("OCH") by Tegeta from Glencore**

2.9.2.1 In December 2015, the sale and purchase agreement for the sale of shares and claims ("**SPA**") was signed. Tegeta purchased all of the shares in the issued share capital of OCM and purchased claims against OCM from OCH for an amount of R2, 100, 000, 000.00

2.9.2.2 The suspensive conditions of the SPA were, *inter alia*, that-

2.9.2.2.1 Eskom must consent to the sale and purchase of shares by Tegeta;

2.9.2.2.2 Release of the guarantee provided by OCH to Eskom;

2.9.2.2.3 Tegeta to issue a guarantee to Eskom in respect of its obligations in the CSA; and

2.9.2.2.4 Cession and assignment of rights in CSA to Tegeta.

2.9.3 To my knowledge, Eskom was not involved in the purchase of OCH by Tegeta (which was a commercial transaction between two private companies), nor 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 (Pre-purchase of coal from OCM by Eskom) and to that extent, the

[5] Written Narrative of Evidence to be presented by Anoj Singh on 5 December 2017 – Para 82 & 83

conditions precedent mentioned above, were inserted to protect Eskom's interests.

2.9.4 My understanding is that, Eskom's involvement in the sale and purchase of shares and claims by Tegeta from the Business Rescue Practitioner 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.

2.9.5 My understanding is further that on 8 April 2016, Tegeta made an offer to supply additional coal for the Arnot Power Station from OCM over a period of five months. This offer was made subject to a pre-payment to be made by Eskom for the supply of such coal.

2.9.6 The Board was advised that the purpose of pre-payment was to secure coal for Eskom, more particularly, of the high quality that was required by Arnot Power Station and further to ensure Tegeta's ability to meet the production requirements for both Hendrina and Arnot Power Stations in the short term.

2.9.7 In line with the above, on 11 April 2016, Eskom management approached the BTC to consider, on an urgent basis, the purchase of coal from Tegeta to supply Arnot Power Station for five months. The benefits for extending these Short-Term Contracts were presented to the BTC as including the following:

2.9.7.1 the fact that the coal was being mined and could be delivered without delay;

2.9.7.2 to alleviate the coal shortfall at Arnot Power Station due to the closure of Arnot colliery;

2.9.7.3 to alleviate the shortfall of coal requirements at Kriel Power Station due to the underperformance of Kriel Power Station Underground mine; and

2.9.7.4 by procuring this coal for Arnot and Kriel Power Station, it would assist towards building stock days.

2.9.8 The abovementioned requested approval by management was made in terms of Eskom's SCM Procedure, which 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. For example:

2.9.8.1 in cases where the supplier will have to make a big capital outlay before starting with the contract; and

2.9.8.2 it will only be issued on condition that the relevant contractual provisions relating to advance payments also need to be included in the contract.

2.9.9 The BTC approved pre-payment to Tegeta in the requested sum of R659, 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 VAT. The approval was made subject to the following conditions:

2.9.9.1 Eskom had negotiated a 3,5% discount with Tegeta;

2.9.9.2 Tegeta had obtained adequate and appropriate security for the transaction to safeguard Eskom's interests; and

2.9.9.3 Eskom management had provided a rationale for the commercial value that the transaction would have for Eskom.

2.9.10 My understanding is that in the Eskom environment, pre-payment of this nature is not necessarily unique and has been done in the past. It forms part of the procurement mandate approved by the BTC in 2008. It is used in large projects, coal mining contracts, and emergency supply contracts.

2.9.11 In this regard, it is also noteworthy that, in her report, the Public Protector stated that "*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.*"[6]

2.9.12 However, the Public Protector also made the comment that "*Eskom had previously done extensive due diligence on OCM which formed part of the Co-Operation Agreement, they were aware of exact production*

[6] See page 310, para s) of the Public Protector's report on the State of Capture.

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."[7]

2.9.13 To that end, I point out that a preliminary legal opinion obtained by Eskom on this transaction indicated that Eskom was not in contravention of the PFMA in executing this transaction as it related to irregular and fruitless and wasteful expenditure. Financial sustainability is the overarching objective of the Eskom coal strategy – optimise value from the existing cost-plus mines (Paras 8.2 – 8.4)[8]

3. Conclusion

I trust that this submission will assist the Committee in the finalisation of its inquiry.

DR BALDWIN NGUBANE

DATE: 05/03/18

[7] See page 311, para u) of the Public Protector's report on the State of Capture

[8] Submission by Board of Eskom to Portfolio Committee

"BN1"
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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 12005/2017

In the matter between:

ALSTOM S&E AFRICA (PTY) LTD
t/a GE STEAM POWER SYSTEMS
("Alstom") — Applicant

MURRAY & ROBERTS/SHANGHAI
ELECTRIC CONSORTIUM
("Murray & Roberts") — First Intervening Applicant

MURRAY & ROBERTS LIMITED t/a
MURRAY & ROBERTS POWER & ENERGY — Second Intervening Applicant

SHANGHAI ELECTRIC GROUP COMPANY
LIMITED — Third Intervening Applicant

And

ESKOM HOLDINGS SOC LIMITED
("Eskom") — First Respondent

DONGFANG ELECTRIC CORPORATION LIMITED
("Dongfang") — Second Respondent

RAFAKO SA — Sixth Respondent

DRAFT ORDER

Having heard counsel for the Applicants and the Respondent it is hereby

ordered that:

1 The Intervening application is hereby granted. The First, Second and Third intervening applicants are hereby joined as co-applicants to Alstom.

2 Pending the final determination of the relief sought in Part B of this application and Part B of the intervening application, the First and Second Respondents are interdicted from taking any steps to implement or execute any contract pursuant to the award of the tender advertised under Request For Proposal (RFP) Corp 3571 pertaining to the manufacturing, factory acceptance testing, procurement shipping and delivery to site, installation, testing and commissioning of the pulverised coal fired boiler as part of the return to service of unit 3 at Duvha Power Station (the tender).

3 The First Respondent is ordered to pay the taxed party and party costs of the application as well as the intervening application which costs shall include the costs of two (2) counsel.

DATED at JOHANNESBURG on this the 30th day of JUNE 2017

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

"BN2" 32

Eskom	Terms of Reference (32-606)	Office of the Group Company Secretary

Title: **Board Tender Committee**

Document Identifier: **240-XXXXXXXX**

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Date:	Date:	Date:

COMMISSION OF INQUIRY INTO STATE CAPTURE

U19-BSN-0098

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1. SECTION 1

1.1. Purpose

The purpose of the Terms of Reference is to define and formalise the composition, role and responsibilities, authority and governance processes of the Committee.

1.2. Applicability

This document area of applicability is Eskom Holdings (SOC) Ltd.

1.3. Definitions and Abbreviations

1.3.1. Definitions

Board	The board of directors of Eskom from time to time
Business Day	Any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa
Companies Act	Companies Act, 71 of 2008, as amended and including its regulations
DoA	Eskom's delegation of authority policy (240-62072907)
Eskom	Eskom Holdings SOC Ltd
King IV	King IV Report on Corporate Governance for South Africa, 2016
King IV Code	Part 5 of the King IV Report on Corporate Governance for South Africa, 2016
MoI	Eskom's Memorandum of Incorporation (240-65347859
PFMA	The Public Finance Management Act, 1 of 1999, as amended and including its regulations

1.3.2. Abbreviations

GCE	Group Chief Executive
GCFO	Group Chief Financial Officer

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BTC	Board Tender Committee

1.4. Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

1.4.1. Normative

a.	Companies Act
b.	DoA
c.	MoI
d.	PFMA
e.	Shareholder's Compact
f.	King IV
g.	Information Security Policy 32-85
h.	Procedure for the handling of Classified Items

1.4.2. Informative

a.	ISO 9001:2008

1.5. Information Security

The Committee shall, in carrying out its roles and responsibilities in accordance with the Terms of Reference, take note of the Eskom Information Security Policy. Information resources are Eskom business critical assets requiring a high level of protection. Sufficient measures commensurate with the risk must be taken to protect these information resources against accidental or unauthorised modifications, disclosure and/or destruction, as well as to assure the confidentiality integrity and availability of Eskom's information resources.

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2. SECTION 2

2.1. Constitution of Committee

The Board Tender Committee ("Committee") is a Committee of the Board, and has been established to assist the Board in its responsibility in making commercial process decisions to the benefit of Eskom.

The Committee shall carry out its roles and responsibilities and exercise its delegated authority as determined by the Board and reflected in these Terms of Reference, subject to the provisions of the Companies Act, the PFMA, the DoA, the MoI, the Shareholder's Compact, and any other applicable legislation or Eskom policies/procedures as determined by the Board ("the governance framework").

To the extent that there is a conflict between the governing framework and these Terms of Reference, the governing framework shall take precedence and these Terms of Reference shall be amended to remove the conflict.

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 Directors with 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, in fulfilling its mandate, apply the relevant King Code principles and explain the practices that demonstrate the application of these principles.

2.2. Composition of the Committee

2.2.1. The Committee shall comprise at least 3 (three) Directors, the majority of whom shall be independent, non-executive Directors.

2.2.2. The Board shall appoint the members of the Committee, including the Chair thereof.

2.2.3. The tenure of members of the Committee is at the discretion of the Board.

2.2.4. 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.

2.3. Committee Support Structure

2.3.1. The Committee, in consultation with the GCE, shall identify officials who shall assist the Committee in an advisory capacity and who shall be

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expected to attend meetings of the Committee unless otherwise required by the Committee.

2.3.2. The Committee, in consultation with the GCE, shall appoint a Senior Eskom Executive as the co-ordinating official.

2.3.3. The co-ordinating official of the Committee shall:

2.3.3.1. provide assistance to the Office of the Group Company Secretary in drawing up meeting agendas and preparing the necessary documentation.

2.3.3.2. review the minutes of meetings for correctness prior to circulation to members.

2.3.3.3. ensure that all action items from each meeting are appropriately addressed.

2.3.3.4. ensure that all actions emanating from resolutions passed by the Committee are actioned and managed accordingly.

2.3.3.5. sign-off on all submission packs to the Committee.

2.3.4. Officials shall not form part of the quorum and shall not have any voting powers.

2.3.5. The Committee, in consultation with the GCE, shall have the power at any time to remove any officials appointed in terms of clause 2.3.3 above from the Committee.

2.3.6. The Committee, in consultation with the GCE shall annually review and identify officials who will be required to attend the Committee meetings.

2.3.7. Experts, consultants and/or advisors may be appointed from time to time to assist the Committee in fulfilling its mandate and shall be invited to attend meetings of the Committee with the consent of the Chair and on recommendation by the relevant official. Where reasonably possible and deemed necessary, international nuclear experts should be invited to attend meetings when the Committee discusses nuclear issues.

2.3.8. The costs of appointment and/or attendance of such experts, consultants or advisors shall be borne by the appropriate business unit, and failing clarity in this regard, this matter shall be determined by the GCE. Experts, advisors or consultants appointed in terms hereof shall not be members of the Committee and shall not be considered for quorum purposes.

2.3.9. Any Board member who is not a member of the Committee may attend the Committee meeting as an observer, however the Board member is not entitled to participate without the consent of the Chair and does not have a

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vote.

2.4. Authority of Committee

2.4.1. The Committee acts in terms of the responsibilities delegated to it by the Board as recorded in these terms of reference.

2.4.2. The Committee is authorised to:

2.4.2.1. Require from any Director or Prescribed Officer any information or explanation necessary for the performance of the Committee's functions.

2.4.2.2. Request from any employee of the Company any information or explanation necessary for the performance of the Committee's functions.

2.4.2.3. Investigate any activity within its terms of reference, which shall be borne by the business unit to which it relates, and failing clarity in this regard, this matter shall be determined by the General Manager Corporate Strategy and Planning.

2.4.2.4. Obtain independent professional and legal advice, as it considers necessary to carry out its duties, and report promptly to Board on advice made in this regard. 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.

2.4.2.5. Approve tenders and contracts with a value from R750m up to Investment decision or Budget. This includes acquisition and disposal of movable and immovable property, operational expenditure and the provision and acquisition of services.

2.5. Meeting Procedure

2.5.1. Meetings

2.5.1.1. The Committee shall hold sufficient scheduled meetings to discharge all its duties as set out in these terms of reference, subject to at least one meeting every quarter.

2.5.1.2. Meetings, in addition to those scheduled, may be convened by the Chair of the Committee or at the request of a member, with the approval of the Chair.

2.5.1.3. 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.

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2.5.1.4. Reasonable notice of meetings and the business to be conducted shall be given to members and officials of the Committee, even those for the time being absent from the Republic of South Africa.

2.5.2. **Quorum**

2.5.2.1. The quorum for meetings shall be a majority of members present, in person or by electronic communication facility, throughout the meeting.

2.5.2.2. Where a member declares an interest and is recused from the meeting, the meeting remains quorate during his/her absence.

2.5.2.3. In the absence of a quorum and subject to the discretion of the Chair, the meeting can either be postponed to a later date or can proceed as an informal meeting with all resolutions required to be taken at the meeting being formally approved by way of a Round Robin Resolution (RRR).

2.5.2.4. No resolutions tabled for approval by the Committee at a meeting which is not quorate will be implemented until formally approved at the postponed meeting or via RRR as contemplated in clause 2.5.2.3

2.5.2.5. The RRR circulated in terms of clause 2.5.2.3 requires unanimous approval, in the absence of which a special meeting of the Committee will be convened in order for the matter to be discussed and formally approved during such special meeting.

2.5.3. **Agenda**

2.5.3.1. 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.

2.5.3.2. The number, timing and length of meetings and the agendas are to be determined in accordance with the annual agenda plan.

2.5.3.3. The Chair of the Committee may meet with the Office of the Group Company Secretary and officials prior to the meeting to discuss important issues and agree on the agenda.

2.5.3.4. Prior to every meeting, the agenda must be signed-off by the co-ordinating official.

2.5.3.5. Agenda items not forming part of the annual agenda plan may only be included with the approval of the co-ordinating official.

2.5.4. **Attendance**

2.5.4.1. Committee members must attend all scheduled meetings of the

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Committee, including meetings called on an ad hoc basis for special matters, unless an apology, with reasons, has been submitted to the Chair of the Committee or the Office of the Group Company Secretary.

2.5.4.2. If the Chair is absent from a meeting, any other member may act as Chair for that meeting, as agreed by those present, or as nominated by the Chair.

2.5.4.3. No member shall be entitled to appoint an alternate in his/her stead.

2.5.4.4. Members shall be fully prepared for meetings to provide appropriate and constructive input on matters under consideration.

2.5.5. Meeting and Written Resolutions

2.5.5.1. 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 Chair shall not have a second or casting vote.

2.5.5.2. The Committee may in the event of a deadlock refer the matter to the Board for a decision.

2.5.5.3. No official shall have a vote at meetings of the committee.

2.5.5.4. In the case of round robin approvals, a resolution in writing, including those submitted electronically, approved by 75% 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, provided that each member has received notice of the round robin resolution.

2.5.5.5. Where the round robin resolution referred to in term 2.5.5.4 above is approved by the members electronically, the original signed resolution must be returned to the Office of the Group Company Secretary as soon as possible for retention in terms of the Companies Ac.

2.5.5.6. Such a round robin resolution and approval shall be tabled at the next meeting for noting.

2.5.5.7. 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.

2.5.5.8. 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.

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2.5.5.9. 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 2.5.5.4 above.

2.5.6. Minutes

2.5.6.1. Minutes of meetings shall be completed by the Office of the Group Company Secretary within ten (10) Business Days after the meeting for review by the co-ordinating official where after it shall be circulated to members for comment.

2.5.6.2. The minutes must be verified by the Committee at its next scheduled meeting or via electronic communication and may thereafter be signed by the Chair of the Committee.

2.5.7. Reporting

2.5.7.1. A written report on the matters considered and decisions taken by the Committee shall be submitted to the next Board meeting.

2.5.7.2. The Chair of the Committee (or in his/her absence another member of the Committee) may highlight issues in the report for the attention of the Board.

2.5.7.1. A report of the Committee's activities shall be included annually in the Integrated Report as per the King IV Code guidance.

2.6. Evaluation of Performance

An evaluation of performance and effectiveness of the Committee, as well as individual Directors will be reviewed as necessitated by changes in the governance framework and as directed by the Board.[1]

2.7. Revisions

Date	Rev.	Remarks
May 2015	0	Annual Review
February 2017	1	Template revised based on Governance Committee requirements for Committee templates

[1] Requirement as per King IV is biennially. DPE requirement is annually.

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2.8. Development Team

This document was influenced and supported by the following:

Name	Division Represented

2.9. Approval of Terms of Reference

The Terms of Reference shall be approved by the Board on the recommendation of the Committee, shall be reviewed on an annual basis and may, from time to time, be amended as required.

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3. SECTION 3

3.1. Role of the Committee

The role of the Committee is to assist the Board in making commercial process decisions to the benefit of Eskom.

3.2. Responsibilities of the Committee

The Committee is responsible for:

3.2.1. approve tenders and the awarding of contracts up to the maximum of the investment decision /budget;

3.2.2. approve procurement strategies for projects inception;

3.2.3. approve procurement strategies for specific transactions from R750m up to Investment decision or Budget;

3.2.4. ensure that all the above are done to ensure fair, equitable, transparent, cost-effective and competitive procurement processes;

3.2.5. ensure that Eskom's procurement strategies promote transformation with regard to BEE and SD&L;

3.2.6. ensure that Eskom uses the infrastructure spend to transform and create employment opportunities and to ensure that Eskom sustains and maintains continued supply of electricity;

3.2.7. act as the oversight authority in the formulation of strategy and on-going performance monitoring and tracking of Group Commercial through relevant dashboards;

3.2.8. implement higher SD&L targets at the lower transactional levels where barriers to entry for BO, BWO and BYO entities are more significant, including the use of targeted competitive selection where necessary, in order to ensure achievement of the overall Eskom SD&L targets as set out in the Eskom Corporate Plan and in the Eskom Competitive Supplier Development Plan;

3.2.9. ensure inclusion of provisions in the standard conditions of tender which enable Eskom to reserve its right not to award a particular tender to the highest ranked or highest scoring tenderer and/or to not award it at all, in order to ensure that it is able to leverage and maximise the socio-economic and developmental objectives that are enshrined in various government policies such as the Industrial Policy Action Plan and the New Growth Plan and aligned with the set corporate targets, provided that:

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3.2.9.1. the evaluation factors to be considered in the exercising of this right is clearly set out in the tender invitation for proposals; and

3.2.9.2. do not include factors that were already considered in full or in part of the main stream evaluation factors or first phase of the evaluation.

3.2.10. ensure oversight of contract modifications and condonations to ensure that these are stringently managed; and

3.2.11. ensure oversight on the governance structure of the Land & Rights Committee together with the Property and Asset Disposals.

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Eskom	Request for Proposal (RFP)	Unique Identifier	240-114238630
		Revision	Rev 0
		Revision Date	July 2019
		Group Technology and Commercial	
		Enquiry no	CORP 3571

ESKOM HOLDINGS SOC LTD

REQUEST FOR PROPOSAL (RFP) CORP 3571

FOR

The manufacturing, factory acceptance testing, procurement, shipping and delivery to Site, installation, testing and commissioning of a pulverized coal fired boiler as part of the return to service of Unit 3 at Duvha Power Station.

RFP number	CORP 3571
Issue date	17 August 2016
Closing date and time of Tender Submission	1 November at 10h00
Closing date and time for clarification questions	27 October 2016 at 10h00
Tender validity period	Eight (8) weeks from the closing date and time
Eskom to issue Conditions of Contract	31 August 2016
Eskom to issue Technical Proposal Design	◦ Partial technical information by 31 August 2016 ◦ Completed technical information by 30 September 2016
Site visits at Duvha Power Station	◦ 12 September 2016 ◦ 05 October 2016
Clarification meetings	◦ 13 September 2016, 09h30, Eskom Megawatt Park, 1 Maxwell Drive, Sunninghill, Sandton, Johannesburg ◦ 06 October 2016, 09h30, Eskom Megawatt Park, 1 Maxwell Drive, Sunninghill, Sandton
Tenders are to be delivered to the following address on the stipulated closing date and time:	Eskom Megawatt Park 1 Maxwell Drive, Sunninghill, Sandton Tender Office (Opposite Main Reception) Johannesburg

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Eskom	Request for Proposal (RFP)	Unique Identifier	240-114238630
		Revision	Rev 0
		Revision Date	July 2019
		Group Technology and Commercial	
		Enquiry no	CORP 3571

Request for Proposal CORP 3571

Eskom Holdings SOC Ltd (hereinafter "Eskom") invites you to submit a *proposal* for the Manufacturing, Factory Acceptance Testing, Procurement, Shipping and Delivery to Site, Installation, Testing and Commissioning of a of a pulverized coal fired boiler as part of the return to service of Unit 3 at Duvha Power Station.

The enquiry documents are supplied to you on the following basis:

- Free of charge

Eskom has delegated the responsibility for this tender to the Eskom *Representative* whose name and contact details are set out in the Tender Data. A submission of a proposal by you in response to this *RFP* will be deemed as your acceptance of the Eskom Standard Conditions of Tender (to be accessed via www.eskom.co.za).

Queries relating to these RFP documents may be addressed to the Eskom *Representative*.

Yours faithfully

Charles Kalima
General Manager (Acting): Eskom Commercial-Commodity Sourcing

Date: 18.08.2016

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Eskom	Request for Proposal (RFP)	Unique Identifier	240-114238630
		Revision	Rev 0
		Revision Date	July 2019
		Group Technology and Commercial	
		Enquiry no	CORP 3571

Contents of Request for Proposal CORP 3571 documents are as follows

1. Request for Proposal (RFP CORP 3571)

   1.1 Conditions of Tendering (refer to www.eskom.co.za for this document that suppliers are required to download and read)
   1.2 Tender Data
   1.3 Commercial Tender returnables

2. Evaluation process and criteria

   2.1 Basic Compliance
   2.2 Mandatory tender returnables
   2.3 Functionality
   2.4 Financial evaluation
   2.5 Price and preference scoring
   2.6 Objective criteria

3. Condition of contract

   3.1 To be issued by 31 August 2016

4. Scope of work/Works Information/Employers Requirements

   4.1 Partial technical information to be issued by 31 August 2016.

   4.2 Completed technical information to be issued by 30 September 2016.

5. Pricing data

   5.1 Pricing data or requirements to be issued by 30 September 2016.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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6. Annexures

Number	Description	Annexure	Attached (Y/N)	Page no.
6.1	Acknowledgement form	Annexure A	Y	26
6.2	Tenderer's particulars	Annexure B	Y	29
6.3	Integrity Declaration Form (refer to www.eskom.co.za for the Supplier Integrity Pact that suppliers are required to download and read)	Annexure C	Y	32

1.2. TENDER DATA

The Tender Data makes several references to the **Eskom Standard Conditions of Tender** (refer to www.eskom.co.za for this document that suppliers are required to download and read). The clauses that apply specifically to this RFP are referenced hereunder. The ***"Tender Data"*** shall take precedence over the **Standard Conditions of Tender** in the event of any ambiguity or inconsistency between the two documents.

Clause Number from Standard Conditions of Tender	Tender Data
1.1 Parties	The *Employer* is **Eskom Holdings SOC Ltd** The Eskom *Representative* is: Name: **Thami Mnguni** Tel: **+27 11 800 5873** E-mail: **mngunitb@eskom.co.za**
1.1 Eligible tenders	Tenderers are deemed **ineligible** to submit a *proposal* if • Tenderers have the nationality of a country on any international sanctions list. A tenderer shall be deemed to have the nationality of a country if the tenderer is a national or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

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	▫ Tenderers submit more than one proposal either individually or as a partner in a joint venture (JV) or consortium ▫ Proposals submitted by a JV or consortium where the JV/consortium agreement does not explicitly state that the parties of the JV or consortium shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. ▫ A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this RFP process, if : (a) they have a controlling partner in common; or (b) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender/proposal of another Tenderer, or influence the decisions of the Employer regarding this bidding process; ▫ Tenders signed by non-authorised persons. ▫ Tenderers need to be registered with National Treasury's Central Supplier Database. **Ineligible tenderers will be disqualified.**
1.3 Enquiry documents	The RFP number is : **CORP 3571** See the content list above for the enquiry documents.
1.4 Type of Invitation to Tender/RFP	This RFP is: ▫ An Open invitation to tender
1.6 Eskom's right to accept /reject a tender	The tender shall be for the whole of the contract.

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2.2 - 2.5 Tender Submission Information	The deadline for *RFP* submission is : Date: 01 November 2016 Time: 10h00 **Late Tenders will not be accepted** Addressed: Tenders are to be submitted to the Eskom *tender box* at the following physical address: **THE TENDER OFFICE** Eskom Megawatt Park 1 Maxwell Drive, Sunninghill, Sandton Tender Office (Opposite Main Reception) Johannesburg
2.8 Mandatory tender returnables	See below list of Tender Returnables, some of these are mandatory at the Tender deadline, and others required later.
2.9 Copy of original tender	The tenderer shall submit original tender, plus 3 copies that are identical to the original tender and two soft copies e.g. a CD or memory stick/USB that is also identical to the original copy.
2.13 Tender Validity Period	The tender validity period is **eight (8)** weeks
2.17 Site/clarification meetings	A **clarification meeting** and ***site visit*** with representatives of the *Employer* will take place as follows:

Item	Site visit	Clarification
Date	12 September 2016 and 05 October 2016	13 September 2016 and 06 October 2016
Time	09h30	09h30
Venue	Duvha Power Station*	Eskom Megawatt Park, 1 Maxwell Drive, Sunninghill, Sandton, Johannesburg

Note: *Old Bethal Road, Emalahleni, 1034

Tenderers must confirm their intention to attend with the Eskom *Representative* stating the name, position, car registration, ID number and contact details of each proposed attendee.

2.18 Clarification on enquiry documents	The tenderer will notify the *Employer* of any clarifications required before the closing time for clarification queries, which is 5 days before the tender submission (closing date).
2.22 Conditions of contract	The conditions of contract will be forwarded by **31 August 2016.**
2.24 Alternative tenders	Alternative tenders are ***not allowed.***
2.31 Provision of security for performance	Will be detailed in the Conditions of contract.

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3.17 Evaluation of price	Prices will be evaluated as follows: ▫ Making the specified correction for arithmetical errors ▫ Excluding contingencies in any bill of quantities or activity schedule. ▫ Making an adjustment based on the application of the quantitative information entered by tenderers in the Contract Data provided by the Contractor to provisional amounts assessed by Eskom's Representative. Conditions of Contract detailing all the may be included in the tender returnables for this purpose. ▫ Making an appropriate adjustment for any other acceptable variations, deviations, loss evaluation or alternative tenders submitted. ▫ Making a comparison of the Nett Present Value of each adjusted tender based on the tendered programme (if provided) and prices, on the estimated effect of Price Adjustment Factors and rate of exchange fluctuations (if applicable) and on other evaluation parameters relating to uncertainty and risk.
3.18 Scoring of Prices	Prices will be scored out of 90.
3.19 Scoring of B-BBEE	B-BBEE status will be scored out of 10 in accordance with PPPFA.
3.20 Ranking of suppliers	Suppliers will be ranked by applying the preferential point scoring based on the 90/10 principle.
3.21 Objective criteria	The following will be objective criteria: 1. SHEQ requirements. 2. SD&L requirements (minimum threshold of 60% must be achieved before contract award).

COMMISSION OF INQUIRY INTO STATE CAPTURE

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1.3 TENDER RETURNABLES (refer to 2.7 & 3.12 above)

The tenderer must submit the returnables set out hereunder as part of its tender. (Mandatory returnables are indicated by a tick (✓), and if they are not submitted by tender deadline, the tenders will be disqualified from further evaluation).

No	The tenderer must complete and return the following documents.	Mandatory for evaluation	Mandatory for contract award
1.	Contractor's Nominated Account details (details for both foreign and local payments and where applicable CFC account details for foreign currency paid into a local bank account).		√
2.	Details of at least two entities or institutions which the Contractor intends to use to issue the Performance Security (as per Sub-Clause of the Conditions of Contract) and any other bonds provided for in the conditions of contract.		√
3.	Parent Company Guarantee		√
4.	Organogram indicating the tenderers proposed structure for the execution of the Works and identified key personnel (if any) together with relevant curriculum vitae of such personnel. Organogram should clearly indicate site based staff and off-site based staff (indicating local and overseas staff).		√
5.	Schedule of proposed subcontractors Section 1.7		√
6.	Your corporate governance policy (and for joint ventures, the Corporate Governance Policy of each member is required).		√
7.	Original SARS Tax Clearance certificate (IRP20).		√
8.	Certified Copy of the VAT registration certificate (VAT 103) If the tenderer qualifies as a VAT vendor. Tenderers should note that The Employer will only pay VAT against presentation of a valid tax invoice and to the extent that VAT is payable in connection with the Works		√

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No	The tenderer must complete and return the following documents.	Mandatory for evaluation	Mandatory for contract award
9.	Completed set of the Supplier Tax Evaluation Pack for Service Providers, which Includes Evaluation Pack A, Questionnaire and Appendices.		√
10.	A completed copy of the Foreign Procurement Importation Information/Requirements Sheet.		√
11.	To the extent that you fall within the definition of a "designated Employer" as contemplated in the Employment Equity Act 55 of 1998, you are required to furnish The Employer with proof of compliance with the Employment Equity Act, including proof of submission of the Employment Equity report to the Department of Labour.		√
12.	Original B-BBEE Recognition Level Verification Certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA. (Supplier will not be disqualified if the B-BBEE certificate is not available at tender close).	√	√
13.	A trust, consortium or joint venture will qualify for points for the B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate; and	√	√
	• A trust, consortium or joint venture will qualify for points for the B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated scorecard as if they were a group structure.	√	√
	• An original certificate of good standing, or proof of application, issued by the Fund, or a licensed compensation insurer		√
14.	Audited Financial Statements for the last two financial years that are written in English, or to the extent that such statements are not available, for the last two years that are available;	√	√
15.	Tenderers to note that in the case of a joint venture or special purpose vehicle (SPV) especially formed for this tender or in the last twelve months, Audited Financial Statements of each member are required.	√	√

	• The Employer Vendor Data Base number or proof of application for registration.		√
16.	If the Contractor constitutes (under applicable laws) a joint venture, consortium or other unincorporated grouping of two or more persons:		
17.	Written confirmation that these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;		√
	• these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons;		√
	• the Contractor shall not alter its composition or legal status without prior consent of the Employer;		√
	• that they accept, without qualification, the provisions of Sub-Clause 1.14 of the Conditions of Contract;		√
	• a copy of the joint venture agreement entered into between the members;		√
	• a list of all directors of each member;		√
	• an organogram detailing the group or company structure in respect of each member;		√
	• details of each member's share in the joint venture including details of each member's role and effective participation for the purpose of the Works; and		√
	• details of each member's share in the joint venture including details of Corporate Governance Policy of the Contractor (and for joint ventures, the Corporate Governance Policy of each member is required		√
	• Valid certificate or proof of CIDB (Construction Industry Development Board) Registration, in a Grade 9 designation.		√
18.	Companies who tender as a joint venture must all submit proof of registration or proof of application for registration with the CIDB as a tender returnable and demonstrate that the requirements of Regulation 25(5) are met.		√
	• Tenderer's proposed Local Production and Content Declaration (Annex C) and information which the Employer may reasonably request which satisfies the Employer that local production and content targets will be achieved	√	√
19.	Tenderer's proposed targets for Local to Site procurement	√	√

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No	The tenderer must complete and return the following documents.	Mandatory for evaluation	Mandatory for contract award
20.	Tenderer's proposed targets for Designated Sectors non-negotiable	√	√
21.	The following documents are returnable with regards to designated commodities: • Annex C - Local Content Declaration; • Annex D - Imported Content Declaration; and • Annex E - Local Content Declaration		√
22.	Insurance quotations from the lead insurer in respect of the following insurances: • Contractors All Risk / Erection All Risks Insurance; • Public Liability Insurance; • SASRIA / Riot Insurance; • Contractor's Equipment Insurance; • Marine/transit Insurance; and • Other Insurances Copies of the draft wording applicable to the following insurances must also be provided: • Contractors All Risk / Erection All Risks Insurance; • Public Liability Insurance; and • Marine/transit Insurance		√
23.	Declaration Form	√	√
24.	Conflict of Interest Form	√	√
25.	Non-disclosure agreement	√	√

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Part 2 - Technical Documents:			
No	The tenderer must complete and return the following documents.	Mandatory for evaluation	Mandatory for contract award
26.	All information required for The Employer to consider the matters such as; Eskom will inter alia, consider (and require you to demonstrate and provide proof) whether:	√	√
27.	you have the technical capabillty to execute the Works; and	√	√
	• you have the capacity to execute the Works with due regard to your available resources and your other actual and planned commitments.	√	√
	A programme for the Works (level 3, critical path method in Primavera P6.8.2 format), together with a resource usage histogram including: • Contractor Document Submittal Schedule (CDSS) as in Section 3 of the Employer's Requirements; including but not limited to all the documents listed in the 'Schedule of Submittals' • XER file; • S-Curve ES-LF; • Cost loaded programme; • Basis of Schedule Report	√	√
28.	Technical Qualifications and Deviations Schedule (if applicable);	√	√
29.	Proposed Planner/Schedulers qualifications	√	√
30.	Proposed number of persons to be authorised as Responsible Persons.	√	√
31.	All other completed schedules and other information required to be submitted will be highlighted on 31 August 2016 and firmed-up on 30 September 2016. The additional documents will be issued under section 3 [Employers Requirements] and/or section 4 [Employer's Policies and Procedures].	√	√

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Part 3: Financial			
No	The tenderer must complete and return the following documents.	Mandatory for evaluation	Mandatory for contract award
32.	All completed Financial schedules and other information required to be submitted will be issued under section 5 [*Pricing Schedules and Financial Information to be issued on 30 September 2016*]. *Financial schedules includes but not limited:*	√	√
	• Pricing Schedules and Schedule of Payments with completed data for adjustments for changes in Cost (Price Adjustment Formula), Forecast Rate of Payment (FRP), Rate of Exchange (ROE) and PS5 Schedule.	√	√
	• Milestone payments schedule with qualitative deliverables per discipline as per Milestone payments template	√	√
	• Form CPA (IG) Rev 28	√	√
	• Detailed life cycle costing (LCC) for proposed design solution including but not limited to: - total cost of ownership - asset acquisition costs - operation and maintenance costs - future improvement costs - probabilistic costs (costs of failure, repairs, spare parts, downtime etc) - cash flow projections - Net Present Value (NPV) and Internal Rate of return (IRR) calculations • - proof of O&M data from similar type designs	√	√

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Part 4 – Safety Health & Environment (SHE)			
No	The tenderer must complete and return the following documents.	Mandatory for evaluation	Mandatory for contract award
33.	Loss Time Injury Incident Rate (LTIR) (or other). Number of cases with medical attention and number of fatalities for the last 5 years. Provide the following details:		
	• Employee hours worked (used in the calculation in the calculation of LTIR)		√
	• Trend for the LTIR (or other) figure over 5 years		√
34.	Number of loss time injury (OHS Act Section 24(a) incidents including Occupational Diseases) for the last 5 years		√
35.	Health and Safety Plan (include relevant policies, organogram, equipment, machinery, major incidents and vehicles to be utilised in this project)		√
36.	Environmental Management System compliance certificate as applicable, Environmental performance for the last three years		√
37.	Costing for Safety Health & Environment as specific line items (not hidden in the technical costing of this project)		√
38.	A signed copy of the SHEQ Policy	√	√
39.	Competencies Certificates of all employees & SHE Management Representative (as per organogram)		√
40.	A sample of method statements for key activities taking note of engineering and SHE requirements. Method statements to also include activities to be performed in all phases of the project (Site establishment, Demolition of the plant, Construction of the plant & Commissioning of the plant)	√	√
41.	Baseline Risk assessment with monitoring plan, review plan and rating matrix	√	√
42.	Any SHE Management System Certificate from a recognized accredited body, e.g. OHSAS 18001		√

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No	The tenderer must complete and return the following documents.	Mandatory for evaluation	Mandatory for contract award
43.	Valid Letter of Good Standing–registration with the Compensation Commissioner (COID) or a licensed mutual company or an equivalent thereof (for international bidders)	√	√
44.	Historical information (less than 2 years): Annexure 1 incident report Sample of corrective and preventive action reports Internal or External Audits reports (Safety, Health and Environmental)	√	√
45.	How will the Company communicate with and interface between the client, subcontractors and all responsible stakeholders during the execution of the contract?		√
46.	Process for the completion of the man-job specifications (risk-based) for each employee (including temporary / casual and labour broker persons) that is specific the: individuals, positions that they occupy, work environment and tasks that they perform. (This has to be converted from generic to scope-of-work-specific on contract award.)		√
47.	Proof of Registration of the appointed Construction Health and Safety Officer (CHSO) with the South African Council for the Project and Construction Management Professions (SACPCMP) with proof of necessary competencies and resources		√
48.	Latest structure / organogram of the SHE Department and abridged qualifications of persons including SACPCMP registration CV's of Key personnel (SHE competency to be included)	√	√
Part 5 – Quality			
49.	A copy of a valid ISO 9001:2008 certificate (Or latest applicable revision)	√	√
50.	The contractor shall complete and sign Appendix A (Enquiry / Contract/Quality Requirements)	√	√
51.	The contractor shall complete and sign Appendix B (Quality Requirements for quality management ISO series)	√	√

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No	The tenderer must complete and return the following documents.	Mandatory for evaluation	Mandatory for contract award
52.	Copies of the signed quality policy statement, a quality manual and the mandatory QMS procedures as per ISO 9001:2008	√	√
53.	A copy of the latest organisational structure indicating the quality functions (Quality Assurance and Control, QA and QC within the organisation)	√	√
54.	CVs and qualifications of the Quality Representative and those of the site Quality Assurance and Control Officer (QA and QC)	√	√
55.	A draft PQP or a sample of the PQP for a similar project carried out within the past two years. The PQP shall contain the information as addressed in Annexure C of the Project Quality Requirement Specification (240-85067398)	√	√
56.	A sample of a completed Non-conformance report	√	√
57.	A sample of a completed corrective and preventive action report	√	√
58.	A copy of an external audit report conducted on the Contractor within the past two years	√	√
59.	Copies of operational procedure applicable to the contract:	√	√
60.	Management of measurement and monitoring equipment	√	√
	a) Preservation of products	√	√
	b) Procedure for the evaluation, selection and control of suppliers and subcontractors	√	√
	c) Procedure on how the Contractor manages his Sub-Contractor during project execution	√	√
	d) Proof of any accreditations (NDT / NDE / welding procedure / welder qualification) and special processes requiring certification. This can be for a similar job performed within the last two years	√	√

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Attachments			
61.	Annexure A		√
62.	Annexure B		√
63.	Annexure C		√

2.5 FUNCTIONALITY CRITERIA FOR TECHNICAL SCORING

Functionality will be evaluated on a total weight of 100% with a minimum threshold of 70%. The following is an overview of the functionality criteria:

Functionality Criteria	Maximum number of points percentage
Technical (includes Project Controls)	100%
Overall minimum threshold for functionality to proceed to the next phase	70%

The following is a further breakdown of the Functionality criteria:

Functionality Criteria	Maximum number of points percentage
Technical	80%
Project Controls	20%
Total	100%
Overall minimum threshold for functionality to proceed to the next phase	70%

Note: A detailed Functionality criteria will be issued on 30 September 2016.

Tenders which do not meet the overall minimum threshold of 70% will not be evaluated further.

Step 4 – Local Content and Production

All designated commodities such as, but not limited to, valves, cables and filter bags should be supplied in accordance with the instruction notes issued by the National Treasury and to comply with the local production and content thresholds.

Step 5 – Financial Evaluation

Where applicable a financial evaluation will be conducted by Eskom to further evaluate the financial viability of the tenderer and its ability to meet its contractual obligations for the duration of the contract including a financial analysis, formal treasury evaluation, QS evaluations etc.

Step 6 – Price and Preference

Price points will be calculated out of 90 for price. ***Price = Evaluated price, including VAT.*** A maximum of 10 points will be allocated to the B-BBEE level contribution. The prices and preference points will be added together to determine the highest scoring tenderer.

Step 7: Objective Criteria

SHEQ Objective criteria applicable in terms of Section 2(1) (d-f) of the PPPFA.

Supplier Tender Submissions for Health, Safety, Environment (SHE) Requirements

Sec	Supplier Tender Submissions for Health, Safety, Environment (SHE) Requirements	Total
1	Letter of good standing	10%
2	SHE policy	10%
3	Latest structure/organogram of the SHE Department and abridged qualifications of persons. • SACPCMP registration • CV's of Key personnel (SHE competency to be included)	10%
4	Safety & Environmental Management Plan	20%
5	Baseline risk assessment with monitoring plan, review plan and rating matrix	20%
6	Method statement	15%
7	Historical Information (Less than 2 years): • Annexure 1 incident report • Sample of corrective and preventive action reports • Internal or External Audits reports (Safety, Health and Environmental)	15%
Total		100%

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Supplier Tender Submissions for Quality Requirements

Category 1: Quality Requirements	Deliverables to be evaluated indicator = 1	Weights
SECTION A : Quality Management System Requirements ISO 9001:2008 Valid certification of Quality Management System by an ISO accredited body		
	Apply (Yes=1)	
A.1 Product / Service Scoping on ISO 9001 certificate is defined and relevant	1	25%
A.2 Certificate by Approved and Authorized certification authority	1	
A.3 Certification Authority has Recognized International Accreditation	1	
A.4 Validity (expiry date) of certificate	1	
Section A Score	4	

SECTION B : Evidence of QMS in operation (Tender Quality Requirements -Ref QM-58 or 240-51544462)		
	Apply (Yes=1)	
B.1 Copy of appointment letter & CV/ resume of a Quality Representative for the project	1	25%
B.2 Signed Organisational structure & Quality dept reporting structure.	1	
B.3 Copy of procedure for control of suppliers & subcontractors	1	
B.4 Copy of an internal management system audit report (with NCR, corrective &	1	
B.5 Copy of an external management system audit report (with NCR, corrective &	1	
B.6 Copy of Customer satisfaction surveys	1	
B.7 Copy of a Quality Plan (incl ITP's) on previous project < 2yrs	1	
B.8 Historical information (list) of similar work performed < 2yrs	1	
Section B Score	8	

SECTION C : Contract Quality Plan Requirements (Ref QM-58 and 240-10925369B) Contract Quality Plan as per Scope of Works (Ref ISO 10005)		
NB!!!! draft Contract/Project Quality Plan has important QA deliverables	Apply (Yes=1)	20%
Section C Score	0	

SECTION D : Quality Control Plan Requirements (Ref QM-58 Annexure I or 240-51544462) QCP /Checklist/ ITP (Quality Control Plans) as per Scope of Works (Ref ISO 10005 / 35-59 / 39-71)		
NB!!!! draft QCP/ITP (jobcards) haves important QC deliverables	Apply (Yes=1)	20%
	1	
Section D Score	1	

SECTION E : User defined additional Requirements & miscellaneous (Ref QM-58) Customer specific requirements & other standards and required can be listed and evaluated here		
	Apply (Yes=1)	
E.1 Form A is completed and signed.	1	10%
E.2 Copy of proposal and/ or assessment results of any recognised Business Excellent Model	1	
Section E Score	2	

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SD&L Objective Criteria

Below are SDL targets that will be negotiated with the suppliers in order to meet Eskom's requirements. Suppliers are required to meet a minimum of 60% SD&L threshold before contract award.

SUPPLIER DEVELOPMENT AND LOCALISATION COMPLIANCE MATRIX FOR SUPPLIERS AND CONTRACTORS				
Criteria	Weight (%)	Total Target (%)	Proposed Target (%)	Total Overall Weighted Score
Local Content to South Africa as a percentage of Contract Value	25.00%	40.00%		0.00%
Local Content Local to Site as a percentage of Contract Value	25.00%	60.00%		0.00%
Procurement from BO as a percentage of Contract Value	25.00%	10.00%		0.00%
Skills Development	25.00%			0.00%
Total Score	100.00%			
		Total Supplier Development and Localisation Score		0.00%

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SKILLS DEVELOPMENT COMPLIANCE MATRIX

Skill Type (Occupation)	OFO Occupational Group	Weight (%)	Target Number of Persons to be Trained (Local to South Africa)	Proposed Number of Persons to be Trained (Local to South Africa)	Target Number of Persons to be Trained (Local to Site)	Proposed Number of Persons to be Trained (Local to Site)	Total Weighted Score
Method 1: Occupation Qualification e.g. Safety Officer		25.00%	60	0	60		0.00%
Method 2: Fitters, Rigging, A Class Welders		50.00%	25	0	14		0.00%
Method 3: Candidates-3years diplomas e.g Technicians		25.00%	15	0	6		0.00%
	Total	100.00%	100	0	80	0	0.00%

Supplier Development and Localisation Representative

Name:_____

Signature:_____

Date:_____

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Job Creation

Suppliers should mention the number of jobs created and retained as a direct result of the contract. These proposals shall be made in the SD&L Compliance Matrix

New and retained jobs	Commitment
New Jobs	[•] number and Person-Years of Work
Retained Jobs	[•] number and Person-Years of Work*

*For the purposes of this Appendix One-Person-Year of Work is equal to 230 paid working days, including paid training days (in case of paid work), or 230 working days (in case of a learnership).

SD&L performance bond

For the duration of the contract, Eskom will **retain 5% SD&L performance bond** (excluding VAT) payable at the end of each periodic interval as security for the fulfilment by the supplier of its SD&L undertakings, achievements and maintenance of B-BBEE rating at least at a minimum level 4 (four) . This 5% SD&L performance bond will be weighted as follows:

Skills development	20%
B-BBEE rating	20%
Local content	20%
Local content to site	20%
Subcontracting	20%

Note: If the supplier has at the end of the contract fulfilled its SD&L obligations, the 5.0% Bond retained shall be reimbursed.

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1.4 Negotiations Process

Upon conclusion of the desktop evaluations, Eskom will short-list the top two suppliers and engage in negotiations.

1.5 Eskom reserves the right to:

- Cancel this tender or any part thereof at any time.
- Modify this tender or any part thereof at any time.
- Exit or terminate the enabling agreement or any part thereof at any time.
- Split the requirements/quantities between the suppliers.
- Accept any tender in part or full at its' own discretion.
- Contact any supplier during the evaluation process, in order to clarify any information, without informing any other supplier.
- Award contracts to one or more Suppliers for the same commodity.
- Audit the contracts from time to time.
- Eskom reserves the right not to evaluate and award tenders that do not comply strictly with this tender document.
- Eskom reserves the right to make a selection solely on the information received in the tenders or to enter into negotiations with any one or more suppliers.
- Eskom reserves the right not to award a tender to the highest scoring tenderer as prescribed in PPPFA.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Eskom	RESOLUTION OF THE BOARD TENDER COMMITTEE ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary	

RESOLUTION OF THE BOARD TENDER COMMITTEE (BTC) OF ESKOM HOLDINGS SOC LTD

STRICTLY CONFIDENTIAL

Duvha Unit 3 Recovery Project Status Update Report and a Revision of the Mandate to Negotiate and Conclude a contract for the Refurbishment of Duvha 3

1. BACKGROUND:

1.1 On 1 August 2016, BTC approved a strategy and a mandate to negotiate and conclude a contract for the proposal design and overall engineering (concept, basic and detail) as part of the return to service of Duvha Unit 3 with Steinmuller Engineering GMHB.

1.2 The strategy approved on 1 August 2016 also included the issuance of an open tender for procurement and construction contract and to negotiate with the top two short-listed suppliers and conclude a contract.

1.3 As per the previous feedback to the board, evaluations were conducted by the Technical and Commercial Team and results audited by KPMG. 4 (four) tenderers met the technical gatekeepers and the other 2 (two) did not meet all technical gatekeeper requirements. These 2 (two) were subsequently disqualified.

1.4 The next phase of the evaluations was conducted on functionality i.e. technical including Project Controls and tenderers needed to achieve a threshold of 70% in order to move to the next stage of evaluation, which is price and B-BBEE on a (90/10) principle.

1.5 The Technical and Commercial evaluations have been partially completed due to the fact that all (four) suppliers had significant and material exclusions and/or deviations which have a material impact on their tendered price and risk to the project. The team clarified these exclusions and/or deviations through email but it became apparent when the tenderers responded that a face to face interaction is necessary. Hence, pre-negotiation meetings were scheduled with the 4 (four) tenderers from 9 -17 January 2017.

1.6 The meetings are currently underway and it is clear that there are certain exclusions and deviations that cannot be fully addressed without negotiating with the supplier and hence this request. It is expected that the negotiations will commence by 19 January 2017 and concluded on or before 28 February 2017. The contract will be awarded to the successful tenderer before 31 March 2017.

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Eskom	RESOLUTION OF THE BOARD TENDER COMMITTEE ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
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		Revision	0
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		Office of the Company Secretary	

2. IT WAS RESOLVED THAT:

2.1 The Duvha Unit 3 Recovery Project Status is noted.

2.2 The number of suppliers shortlisted and with whom Eskom is to negotiate and conclude as per the mandate approved by the Board Tender Committee, is amended from 2 (two) to a minimum of 2 (two) up to a maximum of 4 (four).

2.3 That the Group Executive: Group Capital Division is authorised with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

The resolutions above are approved / not approved:

IFC COMMITTEE MEMBER:	APPROVED: (Signature)	NOT APPROVED:	DATE:
Z KHOZA			20/01/2017
C MABUDE			20/01/2017
P NAIDOO			20/01/2017

PLEASE FAX OR E-MAIL THE COMPLETED ROUND ROBIN REQUEST BY NO LATER THAN 12H00 ON MONDAY 23 JANUARY 2017

THE OFFICE OF THE GROUP COMPANY SECRETARY: TEL: +2711 800 4278 / + **EMAIL:** magagumn@eskom.co.za

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Eskom	Duvha Unit 3 Procurement and Construction Evaluation Report Rev 1	Unique Identifier	240-53463039
		Revision	Rev. 4
		Revision Date	Feb 2019
		Group Technology and Commercial	

To	EXCO- PROCUREMENT SUBCOMITTEE (EXCOPS) BOARD TENDER COMMITTEE (BTC)			Date	TBC
Business Unit	Group Capital	End-user name	Tshepo Molabe	PR No	TBC
Compiler	Thami Mnguni			Enquiry number	CORP 3571
Buying / Sourcing Department	Commodity Sourcing				
Description	The procurement, fabrication, factory acceptance testing, shipping and delivery to site, construction, testing and commissioning of a pulverized coal fired Boiler for the Duvha Unit 3 Recovery Project				

1. RECOMMENDATION

In accordance with the latest revision of Eskom's Procurement and Supply Chain Management Procedure 32-1034, it is recommended that the negotiations be entered into with **Alstom S&E Africa (Pty) Ltd TA GE Steam Power System (GE),Murray & Roberts Shanghai Electric Consortium (MRSEC), and Dongfang Electric Corporation (DEC)** for the **procurement, fabrication, factory acceptance testing, shipping and delivery to site, construction, testing and commissioning of a pulverized coal fired Boiler for the Duvha Unit 3 Recovery Project**. The 3 (three) Tenderers recommended met the technical threshold and upon concluding the negotiations, all 3 (three) Tenderers will be requested to submit their Best and Final Offer (BAFOs) in order to apply the 90/10 and determine the highest points in terms of Preferential Procurement Policy Framework Act No 5 of 2000 (PPPFA).

It is further recommended that Rafako SA (Pty) Limited (Rafako) be excluded from participating in the negotiation process based on their response during pre-negotiation clarifications as captured in the minutes dated 18 January 2017 indicating that they will submit regulatory documents 4 (four) months post contract award and that their tender price is a budget estimate and will be fixed and firmed post contract award. Rafako SA further indicated that they will require at least 6 (six) months to optimize their proposal and the price and 3 (three) months to submit level 3 (three) project schedule.

The ERA revision 0 approved at Board Investment and Finance Committee in December 2015 makes provision for a budget of allocated to this scope of work for Procurement and Construction. The ERA was not revised to align to the BTC mandate parameters and based on the market response; the contract will be awarded within the approved ERA budget.

The contract will be for a period of 60 (sixty) months. It is anticipated that the contract will commence on or before 29 March 2017.

It is further recommended that a contingency amount of be approved, which will be utilised in respect of compensation events. The Delegation Consent Form will be submitted with the Feedback Report for final approval based on the negotiated contract value.

The total value for approval will therefore not exceed

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It is further recommended that the Group Executive for Group Capital Division be authorised, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

NOTE: ON 1 AUGUST 2016, THE BOARD TENDER COMMITTEE (BTC) APPROVED A STRATEGY FOR THE ISSUANCE OF AN OPEN TENDER FOR PROCUREMENT AND CONSTRUCTION CONTRACT AND TO NEGOTIATE WITH THE TOP TWO SHORT-LISTED SUPPLIERS AND CONCLUDE A CONTRACT WITH ONE TENDERER THAT MEETS ESKOM REQUIREMENTS.

ON 20 JANAURY 2017 BTC APPROVED AN AMENDMENT TO THE APPROVED MANDATE TO NEGOTIATE WITH A MINIMUM OF 2 (TWO) UP TO A MAXIMUM OF 4 (FOUR) TENDERERS.

SIGNATORIES

Name	Unique Number	Designation	Signature	Date
Thembokuhle Bhengu	4035305	Middle Commercial Manager		
Marumo Lekoto	3977406	Senior Manager (Acting) Sourcing		
Tshepo Molabe	3975011	Recovery Portfolio Manager	T. Moabe	
Charles Kalima	3995510	General Manager Commercial (Acting)		

2. SCOPE OF WORK

The procurement, fabrication, factory acceptance testing, shipping and delivery to site, construction, testing and commissioning of a pulverized coal fired Boiler for the Duvha Unit 3 Recovery Project.

The *Employer*, in partnership with Others, performs the basic and high level detail engineering for the *works*. The *Contractor* is responsible for the procurement and construction of the boiler at Unit 3, which includes design of components specified on a functional basis by the *Employer*, fabrication detailing of components designed by the *Employer*, procurement, manufacture, delivery to site, construction, erection, quality assurance, supervision, commissioning, startup and handover of the *works*. The scope of the *works* is summarized in Table 1 below listed in accordance with the AKZ coding system as applied at Duvha Power Station.

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High Level Scope of *works* *

AKZ	System	Scope	Supplied by
A – E, M	Electrical Supply & Distribution Systems	Refurbish	Others
H, J, K, L	Control & Instrumentation Systems (Including Field Equipment)	Upgrade	Others
IF	Boiler House Structures – Main Steel Structure	Refurbish	Others
IF	Boiler House Structures – Secondary Steel Structure	Partial Replacement	Contractor
NA	Boiler High Pressure System	Replace	Contractor
NB	Boiler Circulating System (Excluding Circulating Pump & Motor)	Replace	Contractor
[illegible]	Boiler Circulating Pump & Motor	Refurbish	Others
NC	Boiler Drains & Vents	Replace	Contractor
NE	Boiler Reheat System	Replace	Contractor
NG	Boiler Air Supply System (Combustion Air) – Ducting & Dampers	Replace	Contractor
NG	Boiler Air Supply System (Combustion Air) – Fans	Refurbish	Others
NH	Boiler Air Heater	Refurbish	Others
NK	Boiler Lighting-Up Equipment	Replace	Contractor
NL	Boiler Oil Firing Equipment	Replace	Contractor
NM	Boiler Coal Firing Equipment – Coal Mills	Refurbish	Others
NM	Boiler Coal Firing Equipment – PF Piping	Replace	Contractor
NM	Boiler Coal Firing Equipment – PF Burner Fabrication	Replace	Others
NM	Boiler Coal Firing Equipment – PF Burners Installation	Replace	Contractor
NN	Boiler Gas Firing Equipment	Replace	Contractor
NQ	Flue Gas Cleaning/Fabric Filter Plant (FFP)	Refurbish	Others
[illegible]	Boiler Flue Gas Extraction – Ducting & Dampers up to FFP	Replace	Contractor
NR	Boiler Flue Gas Extraction – Fans	Refurbish	Others
NS	Boiler Secondary Air System	Replace	Contractor
NT	Fly Ash Return - FFP Hopper System	Refurbish	Others
NU	Ash and Slag Removal & Transport (Excl. Boiler Ash Hopper)	Refurbish	Others
NV	Boiler Heating Surface Cleaning (Sootblowing)	Replace	Contractor
NW	Boiler Spray Water	Replace	Contractor
NY	Outage HP Pipework (Chemical Clean & Steam Blow)	Supply	Contractor
P	Fuel Handling System	Refurbish	Others
RA	Main Steam Pipe System	Replace	Contractor
RB	Hot Reheat Pipe System	Replace	Contractor
RC	Cold Reheat Pipe System	Replace	Contractor
RF,RH,RW	Turbine Extraction System	Refurbish	Others
RG	Control Fluid System (HP Bypass & Reheat Safety Valve)	Replace	Contractor

RK	Drains From Start-Up Flush Tank	Refurbish	Others
RL	Feed Water Transfer Pipe System (Excluding Heaters)	Replace	Contractor
RM	Condensate Transfer System	Refurbish	Others
RQ	Auxiliary Steam Equipment	Replace	Contractor
RU	Turbine Drain & Return System	Refurbish	Others
S	Turbine	Refurbish	Others
US	Control & Service Air System – Within Boiler Terminal Points	Replace	Contractor
UX	Fire detection and alarm system – Within Boiler Terminal Points	Replace	Contractor
UY	Fire water system – Within Boiler Terminal Points	Replace	Contractor
VD	Boiler Auxiliary Cooling Water System	Replace	Contractor
WW	Boiler ash hopper system	Replace	Contractor

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3. COMMERCIAL EVALUATION

Sourcing Mechanism used	Open tender			
Item / Description	Issue Date	Closing Date	Original Tender Validity Date	Revised Validity Date
Pre-notification letter	5 August 2016	22 November 2016 (an extension from an original submission date of 01 November 2016)	8 (eight) weeks	31 March 2017
RFP information pack	18 August 2016			
Partial technical information	31 August 2016			
Completed technical information and conditions of Contract	30 September 2016			
Required completion date	15 March 2017	Desired award date		8 March 2017
Reason for using this particular sourcing mechanism	To test the market; to maximise opportunities for competition To give potential suppliers an opportunity to tender for the works; and To create supplier competition for Eskom. PFMA Regulations, competitive tenders are required to be open.			
Reasons why extensions of time/validity were requested	*Not Applicable.*			
No of suppliers approached	Open tender to the market.	No of responses received	6 (six) tenderer's.	
Names of suppliers	Response received [Y/N]	Deemed Non-responsive [Y/N]	Reason for non-responsiveness	
Dongfan Electric Corporation Ltd	Y	N	Deemed responsive	
Murray And Roberts And Power And Energy (with Shanghai Electric)	Y	N	Deemed responsive	
RAFAKO SA	Y	N	Deemed responsive	
Alstom S&E-GE Power System	Y	N	Deemed responsive	
Shany Engineering (Pty) Ltd	Y	Y	Deemed non-responsive (Did not meet mandatory technical gatekeepers)	
Sinohydro Corporation Limited	Y	Y	Deemed non-responsive (Did not meet mandatory technical gatekeepers)	

COST ALLOCATION	
Cost Centre / WBS / Asset Number	Not Applicable.
Status Form : CRA / DRA / ERA	ERA Approved.
Budget Amount	
Budget commitment	The project has been budget for (Approved documents available on request).

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Number	Item	Yes	No	Comments
3.1	Has the Hierarchy been correctly applied?			N/A
3.2	Has it been confirmed that the goods and services cannot be supplied by an Eskom subsidiary?	X		
3.3	Have you determined whether there is other Professional, Strategic or Management Consultants in the market that may be able to render the same / similar services?			N/A
3.4	Has the supplier submitted a valid verification certification confirming its current B-BBEE status		X	Murray and Roberts submitted a valid verification certificate confirming their B-BBEE status. B-BBEE is mandatory submission before contract award and is an objective criteria. It must be noted that GE submitted an invalid B-BBEE certificate and the certificate was observed as invalid and not authentic. Further investigation must be conducted internally and externally. Eskom's Procurement and Supply Chain Management Procedure 1034 states that The PPPFA may also not apply to tenders that target an international supply market, or where in the interests of national security, or in the public interest, it is not practical to apply the provisions of the PPPFA, in

				which case an exemption from the PPPFA may be sought. This is applicable to BBBEE Certificate for Rafako SA, DEC and Murray and Roberts's consortium partner Shanghai Electric Corporation.
3.5	List the shareholders & directors (company), members (CC) or partners (partnership / JV), and their percentage of ownership in the business.	Shareholder/ Members	Executive Directors and Non-Executive	% of Ownership
		Shareholding, directors information will be requested during negotiations		
Number	Item	Yes	No	Comments
3.6	Is Employment Equity included as one of the elements of supplier's B-BBEE Scorecard?		X	
3.7	Is the supplier a "designated employer" as defined in the Employment Equity Act?		X	
3.8	Is this construction / engineering for which registration with CIDB is required?	X		
3.9	Has the supplier provided proof of registration with CIDB in the appropriate category of work?	X		Two Tenderer out of 4 submitted proof of application for CIDB registration. 3.9.1 GE submitted CIDB certificate. 3.9.2 Dongfang submitted proof of application for CIDB registration. 3.9.3 MRSEC Consortium and Rafako did not submit CIDB registration.
3.10	Indicate Tenderer's level of CIDB grading	9 ME and 9 EP		
3.11	Suite of contract to be used?	NEC **	FIDIC	Other

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3.13	**Complete if NEC suite selected (List Main option and Secondary options)	Main	Secondary	
		A: Priced contract with activity schedule	X1: Price adjustment for inflation X2: Changes in the law X3: Multiple currencies X4: Parent company guarantee X7: Delay damages X13: Performance Bond X15: Limitation of *Contractor's* liability to fit for the purpose intended X16: Retention X18: Limitation of Liability Z: *Additional conditions of contract*	
		W1: Dispute resolution procedure		
Number	**Item**	**Yes**	**No**	**Comments**
3.14	Legal sign off on deviations to terms and conditions?	Yes X	No	N/A
3.15	Will any warranties / guarantees be provided & for how long?	Yes X	No	Period To be negotiated.
3.16	Has the supplier submitted an original and valid Tax Certificate?	Yes X	No X	Murray and Roberts submitted individual Tax Clearance Certificate but Shanghai Electric Corporation Tax Clearance Certificate was not submitted. Rafako SA did not submit Tax Clearance Certificate. GE and DEC submitted valid Tax Clearance Certificates
3.17	Are there any tax implications?	Yes X	No	Details on Duties and related taxes.
3.18	The service provider can be classified as one of the following for purposes of PAYE	Labour broker (IRP 30 received)	Personal service provider	Dependent contractor / Independent contractor
				X
3.19	Will shipping / transportation be arranged by the supplier?			To be negotiated.
3.20	If yes, has the Shipping Declaration Form accompanied your request to the Shipping department?			To be advised
3.21	Have any INCOTERMS been used?	Yes X	No	DAP
3.22	*If yes, have you consulted with the Shipping department?*			To be negotiated.
3.23	Is the cost of shipping / transportation indicated separately on the Calculation Sheet, as part of the overall approval value?	Yes	No X	To be negotiated.

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Number	Item	Yes	No	Comments
3.24	Have the relevant insurance obligations been included as part of the conditions of contract?	Yes X	No	N/A
3.25	Indicate what insurances are applicable to this contract.	Type of insurance Assets all risk Construction all risk / Erection all risk Marine cargo SASRIA/Riot insurance Contractor equipment		
3.26	Is supplier providing Eskom with a performance bond / guarantee/advance payment/retention/SD & L "Construction Guarantees" against the contract?	Yes X	No	To be confirmed during negotiations.
3.27	Has prior approval been obtained from Eskom Treasury Department regarding the institution/s that has guaranteed the funds?	Yes	No	Suppliers will be provided with standard Bond wording for their consideration and any deviations, Eskom Treasury will be notified
			X	Eskom treasury will be notified upon the confirmation of institutions that has guaranteed the funds

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4. EVALUATION CRITERIA

4.1 FUNCTIONALITY

Functionality is divided into two streams i.e engineering which accounts for 80% and Project Controls which accounts for 20%. The Suppliers have to meet the 70% threshold of the combined streams scores.

Functionality Criteria	Maximum number of points percentage	Tenderers will be expected to score at least the minimum threshold per functional area to proceed to the next step
Engineering	80%	70%
Project Controls	20%	No Threshold
Technical	100%	70%

Buyer to include all the relevant evaluation criteria's score cards in this document

Complete the table below if any gatekeepers were stipulated

No	Gatekeeper	Reason/explanation
1	The tenderer must have experience, with fabricating in own facilities or through affiliated companies, and under own management and conducted construction under own planning and management, of boilers of at least 500MWe successfully completed.	The use of the mandatory technical gatekeepers was to ensure that all tenderers would have the capacity and experience to execute this project.
2	If construction of main boiler pressure parts and HP piping is sub-contracted, then the proposed sub-contractor needs to have experience of performing the extent of the works sub-contracted.	
3	The tenderer must have boiler pressure parts and high pressure piping fabrication experience according to the specified European norms (EN).	

4.2 PREFERENCE POINTS SYSTEM

TECHNICAL EVALUATION OF TENDERS

No	Name of Supplier	Technically		Reason
		Acceptable	Unacceptable	
1	Murray & Roberts Shanghai Electric Consortium	Yes		Met Functionality Threshold
2	Alstom S&E Africa (Pty) Ltd TA GE Steam Power System	Yes		Met Functionality Threshold
3	Dongfang Electric Corporation	Yes		Met Functionality Threshold
4	Rafako SA	Yes		Met Functionality Threshold

4.3 QUALITATIVE EVALUATION RESULTS (ENGINEERING)

The qualitative evaluation results are summarized in the tables below. For the detailed qualitative scoring sheet, see Appendix A. The non-compliant items (scores of 2), and the totally deficient or non-responsive (scores of 0) are listed in Appendix B.

Table 2: Qualitative Criteria Score Summary

Tenderers final score			
Suppliers	**Score %**	**Score out of 5**	**Ranking**
Alstom S&E Africa (Pty) Ltd TA GE Steam Power System	71.80	3.59	4
Dongfang Electric Corporation	81.05	4.05	3
Murray & Roberts Shanghai Electric Consortium	90.56	4.53	1
Rafako SA	83.30	4.16	2

As per the results shown in Table 2, all 4 (four) tenderers met the defined technical threshold of 70%.

The technical evaluation was conducted by technical evaluators listed on table 3 and signed-off by **Mr. Danie Odendaal-General Manager Generation Plant Engineering**, who concurs with the recommendation contained herein. A copy of the technical evaluation report will be available upon request.

The following Technical Evaluation Team (TET) members took part in the evaluation as well as the scoring clarification sessions. Each TET member signed off an individual scoring sheet prior to the clarification session and agreement was reached during the clarification sessions on all scoring adjustments made.

Name	Designation
Sekkappan Karthikeyan	Duvha Unit 3 Boiler EDWL
Anton Hart	Duvha Unit 3 Project EDWL
Naeem Tootla	Boiler Pressure Parts LDE
Denise Naidoo	Civil and Structural LDE
Herbert Grobler	Boiler Auxiliaries LDE
Morris Maroga	Corporate Specialist - Welding
Andre Kellerman	C&I LDE
Jan Strydom	Low Pressure Services LDE
Johnathan Chetty	Bulk Materials Handling LDE
Macy Mpe	Electrical LDE
Dhelia Raman	Chemical LDE
Afzal Teladia	Project Engineering Manager
Ronald Mandavha	System Design LDE
Wolfgang Marchewski	Steinmueller Engineering
Yokesh Singh	Senior Manager – PEIC (Acting)

Table 3: Technical Evaluators Team

This final tender evaluation report has been seen and accepted by:

Name	Designation
Sekkappan Karthikeyan	Duvha Unit 3 Boiler EDWL
Anton Hart	Duvha Unit 3 Project EDWL
Naeem Tootla	Boiler Pressure Parts LDE
Herbert Grobler	Boiler Auxiliaries LDE

4.4 QUALITATIVE EVALUATION RESULTS (PROJECT CONTROLS)

Functionality serves as a threshold / gatekeeper prior to commencing with the remainder of the commercial evaluation process (being step 2 and 3). Project Controls forms part of the functionality criteria and constitutes twenty (20%) of the weighting.

The qualitative evaluation results are summarized in the tables below. For the detailed qualitative scoring, sheet are available on request. The non-compliant items (scores of 2), and the totally deficient or non-responsive (scores of 0) are listed in Appendix B.

Qualitative Criteria Score Summary

The suppliers were requested to submit a tender with the associated costs for Procurement, Fabrication, Construction and Completion for the enquiry scope of work.

The following suppliers passed the functionality test and were evaluated for Project Controls minimum requirements:

Tenderers final score		
Tenderer Name	**Score %**	**Ranking**
Alstom S&E Africa (Pty) Ltd TA GE Steam Power System	85.10	2
Dongfang Electric Corporation	47.10	4
Murray & Roberts Shanghai Electric Consortium	89.20	1
Rafako SA	77.60	3

CONCLUSIONS (PROJECT CONTROLS)

- **Murray & Roberts Shanghai Electric Consortium's** submission was comprehensive and did align with the Eskom project control requirements. The supplier was responsive in terms of the submission.
- **Alstom S&E Africa (Pty) Ltd TA GE Steam Power System's** submission was comprehensive and did align with the Eskom project control requirements. The supplier was responsive in terms of the submission.

- **Rafako SA (Rafako)**'s submission was comprehensive and did align with the Eskom project control requirements. The supplier was responsive in terms of the submission. There are minor exceptions that need to be clarified at a later stage.
- **Dongfang Electric Corporation (DECE)'s** submission was not comprehensive and did not align with the Eskom project control requirements. There are major exceptions that need to be clarified at a later stage.

The Project Controls evaluation was conducted by Project Controls Team listed on table 4 and signed-off by Mr Tshepo Molabe – Duvha Recovery Portfolio Manager- Group Capital Division, who concurs with the recommendation contained herein. A copy of the technical evaluation report will be available upon request.

Name	Designation
Thando Poney	Senior Advisor Quantity Surveyor
Johan van der Berg	Project Controls Manager

Table 4: Project Control Evaluators

4.5 CONSOLIDATED FUNCTIONALITY SCORES (ENGINEERING AND PROJECT CONTROLS)

	Functionality		
	Engineering	Project Controls	Combined
Tenderers Name	**Score %**	**Score %**	**Score %**
Alstom S&E Africa (Pty) Ltd TA GE Steam Power System	71.80	85.10	74.46
Dongfang Electric Corporation	81.05	47.10	74.26
Murray & Roberts Shanghai Electric Consortium	90.56	89.20	90.29
Rafako SA	83.30	77.60	82.16

4.6 FINANCIAL EVALUATION- PRICE

4.6.1 SUBMISSION DATED 22 NOVEMBER 2016

Price matching was allowed for in the enquiry, but was never applied. All 4 (four) Tenderers met the Technical Evaluation Threshold and price matching principle is applicable to determine the top two Tenderers that qualify for the negotiations phase. However, this was not applied due to items (which may impact on the tendered prices) that still require clarification.

Methodology / Evaluation Process

The Tenderers were requested to submit a tender price with the associated costs for Procurement, Fabrication, Construction and Completion for the enquiry scope of work.

The following suppliers passed the functionality test and were evaluated for price:

- Alstom S&E Africa Pty Ltd Trading as GE Steam Power Systems
- Dongfang Electric Corporation Limited
- Rafako SA
- Murray & Roberts Power & Energy and Shanghai Electric Power Generation Services Company (SEC)

4.6.2 FINANCIAL EVALUATIONS

4.6.2.1 PHASE 1 (ORIGINAL TENDERED PRICES 22 NOVEMBER 2016)

Tenderers submitted tendered prices on 22 November 2016 during the tender closing date as follows:

The suppliers quoted as follows:

Currency	MRSEC	Alstom GE	Rafako	Dongfang
CNY		CNY 139,964,928.00		
EUR		€29,089,941.00	€219,300,000.00	
USD		$2,165,674.00		$427,072,060.00
ZAR	R 2,769,561,202.90	R 2,075,243,607.00		
Total	R 2,769,561,202.90	R 2,851,334,200.00	€219,300,000.00	$427,072,060.00

To enable comparison, the prices were translated from the foreign currency to ZAR amounts using the following exchange rates (Bloomberg currencies on 5/12/2016):

CNY 1.00 = ZAR 2.05
EUR 1.00 = ZAR 15.00
USD 1.00 = ZAR 14.05
ZAR 1.00 = ZAR 1.00

The converted "evaluation" price is as follows:

Currency	MRSEC	Alstom GE	Rafako	Dongfang
CNY		R 286,928,102.40		
EUR		R 436,349,115.00	R 3,289,500,000.00	
USD		R 30,427,719.70		R 6,000,362,443.00
ZAR	R 2,769,561,202.90	R 2,828,948,544.10		
ZAR	R 2,769,561,202.90	R 2,828,948,544.10	R 3,289,500,000.00	R 6,000,362,443.00

NOTE: The price difference between the quoted prices and converted evaluation prices in the Alstom GE Tender submission is due to Tenderers using different base dates for the foreign currency. For the purpose of evaluation and fair comparison, an exchange rate during evaluation had to be normalised to the market price and be applied to all Tenderers that have foreign currencies then converts to South African Rands. This resulted in Alstom GE price to change from R 2,851,334,200.00 to R 2,828,948,544.10.

Based on the above the least cost ranking is:

Supplier	MRSEC	Alstom GE	Rafako	Dongfang
Ranked position	1	2	3	4
Ranked percentage	100%	102%	119%	217%
% Weighted	90%	88%	71%	27%

During the evaluation phase the evaluation team identified that some of the Tenderers had exclusions and/or major deviations to the submissions made on 22 November 2016. The evaluation team prepared clarification questions to Suppliers that will ensure that the exclusions and deviations are included in the tendered price for the full scope.

On 13 December 2016, clarification questions were sent out to all 4 (four) Tenderers to clarify if the items that seemed to be excluded from the submissions were included in the tendered price submitted. On 17 December 2016, all Tenderers responded to the first clarification request confirming the listed exclusions and deviations, and what was included and excluded from the submissions made on 22 November 2016.

Consequent to the 17 December 2016 responses from the Tenderers, Eskom prepared other clarification questions which will ensure that the full scope from all Tenderers is priced. This was to ensure that price normalisation is done and all Suppliers prices are comparable. Only three (3) Tenderers responded with the overall total percentage adjustment to the Tendered Price, Dongfang Electric Corporation did not adjust the tendered price. This was not an invitation to submit a new Tender Price but to ensure that the exclusions and deviations are priced by all Tenderers for the (full scope). Financial Evaluation was then done based on the adjusted prices on the submissions from all four Tenderers dated 22 December 2016.

4.6.2.2 PHASE 2: (NORMALISED PRICES DECEMBER 2016 CLARIFICATION AND SUBMISSIONS)

On the 22nd of December 2016, Eskom received responses from all bidders. The responses included detailed break-downs in prices and; the summary of the responses were as follows:

i) Alstom S&E Africa (Pty) Ltd TA GE Steam Power System (Alstom) indicated that the total price implication for items listed in Annexure A and Annexure B would be 2.6%, which takes the VAT exclusive tendered price from ZAR 2,851,334,200.00 to ZAR 2,902,821,943.64 (excluding escalations);
ii) Dongfang Electric Corporation (DEC) did not indicate a total price implication for items listed in Annexure B, and stated that such price adjustment should occur during negotiations. Dongfang Electric Corporation total price excluded VAT and therefore remains the same;

iii) Murray & Roberts Shanghai Electric Consortium (MRSEC) indicated that the total price implication for items listed in Annexure A and Annexure B would be 5.45%, which takes the VAT exclusive amount from ZAR 2,769,561,202.90 to ZAR 2,920,600,219.64 (excluding escalations); and

iv) Rafako SA (Rafako) indicated that the total price implication for items listed in Annexure C would be 0.7%, which takes the VAT exclusive amount from ZAR 3,289,500,000.00 to ZAR 3,298,761,000.00 (excluding escalations).

The Eskom Technical and Eskom Financial teams confirmed that they are comfortable that the percentage adjustments provided by the bidders address the issue of comparability. The internal adjustment option mentioned above was therefore not used as it was not necessary.

Tenderers quoted as follows (Eskom evaluation based on new information received from suppliers on 22 December 2016):

Currency	MRSEC	Alstom GE	Rafako	Dongfang
CNY		CNY 139,964,928.00		
EUR		€32,378,917.44	€219,300,000.00	
USD		$2,165,674.00		$427,072,060.00
ZAR	R 2,920,600,219.64	R 2,099,782,360.00		
Total	R 2,920,600,219.64	R 2,926,822,486.27	€219,300,000.00	$427,072,060.00

To enable comparison, the prices were translated from the foreign currency to ZAR amounts using the following exchange rates (Bloomberg currencies on 5/12/2016):

CNY 1.00 = ZAR 2.05
EUR 1.00 = ZAR 15.00
USD 1.00 = ZAR 14.05
ZAR 1.00 = ZAR 1.00

The converted "evaluation" price is as follows:

Currency	MRSEC	Alstom GE	Rafako	Dongfang
CNY		R 286,928,102.40		
EUR		R 485,683,761.54	R 3,298,761,000.00	
USD		R 30,427,719.70		R 6,000,362,443.00
ZAR	R 2,920,600,219.64	R 2,902,821,943.64		
ZAR	R 2,920,600,219.64	R 2,902,821,943.64	R 3,298,761,000.00	R 6,000,362,443.00

NOTE: The price difference between the quoted prices and converted evaluation prices in the Alstom GE Tender submission is due to the Tenderer using different base dates for the foreign currency. For the purpose of evaluation and fair comparison, an exchange rate during evaluation had to be normalised to the market price and be applied to all Tenderers that have foreign currencies then converts to South African Rands. This resulted in Alstom GE price to change from R 2,926,822,486.27 to R 2,902,821,943.64. Prices for MRSEC, GE and Rafako

SAexclude VAT and CPA and Dongfang price exclude VAT but include CPA and is fixed and firm for the duration of the contract.

Based on the above the least cost financial ranking is:

Supplier	Financial Ranking	90% Weighted Financial Ranking	Position
Alstom S&E Africa (Pty) Ltd TA GE Steam Power System	100%	90%	1
Murray & Roberts Shanghai Electric Consortium	101%	91%	2
Rafako SA	114%	102%	3
Dongfang Electric Corporation	207%	186%	4

Price Evaluation was conducted but could not be concluded without clarifications due to the following:

a. It became apparent that two tenderers i.e Alstom and MRSEC had material deviations to the technical requirements which would impact the tendered price.
b. All four tenderers had significant and material deviations to the conditions of contract which would impact the tendered price. A decision was made to adjust the risk profile by prescribing 8 (eight) Conditions of Contract (CoC) clauses with significant weighting to the risk profile. The eight CoC clauses were Delay Damages, Retention, Limitation of Liability, Employer's Risks, Latent Defects, Payment Terms, Performance Bond and Subcontracting.
c. Two tenderers i.e Rafako SA and DEC had material deviations to the commercial requirements which would impact the tendered price. The tenderers are international companies and may not familiar with the South African procurement process
d. A process was adopted to request all tenderers to normalize their tendered price by including all components and materials detailed in the issued Scope of Work which were not part of their tendered price and factor in their normalized price for all deviations which were unacceptable to the Eskom.

The price normalisation process was conducted but could not be concluded for the following reasons:

a. Only two supplies MRSEC and Alstom normalized their price based on inclusion of Scope of Work related components and materials.
b. Two tenderers i.e MRSEC and Alstom normalized their price based on the adjusted risk profile as per the eight CoC clauses.
c. One supplier i.e Rafako SA normalized their price to cater for the material deviations to commercial requirement out-rightly rejected by the Employer.
d. Based on responses received from tenderers, it became apparent that there is a need for Pre-Negotiations Clarifications to further clarify all items which might impact the tendered and normalized prices prior to application of 90-10 as per PPPFA.

SHE, Quality and Supplier Development and Localization

Rafako SA did not submit their SD&L targets and indicated that the targets will be negotiated. The latter has a potential to impact the tendered price. Three tenderers submitted the SD&L targets but the implementation plan had to be discussed to test the ability to achieve the targets.

4.6.2.3. Phase 3: (PRE-NEGOTIATIONS CLARIFICATION MEETING AND SUBMISSION)

On 09 January 2017 – 17 January 2017, Eskom held pre-negotiations clarification meetings with all four Suppliers. Suppliers were requested to confirm if the tendered prices were fixed and firm, CPA escalation formulas were to be applied during the duration of the contract, the specific currencies included in the tendered price, the activity schedule, the payment schedule and the local and foreign portion allocated in the tender price.

In addition, Eskom identified 8 critical requirements related to contract conditions that should form part of the contract. Some of the Suppliers had indicated in their tender submission on the 22 December 2016 that some of the items related contract conditions excluded (proposed deviation and were not priced).

The 8 contract conditions items are related to (Employer asserts that should form part of the contract and tendered price) are:

a. Delay Damages for completion of the whole of the works Clause 11.2(9) & X7.1
b. Payment terms Z11 and clause 51 Advance Payment Bond X14
c. Performance bond X13
d. Retention X16
e. Limitation of liability X18
f. Latent defects X18.5
g. Subcontracting Z9
h. Additional Employer's risks Core clause 80.1

Eskom clarified in detail the deviations submitted by all four Suppliers in relation to the 8 items and thereafter communicated its position on the items. Eskom's position on these items could have an implication on the Suppliers' risk profiles and therefore, suppliers were requested to re-submit a normalized price for the full scope of work and the 8 contract conditions in the tendered price.

The requirements for the normalized submission were:

a. Percentage (%) of Advance payment.
   Indicate the currency the advance payment shall be payable.
b. Total contract price for the complete scope of work.
   Local % (ZAR) of the contract price.

Foreign % as a total of the contract price. The specific currencies as a % of the contract price.

c. The full and complete contract price CPA clauses and formulae aligned to X1 as applicable to the Activity Schedule.
d. The Project Programme (level 3 – encompassing; Procurement, Fabrication, Transport, Construction and Commissioning).
e. The Project Activity Schedule (priced).
f. The Payment Schedule linked to the completed activities.
The payment schedule to indicate the payment in the relevant currency.
The payment schedule to indicate which escalation clause applies to the activity.

Alstom S&E Africa (Pty) Ltd TA GE Steam Power System (GE) indicated that the normalized prices dated 23 December 2016 will not be affected by 8 items and re-submitted the price schedule with applicable CPA formulas and currencies. The price was submitted according to Eskom requirements i.e with detailed price schedule with applicable CPA formulas and currencies. Financial evaluation was conducted in details indicating the total cost of the contract for the entire duration of the contract with the application of CPA escalation. The tenderer submission highlighted majority of contract deviations, which has a potential of both Parties reaching an impasse during negotiations. The deviations are on Eskom's key conditions of contract. Upon SD&L evaluation, it was highlighted that the tenderer submitted a B-BBEE certificate that is not valid and further investigations by Eskom's SD&L representatives (in consultation with Verification Agency) and Assurance and Forensic will be conducted to understand how did the tenderer obtain their invalid B-BBEE certificate.

Murray & Roberts Shanghai Electric Consortium (MRSEC) indicated that the normalized prices dated 23 December 2016, will be affected by 1% due to the 8 items. The revised price was submitted according to Eskom requirements i.e with detailed price schedule with applicable CPA formulas and currencies. Murray and Roberts confirmed that the Consortium will formally be formed and signed off before contract award should they be awarded the contract. Shanghai Electric Consortium did not attend the pre-negotiations meeting but Murray and Roberts indicated that they are jointly and severally liable for the commitment made with respect to the pre-negotiations clarification process. The confirmation letter for the consortium was submitted signed by the CEO's of both companies.

Financial evaluation was conducted in details indicating the total cost of the contract for the entire duration of the contract with the application of CPA escalation. The tenderer indicated that they will form an Unincorporated Consortium and during the pre-negotiation clarification meeting the tenderer was requested to submit a signed Consortium agreement by 14 February 2017. Only a draft Consortium Agreement has been

submitted to Eskom. All the Legislative requirements including CIDB registration (which requires foreign suppliers to open an office in the country), SARS certificate and B-BBEE certificate are still outstanding. Experience indicates that minimum period required to obtain these documents is a month. During negotiations the tenderer will afforded an opportunity to indicate their road-map of obtaining these Legislative requirements

Dongfang Electric Corporation (DEC) indicated that their tendered price included the CPA and was fixed and firm for the duration of the contract. They however did not indicate a total price implication for the 8 items listed. Dongfang further revised their prices based on the 8 items and the revised price is USD 366.45 Million. Dongfang further indicated that they were waiting for the revised offers from their South African Construction Partners for erection work etc. Once offers are received from the South African Construction partners their price will further be normalized. Dongfang did not submit the price schedule as per Eskom requirement but requested extension to the submission date. It must be noted that all outstanding mandatory documents will be requested before contract award.

Rafako SA responded but indicated that some of the 8 items that Eskom requires as part of the contract price are not acceptable to them i.e Delay Damages for completion of the whole works, bond guarantee, total contractor indemnity, compensation liability and liability of all titles. Rafako did not submit a revised price as per Eskom requirements with a detailed payments schedule breakdown with applicable CPA Formulas. They indicated that their price is not fixed and firm and that they can only firm the price 6 months after the contract award.

Rafako further indicated that they are still in the process of finding a Local partner for the Construction portion and for this reason Rafako SA requested to have at least six months optimization of this part of the proposal. This is related to finding the subcontractors and partners, applying for registration to the relevant authorities and establishment and registration of Rafako in South Africa, and signing of agreement (consortium/JV) to execute the contract in accordance with local regulations and laws.

Rafako SA further indicated that the estimated time to comply with South African Legislative requirements (i.e CIDB, SARS, Tax Clearance, COID, BBBEE and others) will be four months. Rafako will confirm on 31 January 2017 if they will be forming a JV or a Consortium and indicated that Murray and Roberts and Wetback are possible partners. It must further be noted that Murray and Robert has tendered for the same tender as Rafako.

Rafako also stated that detailed schedule/programme linked to the BoQ will be submitted three months post contract award date.

A full financial evaluation was conducted based on the re-submissions from Suppliers. The full contract price evaluation was conducted by applying the CPA escalation formulas for full the contract duration. Eskom indicated that if Suppliers do not submit the detailed price schedule with the applicable CPAs, Eskom will make a decision with the information available on their disposal.

4. FINAL FINANCIAL EVALUATION SCORES (January 2017 Submissions)

The applied exchange rate is 22 November 2016 (tender closing date)

	Date	Prices excl VAT			
		GE Alstom	MRSEC	Rafako	Dongfang
Tender Price excl VAT	2016/11/22	R 2 851 334 199.30	R 2 769 561 202.90	€219 300 000.00	$427 072 060.00
Normalisation 1	2016/12/22	R 2 926 822 486.27	R 2 920 600 219.64	€219 917 400.00	$427 072 060.00
Normalisation 2	2017/01/18	R 2 926 822 486.27	R 2 946 515 413.00	€219 917 400.00	$366 450 000.00
Exchange Rate				R 15.02	R 14.14
		R 2 926 822 486.27	R 2 946 515 413.00	R 3 302 235 694.92	R 5 180 870 100.00
Advance Payment		10%	10%	10%	15%
TCO	2017/01/20	R 3 493 316 874.00	R 3 393 290 800.00	R 3 500 369 836.62	R 5 180 870 100.00

	Date	Prices incl VAT			
		GE Alstom	MRSEC	Rafako	Dongfang
Tender Price incl VAT	2016/11/22	R 3 250 520 987.20	R 3 157 299 771.31	€250 002 000.00	$486 862 148.40
Normalisation 1	2016/12/22	R 3 336 577 634.35	R 3 329 484 250.39	€250 705 836.00	$486 862 148.40
Normalisation 2	2017/01/18	R 3 336 577 634.35	R 3 359 027 570.82	€250 705 836.00	$417 753 000.00
Exchange Rate				€15.02	$14.14
		R 3 336 577 634.35	R 3 359 027 570.82	R 3 764 548 692.21	R 5 906 191 914.00
Advance Payment		10%	10%	10%	15%
TCO	2017/01/20	R 3 982 381 236.36	R 3 868 351 512.00	R 3 990 421 618.74	R 5 906 191 914.00

1) The least cost Tenderer is Murray & Roberts Shanghai Electric Consortium.
2) The price difference between the above Tenderers is marginal. 3) The Tenderers have been evaluated based on the pricing schedules submitted and it must be noted that Rafako did not submit according to Eskom requirement and all four Tenderers have been given an opportunity to submit a detailed price schedule as stated below.

The financial evaluations of the recommended Tenderer were submitted to Generation Finance Department and was evaluated by **Ms Lize Bowie** and approved by **Ms Ragini Ramkumar**. The findings are that th two lowest price tenders were received from **Murray & Roberts Shanghai Electric Consortium and Alstom S&E Africa (Pty) Ltd TA GE Steam Power System.**

4.6.4 RISK IDENTIFIED ON FOUR TENDERER'S

Tender	Risk	Mitigation Factor	LEVEL (High/Medium/Low)
GE	◦ Contracting with Tenderer that has submitted an invalid B-BBEE certificate. ◦ Negotiations not concluded in time due to impasse on key conditions of contract.	◦ Submit the invalid B-BBEE certificate to Assurance and Forensic for further investigation. ◦ Negotiation team to agree on a position that will best serve Eskom's interest.	Medium
MRSEC	◦ Failure by the Consortium to meet all the mandatory requirements for contract award especially submission of the Tax Clearance Certificate by 7 March 2017. ◦ Failure by the tenderer to submit a signed Unincorporated Consortium Agreement by 14 February 2017.	◦ Eskom to inform the tenderer to submit the mandatory requirement for contract award by 08 March 2017. ◦ Eskom to inform the tenderer that they need to submit a signed Unincorporated Consortium Agreement by 7 March 2017.	High Medium
Rafako SA	◦ Tenderer failure to submit the Legislative requirements and indicated that it will take four months to comply. ◦ Tenderer indicated that the price is a budget price and will be firmed after 6 months post contract award.	◦ None, Tenderers time-lines are beyond Eskom's desired contract award date thus exposing Eskom to a R1.69 billion penalty by the Insurer ◦ Exclude the Supplier for the Negotiations	High High
DEC	◦ Tenderers price is too high compared to the other three tenderers'.	◦ Negotiation team to challenge the submitted price and possibly negotiate the price down.	High

Based on the risks identified above, it will be prudent for the negotiation team to enter into negotiations with three Tenderers namely GE, MRSEC and DEC. Rafako SA should be excluded from the negotiations due to their risk profile mentioned above. It must be noted that BTC on 20 January 2017, approved a revised mandate to negotiate with a minimum of 2 (two) up to a maximum of 4 (four) tenderers. It is therefore against the backdrop of this mandate that the negotiation team recommends that negotiations be held with GE, MRSEC and DEC.

4.7 SD&L EVALUATION

APPLICATION OF SD&L REQUIREMENTS

The Supplier Development and Localization (SD&L) evaluation was conducted by Mr Rojane Qacha and signed-off by Mr Manase Mathabathe, Senior Manager SD&L- Group Commercial, who concurs with the recommendation contained herein.

The B-BBEE evaluation was conducted on a 90/10 principle, where 90 points was allocated for the price and 10 points for B-BBEE. The B-BBEE evaluation was based on the submitted valid B-BBEE certificate and Tenderers score is as follows:

Company name	BBBEE Level points	BO, BWO, BYO	BBBEE points 10% weight	Expiry date	Compliance matrix score	Comment
Dongfang	EME 4	BO=0.0% BWO=0.0%	0	06 Sep 2017	Submitted	The affidavit is invalid for offshore based tenderer
Alstom S&E	Level 3	BO=26.12% BWO=12.46%	0	06 Oct 2017	Submitted	The authenticity of the B-BBEE certificate is not confirmed. The submitted B-BBEE certificate is invalid.
MRPF & SEC JV	Not submitted	Not submitted	0	Not submitted	Submitted	
Rafako	Not submitted	Not submitted	0	Not submitted	Not submitted	

SD&L also consist of objective criteria where Tenderers were required to complete and return Compliance Matrix. Below is the Tenderers completed Compliance Matrix which will form basis for negotiations:

Note: The PPPFA may also not apply to tenders that target an international supply market, or where in the interests of national security, or in the public interest, it is not practical to apply the provisions of the PPPFA, in which case an exemption from the PPPFA may be sought.

Dongfang Electric Corporation

Table 1: A1.1 SUPPLIER DEVELOPMENT AND LOCALISATION COMPLIANCE MATRIX FOR SUPPLIERS AND CONTRACTORS				
Criteria	Weight (%)	Total Target (%)	Proposed Target (%)	Total Overall Weighted Score
Local Content to South Africa as a percentage of Contract Value	25.00%	40.00%	30	0.00%
Local Content Local to Site as a percentage of Contract Value	25.00%	6.00%		0.00%
Procurement from BO as a percentage of Contract Value	25.00%	10.00%		0.00%
Skills Development	25.00%			0.00%
Total Score	100.00%			
		Total Supplier Development and Localisation Score		0.00%

Table 2: A2.1 SKILLS DEVELOPMENT COMPLIANCE MATRIX							
Skill Type (Occupation)	OFO Occupatio	Weight (%)	Target Number of Persons to be Trained (Local to South Africa)	Proposed Number of Persons to be Trained (Local to South Africa)	Target Number of Persons to be Trained (Local to Site)	Proposed Number of Persons to be (Local to Site)	Total Weighted Score
Method 1: Occupation Qualification e.g. Safety Officer		25.00%	60	60	60	60	0.00%
Method 2: Fitters, Rigging, A Class Welders		50.00%	22	22	14	14	0.00%
Method 3: Candidates-3years diplomas e.g. Technicians		25.00%	18	18	6	6	0.00%
	Total	100.00%	100	100	80	80	0.00%

Negotiation/Clarification Points: The Tenderer has submitted a sworn affidavit to declare EME 4 status. Since the company's physical address is in China and not in South Africa the affidavit is invalid and the tenderer gets zero preferential points.

Other negotiation points: The Tenderer is required to propose the number of jobs to be created and retained.

Other negotiation points: The Tenderer is required to declare a list of designated commodities and the local content in Annexure C that meets the threshold.

Joint Venture between Murray and Roberts Power and Energy (MRPE) and Shanghai Electric Power Generation Services Company (SEC)

Table 1: A1.1 SUPPLIER DEVELOPMENT AND LOCALISATION COMPLIANCE MATRIX FOR SUPPLIERS AND CONTRACTORS				
Criteria	Weight (%)	Total Target (%)	Proposed Target (%)	Total Overall Weighted Score
Local Content to South Africa as a percentage of Contract Value	25.00%	40.00%	44.46%	0.00%
Local Content Local to Site as a percentage of Contract Value	25.00%	6.00%	6%	0.00%
Procurement from BO as a percentage of Contract Value	25.00%	10.00%	10%	0.00%
Skills Development	25.00%			0.00%
Total Score	100.00%			
		Total Supplier Development and Localisation Score		0.00%

Table 2: A2.1 SKILLS DEVELOPMENT COMPLIANCE MATRIX							
Skill Type (Occupation)	OFO Occupatio	Weight (%)	Target Number of Persons to be Trained (Local to South Africa)	Proposed Number of Persons to be Trained (Local to South Africa)	Target Number of Persons to be Trained (Local to Site)	Proposed Number of Persons to be (Local to Site)	Total Weighted Score
Method 1: Occupation Qualification e.g. Safety Officer		25.00%	60	60	60	60	0.00%
Method 2: Fitters, Rigging, A Class Welders		50.00%	22	22	14	14	0.00%
Method 3: Candidates-3years diplomas e.g. Technicians		25.00%	18	18	6	6	0.00%
	Total	100.00%	100	0	80	0	0.00%

Negotiation / Clarification Points. The tenderer has not submitted a valid BBBEE certificate for the JV, therefore scoring zero preferential points. Only the BBBEE certificate for the local black owned lead partner has been submitted.

Other negotiation points. The tenderer submitted local content proposal of 44.46% in the unsigned Annexure C which differs from the local content of 40% proposed in the unsigned SD&L compliance matrix.

Other negotiation points. The Tenderer submitted detailed list of skill types and the respective number under each group. These are accepted as obligations in the contract.

Other negotiation points. The Tenderer is required to propose the number of jobs to be created and retained.

Other negotiation points: The Tenderer is required to declare cables with local content threshold of 90% and valves with local content threshold of 70% as distinct designated commodities in Annexure C.

Rafakos SA

Negotiation / Clarification Points. The Tenderer did not submit BBBEE certificate therefore obtains zero preferential points.

Other negotiation points. The Tenderer proposes local content of 40.2% under the construction and local supplies portion of the price offer. This must be submitted in the SD&L compliance matrix.

Other negotiation points: The Tenderer is required to complete and submit the SD&L compliance matrix.

Other negotiation points. The Tenderer is required to propose the number of jobs to be created and retained.

Other negotiation points: The Tenderer is required to declare a list of designated commodities and their respective local content in Annexure C that meets the threshold.

Post Pre-Negotiation Clarification Meeting- Rafako SA stated that SD&L costs are part of "C Portion" (budgetary portion). The budgetary portion will at least take 6 months to optimize. For this reason the Contractor reserves the right to have at least six months optimization of this part of the proposal.

4.9 SHEQ EVALUATION OF TENDERS

The SHE evaluation was conducted by Ms. Len Msimanga and Ms. Kgaugelo Sedibeng, signed-off by Mr. Themba Mdaka and authorized by Mr. Tshepo Molabe from Group Capital Division, who concurs with the recommendation contained herein. The following criteria from SHE Specification were used to evaluate the tenders:

[illegible]ion	Supplier Tender Submissions	Total
		100%
1	Letter of good standing	10%
2	SHE policy	10%
3	Latest structure/organogram of the SHE Department and abridged qualifications of persons.	10%
4	Safety & Environmental Management Plan	15%
5	Baseline risk assessment with monitoring plan, review plan and rating matrix	15%
6	Method statement	15%
7	Historical Information (Less than 2 years): • Annexure 1 incident report • Sample of corrective and preventive action reports • Internal Audits (Environmental) .	10%
8	Acknowledgement of Eskom's rules and requirements (Annexure B)	5%
9	Costing for Safety, Health and Environmental management	10 %
Total		**100%**

The following criteria from SHE Specification were used to evaluate the tenders:
√- Minimum requirement met and ×- Requirement not met

No	CRITERIA	MURRAY ROBERTS	ALSTOM/GE	DONGFANG	RAFAKO (SA)	COMMENTS
1	LETTER OF GOOD STANDING					
	◦ Date of expiry	√	√	√	×	Rafako (SA) - The letter of good standing submitted is not relevant to the scope of work tendered for. It is registered under ERIGER PTY LTD.
	SHE POLICY					
	◦ Be appropriate to the nature and scale of the --organisation's SHE risks.	√	√	×	√	
	◦ Include a commitment to continual improvement.	√	√	×	√	
	◦ Include a commitment to at least comply with current applicable SHE legislation and with other requirements to which the organisation subscribes.	√	√	×	√	
	◦ Be documented, implemented and maintained.	√	√	×	√	
	◦ Be reviewed periodically to ensure that it remains relevant and appropriate to the organisation.	√	√	×	×	Rafako Policy signed 2013 and not authorized. Review date for GE policy to be confirmed.
	ORGANOGRAM SHE DEPARTMENT AND ABRIDGED QUALIFICATION.					
	◦ Structure	√	√	√	×	
	◦ Proof of qualification (SHE)	√	√	×	×	
	◦ Professional Registration (SACPCMP)	√	√	√	×	
	◦ Incident Investigator	×	√	×	×	
	◦ SHE Representative	×	√	×	×	
	◦ First Aider	×	√	×	×	
	◦ HCS Controller	×	√	×	×	

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4	SHE PLAN	MURRAY ROBERTS	ALSTOM/GE	DONGFANG	RAFAKO (SA)	COMMENTS
	◦ commitment to comply with the SHE Legislation	√	√	√	√	
	◦ communication and awareness	√	√	√	√	
	◦ housekeeping program	√	√	√	√	A detailed housekeeping programme to be submitted by Murray and Roberts
	◦ SHE Emergency preparedness and fire protection process	√	√	√	√	
	◦ Management of PPE	√	√	√	√	
	◦ Management of lifting equipment	√	√	√	√	
	◦ Management of incident	√	√	√	√	
	◦ Competency, training and appointments	√	√	√	√	
	◦ Management of waste	√	√	√	√	
	◦ Management of dust and Noise	√	√	√	√	
5	RISK ASSESSMENT (RELEVANT TO SCOPE OF WORK)					
	◦ Risk Identification	√	√	×	√	Rafako SA- Risk assessment not detailed and relevant to the Scope of Work
	◦ Risk Analysis	√	√	×	×	
	◦ Impacts and Aspects Register	√	√	×	×	
	◦ Risk Controls / Safe work procedures	√	√	×	×	
	Matrix and Rating	√	√	×	×	
	◦ Monitoring Plan	√	×	×	×	
	◦ Review Plan	×	×	×	×	
6	METHOD STATEMENT (RELEVANT TO SCOPE OF WORK)					
	◦ Proffered safest method	√	×	√	×	GE and Rafako did not submit the detailed method statement.

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7	HISTORICAL INFORMATION OF INCIDENT AND CAR (LESS THAN TWO YEARS)	MURRAY ROBERTS	ALSTOM/GE	DONGFANG	RAFAKO (SA)	COMMENTS
	◦ Annexure 1 incident report	√	√	×	√	
	◦ Incident records (achievement/certificate)	√	√	×	×	
	◦ Corrective and preventative action reports(SHE related CAR)	√	√	×	×	
8	ACKNOWLEDGEMENT OF ESKOM'S RULES AND REQUIREMENTS (ANNEXURE B)					
	◦ Is the acknowledgement of Eskom's SHE rules and requirements form (Annexure B) signed and submitted by the tenderer?	×	×	×	×	Information is required prior to contract award.
9	COSTING FOR SAFETY, HEALTH AND ENVIRONMENTAL MANAGEMENT					
	Has the tenderer submitted detailed (The cost should be broken down not provided as a lump sum) costing for SHE, i.e. – ◦ based on the overall scope of work/service to be performed; ◦ the generic scope of work/service risk assessment – will may serve as a guideline.	×	×	×	×	Information is required prior to contract award.

Summary of SHE scores as an objective criteria

Tenderer	Maximum to be achieved	Score Achieved
Murray & Roberts	100%	76%
Alstom / GE Steam Power System	100%	65%
Dongfang Electrical	100%	44%
Rafako SA	100%	37%

- Before contract award, the winning tenderer will be required to submit all SHE outstanding documentation.
- A copy of the SHEQ evaluation report will be available upon request.
- A signed-off safety evaluation report was received from the relevant safety functionary.

4.10 QUALITY

Quality evaluation was conducted by Mr Sipho Sambo and signed-off by Ms Pamela Dondashe from Sustainability Division, who concurs with the recommendation contained herein. The following criteria from Quality were used to evaluate the tenders:

Eskom Supplier Quality Management: List of Tender Returnables Documents	Unique Identifier	QM-5
	Revision	8.00
	Effective Date	18/07/2013
	Specification	QM 58

Category 1: Quality Requirements	Deliverables to be evaluated indicator = 1	Weights
SECTION A : Quality Management System Requirements ISO 9001:2008 Valid certification of Quality Management System by an ISO accredited body		
	Apply (Yes=1)	
A.1 Product / Service Scoping on ISO 9001 certificate is defined and relevant	1	
A.2 Certificate by Approved and Authorized certification authority	1	25%
A.3 Certification Authority has Recognized International Accreditation	1	
A.4 Validity (expiry date) of certificate	1	
ction A Score	4	

SECTION B : Evidence of QMS in operation (Tender Quality Requirements -Ref QM-58 or 240-51544462)		
	Apply (Yes=1)	
B.1 Copy of appointment letter & CV/ resume of a Quality Representative for the project	1	
B.2 Signed Organisational structure & Quality Department reporting structure.	1	
B.3 Copy of procedure for control of suppliers & subcontractors	1	
B.4 Copy of an **internal** management system audit report (with NCR, corrective & preventive report)	1	25%
B.5 Copy of an **external** management system audit report (with NCR, corrective & preventive report)	1	
B.6 Copy of Customer satisfaction surveys	1	
B.7 Copy of a Quality Plan (incl ITP's) on previous project < 2yrs	1	
B.8 Historical Information (list) of similar work performed < 2yrs	1	
Section B Score	8	

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SECTION C : Contract Quality Plan Requirements (Ref QM-58 and 240-109253698) Contract Quality Plan as per Scope of Works (Ref ISO 10005)			
NB!!!! draft Contract/Project Quality Plan has important QA deliverables	Apply (Yes=1)		20%
Section C Score	1		

SECTION D : Quality Control Plan Requirements (Ref QM-58 Annexure 1 or 240-51544462) QCP /Checklist/ ITP (Quality Control Plans) as per Scope of Works (Ref ISO 10005 / 35-59 / 39-71)		
NB!!!! draft QCP/ITP (job cards) haves important QC deliverables	Apply (Yes=1)	20%
	1	
Section D Score	1	

SECTION E : User defined additional Requirements & miscellaneous (Ref QM-58) Customer specific requirements & other standards and required can be listed and evaluated here.		
	Apply (Yes=1)	
E.1 Form A is completed and signed.	1	10%
E.2 Copy of proposal and/ or assessment results of any recognized Business Excellent Model	1	
Section E Score	2	

COMMISSION OF INQUIRY INTO STATE CAPTURE

U19-BSN-0166

Below is tenderer's Quality evaluation, √- Minimum requirements met and ×- Requirements not met:

Sec	CRITERIA	MURRAY and ROBERTS	ALSTOM/GE	DONGFANG	RAFAKO (SA)	COMMENTS
A	Section A: Quality Management system	√	√	√	√	
B	Section B: Additional Quality requirements (structure, suppliers, history)	×	√	×	×	A CV of the contractor's quality representative to be appointed fulltime for the works. Latest organogram of the quality function/department, resources, and number of employees employed in the quality department, including an abridged indication of their qualifications (structure to show how the quality department leader reports to within the tenderer's organisation). Management of suppliers or subcontractor- A copy of process/procedure regarding the assessment, selection, management and auditing of suppliers and subcontractors. (a) Historical Information, (b) Audit reports with Non-conformance report, corrective action & preventative action reports, (C) Customer Survey Report.
C	Section C: Contract Quality Plan	√	√	√	√	A provisional CQP for the project. The CQP provide a comprehensive strategy to demonstrate how consistency of design and philosophies across all the units during the overall project implementation will be ensured. Clearly identify roles, responsibilities and expectations throughout the project and the tenderer to demonstrate correct allocation of experienced resources throughout the project period.
D	Section D: Quality Control Plan	×	√	√	√	A provisional QCP for the project. The QCP provide a comprehensive Quality control process, to ensure world-class engineering practice will be achieved during the implementation of the project, by others to be overseen by the tenderer as well as any subcontractors forming part of the project. Methodologies must be provided to demonstrate how installation practices will be managed and carried out to ensure compliance to the details designs and the Employer's requirements.

E	Section E: User defined & additional Quality requirements	√	√	√	×	Signed enquiry/contract/order quality requirements forms (QM58 Annexure A & B). Any other quality requirements such as transportation and shipping or storage and preservation, quality management accreditations that are specifically required, such as AIA, NDE, PSIRA, CIDB or RBI auditor certification etc. Provide a list of standards that exceeds the standards referenced in the Works Information to which the works provided by the Tenderer, adheres to.

Clarifications items to be addressed with the tenderers:

Supplier	Comments
Murray and Roberts & Shanghai Electric	Tenderer to submit draft CQP and ITP.
Alstom T/A GE Stream Power System	Tenderer to submit draft CQP.
Dongfang Electric Corporation	Tenderer to submit draft CQP and ITP.
Rafako SA	Tenderer to submit draft CQP and ITP.

Summary of tenderer's Quality scores as objective criteria

Name of Tenderer	Section Quality Criteria					100%
	Section A	Section B	Section C	Section D	Section E	Objective Criteria allocation for Quality
Criteria weights	25%	25%	20%	20%	10%	
Criteria description	*QMS Requirements*	*QMS Evidence Requirements*	*Contract Quality plan*	*Quality Control plan*	*Customized Requirements*	*Pro-rata score (%)*
Murray & Roberts Shanghai Electric	25.0%	18.6%	20.0%	0.0%	4.0%	67.57%
Alstom T/A GE Stream Power System	25.0%	25.0%	20.0%	20.0%	10.0%	100.00%
Dongfang Electric Corporation	25.0%	11.4%	12.0%	20.0%	5.0%	73.43%
Rafako SA	25.0%	12.9%	4.0%	4.0%	0.0%	45.86%

4.11. SUMMARY OF EVALUATION SCORING

4.11.1 SUMMARY OF TENDERED PRICES

SUMMARY OF TENDERED PRICES						
Supplier	Quote	Points for quote	BBBEE Level	BBBEE Points	BBBEE POINTS *(90/10)*	Total app points
Alstom S&E Africa (Pty) Ltd TA GE Steam Power System	R 2,902,821,943.64	87.42	EME 4	0	0	90.00
Dongfang Electric Corporation	R 6,000,362,443.00	42.59	Level 3	0	0	-6.04
Murray & Roberts Shanghai Electric Consortium	R 2,920,600,219.64	90.00	No Submission	0	0	89.45
Rafako SA	R 3,298,761,000.00	87.16	No Submission	0	0	77.72

The final PPPFA 90/10 outcome is as follows:

Bidder:	Original price 22 November 2016	Adjusted price 23 December 2016	Adjusted Price in January 2017	Final Adjusted Price Total Cost of Ownership excl VAT January 2017	Price (90)	B-BBEE (10)	90/10
GE	R 2,851,334,200.00	R 2,902,821,943.64	R 2 926 822 486.27	R 3 493 316 874.00	87.35	0	87.35
MRSEC	R 2,769,561,202.90	R 2,920,600,219.64	R 2 946 515 413.00	R 3 393 290 800.00	90.00	0	90.00
Rafako SA	R 3,289,500,000.00	R 3,298,761,000.00	R 3 302 235 694.92	R 3 500 369 836.62	87.16	0	87.16
DEC	R 6,037,944,784.28	R 6,037,944,784.28	R 5 180 870 100.00	R 5 180 870 100.00*	42.59	0	42.59

Note: * DEC final adjustment price showing the Total Cost of Ownership did not change due their price being fixed and firm for the duration of the contract.

The adjusted figures above were confirmed from Eskom Finance evaluation team, which was compiled by **Lize Bowie (Financial Evaluator) and signed by Ragini Ramkumar (Financial Approver).**

4.11.2 FINANCIAL EVALUATION AND CPA COMMENTS

A financial evaluation of the supplier's business was conducted as a result of the following potential risks to Eskom:

No.	Identified risk	Reason for risk
1	Foreign Exchange	Suppliers tendered with foreign amount
2	Material and Labour Costs	Copper and Steel commodities price fluctuation
3	Construction cost escalation	Compensation events
4	Tenderers have multiple contracts with Eskom	Exposure to Eskom in case the company is liquidated and fail to supply

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Eskom	Duvha Unit 3 Procurement and Construction Evaluation Report Rev 1	Unique Identifier	240-53463039
		Revision	Rev. 4
		Revision Date	Feb 2019
		Group Technology and Commercial	

4.12. FINANCIAL ANALYSIS

The financial statements of the recommended supplier were submitted to Eskom Treasury Department and compiled by Ms Malebo Segwai and reviewed by Mr Arthur who has carried out the financial analysis. The findings are that **Rafako Group, General Electric Company, Dongfang Electric Corporation Limited And Murray & Roberts Holdings Limited** are financially acceptable to enter into a contract of this magnitude.

RAFAKO GROUP is relatively sound enough financially to be awarded a contract to the value of R4.8 billion for the Procurement, Fabrication, Transportation and Construction of the Unit 3 Boiler at Duvha Power Station for a period of 52 months, per reference number Corp 3571. In order to reduce Eskom's risk, payments should be made as work is performed and approved in terms of the contract.

GENERAL ELECTRIC COMPANY is relatively sound enough financially to be awarded a contract to the value of R4.8 billion for the Procurement, Fabrication, Transportation and Construction of the Unit 3 Boiler at Duvha Power Station for a period of 52 months, per reference number Corp 3571. In order to reduce Eskom's risk, payments should be made as work is performed and approved in terms of the contract.

DONGFANG ELECTRIC CORPORATION LIMITED is relatively sound enough financially to be awarded a contract to the value of R4.8 billion for the Procurement, Fabrication, Transportation and Construction of the Unit 3 Boiler at Duvha Power Station for a period of 52 months, per reference number Corp 3571. In order to reduce Eskom's risk, payments should be made as work is performed and approved in terms of the contract.

MURRAY & ROBERTS HOLDINGS LIMITED is relatively sound enough financially to be awarded a contract to the value of R4.8 billion for the Procurement, Fabrication, Transportation and Construction of the Unit 3 Boiler at Duvha Power Station for a period of 52 months, per reference number Corp 3571. A written commitment that, should this contract be awarded is required, the company would still be able to honour this contract and all existing contracts. Furthermore, in order to reduce Eskom's risk, payments should be made as work is performed and approved in terms of the contract.

The report is available on request.

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		Document Type	OCSDTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary Department	

EXECUTIVE SUMMARY

SUBMISSION TO THE BOARD TENDER COMMITTEE MEETING (BTC) ON 8 MARCH 2017

1. **TITLE OF THE SUBMISSION**

Duvha Unit 3 Recovery - Project Status Update Report and Contract Award Notification for the Refurbishment of Duvha Unit 3.

2. **RESOLUTION REQUIRED**

Approval be and is hereby granted

2.1. That Board Tender Committee Note the Duvha Unit 3 Recovery Project Status.

2.2. That the Board Tender Committee support the recommendation to conclude a contract with Dongfang Electric Corporation Limited (DEC), for the manufacturing, factory acceptance testing, procurement, fabrication, shipping and delivery to site, erection and commissioning of Unit 3 at Duvha Power Station.

2.3.

2.4.

2.5.

2.6. That the Group Executive: Group Capital Division be authorised to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

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Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary Department	

3. SUMMARY OF FACTS

3.1. Salient facts

3.1.1. On 20 January 2017, BTC approved amendment to the original mandate to negotiate with a minimum of 2 (two) up to a maximum of 4 (four) suppliers.

3.1.2. The negotiations were held with 3 (three) suppliers from 27 January 2017 to 27 February 2017 and Eskom intends awarding the tender to the successful tenderer on 8 March 2017 ("Contract Award date").

3.1.3. Upon conclusion of negotiations, all 3 (three) suppliers were requested to submit their Best and Final Offer (BAFO) which include all negotiation outcomes and Eskom requirements which might have impacted project risk profile on 3 March 2017 at 10h00 South African time. All 3 (three) submitted their BAFO via the Eskom Tender Office on 3 March 2017 and the BAFOs were evaluated. The final results of the evaluation are depicted in Table 1 below.

3.1.4. The negotiation proceedings were as follows:

3.1.4.1 **Alstom S&E Africa Pty Ltd Trading as GE Steam Power Systems (GE):** The supplier submitted major contract conditions deviations with its tender which required clarification and negotiation. The deviations are on Eskom's key conditions of contract which are Retention, Payment terms, Delay damages, Defects period, Limitation of Liability, Sub-contracting and Technical requirements. The parties held negotiations between 27 January 2017 and 03 February 2017. After intensive deliberations, the parties reached agreement on all the conditions.

However, of major concerned to Eskom since the submission of the supplier's tender was the validity and authenticity of the B-BBEE Certificate. Eskom highlighted its concern about the validity and authenticity of the B-BBEE Certificate to the supplier in both the clarification meetings and negotiations. Upon request by Eskom to the supplier to submit a valid and authentic B-BBEE Certificate the supplier submitted the same certificate whose validity and authencity could not be proven which is invalid. The Assurance & Forensic department was engaged to investigate the matter and its findings were that the B-BBEE certificate was invalid. The Verification Agency which verified the B-BBEE also confirmed that the certificate was invalid. Eskom wrote to the supplier to provide

written reasons as to why it submitted an invalid B-BBEE certificate. Eskom has also written to SANAS to verify the validity and authenticity of the B-BBEE certificate on or before the Contract Award date. SANAS responded and confirmed that the certificate was invalid and that it should not have been used for tender submission.

3.1.4.2 **Murray & Roberts Power & Energy and Shanghai Electric Power Generation Services Company (MRSEC):** The tenderer submitted a tender as a consortium. The tenderer also submitted major deviations to the contract conditions which needed clarification and negotiation. All deviations were discussed and agreed to during the negotiations. The tenderer was requested to submit the BAFO and all the mandatory legislative requirements for contract award which includes a Valid Tax Clearance Certificate for the consortium, CIDB registration (which requires foreign suppliers to open an office in the country) and B-BBEE certificate. On 3 March 2016 the tenderer submitted a signed Unincorporated Consortium Agreement. Further, on 3 March 2017, the tenderer indicated that it is and still working on assisting their Consortium partner (Shanghai Electric Corporation - SEC) to register a local entity and thereafter apply for SARS certificate. Although MRSEC has indicated that they will submit the Tax Clearance Certificate for SEC by 12:00hr today Wednesday 8 March 2017 at noon it may not be the case and this process may be concluded beyond Eskom's desired Contract Award date. The PPPFA and its Regulation of 2001 and the Eskom Procurement and Supply Management Procedure, Eskom is precluded from awarding a contract to any person whose tax matters have not been declared by the South African Revenue Services to be in order.

3.1.4.3 **Dongfang Electric Corporation (DEC):** The supplier had major deviations with its submitted tender. The deviations were negotiated and agreed to by the parties. During the negotiations, the supplier clarified that their adjusted price was fixed and firm during contract period. Eskom requested the tenderer to submit its BAFO on 3 March 2017 based on the negotiations. In its submission of the BAFO on 3 March, the tender indicated that its materials will not comply with the European Norms (EN) standard but will adopt GB (Chinese Standards and Codes). The tenderer's price is higher than that of the two suppliers.

Due to the tenderer submitting BAFOs one with a fixed and firm price and the other two without Contract Price Adjustment (CPA), a

life cycle cost model was conducted in order to compare all three tenderers on a common basis and the results are depicted in Table 1 below.

3.1.5. Reasons for recommending Dongfang Electric Corporation (DEC) as the successful tender.

3.1.5.1 Although DEC is the lowest ranked based on the 90/10 application of final evaluation criteria, DEC presents the lowest risk profile out of all the three bidders.

3.1.5.2 The other two contractor's price kept going up through clarifications and negotiations. Their prices are subject to escalations and from past experience with them, cost overruns have been the norm. DEC price was the only one going down and their BAFO is fixed and firm for the contract period.

3.1.5.3 Due to the tenderer submitting BAFOs one with a fixed and firm price and the other two with Contract Price Adjustment (CPA), a Total cost to Completion (TCTC) model was conducted in order to compare all three tenderers on a common basis and the results are depicted in Table 1 below.

3.1.5.4 Alstom scored the highest points for price, followed by MRSEC and DEC. Although Alstom scored the highest points in respect of the price, it submitted an invalid and unauthenticated B-BBEE Certificate. Alstom should be disqualified based on PPPFA clause relating to submission of false information pertaining to a tender.

3.1.5.5 MRSEC scored the second highest points for price. However, the tenderer failed to submit proof of confirmation by SARS that its Consortium partner's tax matters are in order in terms of the applicable legislation. This also is a mandatory requirement for contract award.

3.1.5.6 Dongfang Electric Corporation scored the lowest points in respect of price. However, this this the only tenderer whose price is fix and firm price for the duration of the contract. Although tenderer's price is R254M more than that of MRSEC, the risk of inflationary increases has been mitigated through the price being fixed and firm for the duration of the contract period. In the absence of similar offer by MRSEC, the risk of inflation is prevalent which will impact on the tendered price. Other risks relating to the award of the tender to MRSEC are as follows:

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		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary Department	

3.1.5.6.1 Delays in the execution of the project as has been seen in the Medupi and Kusile project where Murray and Roberts was a sub-contractor.

3.1.5.6.2 Murray and Roberts was involved in collusion in the construction of the 2010 Soccer World Cup stadiums and one of its subsidiaries was involved in collusion in the construction of roads.

3.1.5.6.3 In light of the above and the interest of Eskom and curbing the escalation of costs during the execution of the contract, it is submitted that DEC's price make more economic sense than MRSEC and therefore DEC should be awarded the tender.

3.1.6 It is the team's intention that the Letter of Award be signed 08 March 2017 and the Conditions of Contract which is an NEC 3 ECC contract that contains all the terms and conditions as per negotiation outcomes will be signed on or before the Friday 17 March 2017.

3.2. Key assumptions

- Eskom has secured the right supplier that is capable and have capacity to recover Unit 3 at Duvha Power Station within the stipulated contract period.
- The sucessful Supplier accepts the final contract with all conditions within acceptable time and does not withdraw.

3.3. Financial implications

Table 1 below, depict the TCTC of the project:

Supplier Name	BAFO (Excluding VAT)	TCTC (Excluding VAT)	Comments
GE Alstom	R 3,027,316,340	R3,527,536,099	With Escalations
MRSEC	R 3,299,784,042	R3,756,624,683	With Escalations
DEC	R4,011,008,499	R4,011,008,499	Fixed Price

3.4. Human resources implications

None.

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		Revision	0
		Effective Date	July 2015
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3.5. **Risks (including Environmental, Legal or Contractual risks)**

RISK	CAUSE	LEVEL (High/Medium/Low)	MITIGATING FACTORS
Failure to award the contract by 30 March 2017 resulting in Eskom suffering a R1.67 billion insurance penalty.	• Delays in expediting the negotiation process and conclude a contract before 31 March 2017. • Delay by the chosen contractor to sign the contract agreement.	High	• Expediting evaluation, negotiation process and conclude contract by 28 February 2017. • Agree on conditions of contract before the finalisation of negotiations.
Suppliers not submitting mandatory requirements for contract award.	Delay in notifying successful Supplier resulting in a successful Supplier not to have adequate time to get required documentation and approvals.	High	Award the Contract by the 10 March 2017 to allow successful Supplier adequate time to acquire all documents.

3.6 **Verification by independent party (if applicable)**

KPMG has been appointed to provide assurance in the evaluation and negotiations process.

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		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary Department	

4. OTHER APPROVALS REQUIRED

None.

SIGNED

Charles Kalima
GENERAL MANAGER (ACTING)
COMMERCIAL DIVISION

8/3/2017
Date

Abram Masango
GROUP EXECUTIVE: GROUP CAPITAL

8.03.2017
Date

P.P.
Edwin Mabelane
CHIEF PROCUREMENT OFFICER
COMMERCIAL DIVISION

8/03/2017.
Date

Who hereby represents that the above information is correct

Submission prepared by: Thami Mnguni
Contact Number: (011) 800 5873

"BN7"
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Eskom	EXTRACT OF MINUTES	Template Identifier	240-43921804	Rev	5
		Document Identifier	240-123927074	Rev	1
		Effective Date	08 February 2017		
		Review Date	February 2020		

EXTRACT FROM THE APPROVED MINUTES OF THE ESKOM BOARD TENDER COMMITTEE MEETING 13-2016/17 HELD AT THE HUVO NKULU BOARD ROOM, MEGAWATT PARK ON 8 MARCH 2017 AT 09H00

Group Capital

Mandate to negotiate and conclude contract for engineering, procurement and construction as part of return of Duvha 3

IT WAS RESOLVED THAT:

The Board Tender Committee noted:

7.1.1 The Duvha Unit 3 Recovery Project Status.

The Board Tender Committee approved:

7.1.2 the recommendation to conclude a contract with Dongfang Electric Corporated Limited (DEC) for the manufacturing, factory acceptance testing, procurement, fabrication, shipping and delivery to site, erection and commissioning of Unit 3 at Duvha Power Station with a contract value [redacted]

7.1.3 a contingency amount of [redacted] of the contract values at an amount of [redacted]

7.1.4 [redacted]

7.1.5 the total combined contract value of [redacted] excluding VAT and a contract duration of 63 (sixty three) months; and

Please Initial

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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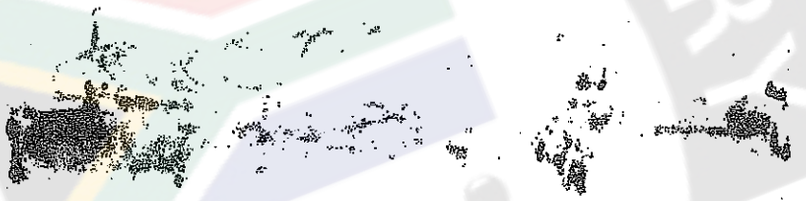
7.1.6 that the Group Executive: Group Capital be authorised to take all the necessary steps to give effect to the above including the signing of any agreements, consents or other documentation necessary or related thereto.

CERTIFIED AS A TRUE EXTRACT

S Daniels (Ms)
GROUP COMPANY SECRETARY
Date: 19/4/2017



Eskom	SUBMISSION DOCUMENT	Unique Identifier	115 "BNS"
		Document Type	OCSDTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary	

EXECUTIVE SUMMARY

SUBMISSION TO THE BOARD TENDER COMMITTEE

1. TITLE OF THE SUBMISSION

Status Update and Contract Award Notification: The Procurement, Fabrication, Factory Acceptance Testing, Shipping and Delivery on Site, Construction Testing and Commissioning of a Pulverised Coal Fired Boiler for the Duvha Unit 3 Recovery Project

2. RESOLUTION REQUIRED

THE BOARD TENDER COMMITTEE TO NOTE:

2.1. the Status Update Report and Contract Award Notification for the Refurbishment of Duvha Unit 3;

2.2. the conclusion of a contract with Dongfang Electric Corporation Limited (DEC), for the manufacturing, factory acceptance testing, procurement, fabrication, shipping and delivery to site, erection and commissioning of Unit 3 at Duvha Power Station at:

2.2.1. A contract valu

2.2.2. A contingency amount of 10% of the contract values

2.2.3.

2.2.4. And the total combined contract value of

2.2

2.3. the Group Executive: Group Capital Division is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

3. SUMMARY OF FACTS

3.1. Salient facts

On 20 January 2017, the BTC approved the amendment to the original mandate to negotiate with a minimum of 2 (two) up to a maximum of 4 (four) suppliers.

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		Document Type	OCSDTE
		Revision	0
		Effective Date	July 2015
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The negotiations were held with 3 (three) suppliers from 27 January 2017 to 27 February 2017 and Eskom intends awarding the tender to the successful tenderer on 13 March 2017 ("Contract Award date").

Upon conclusion of negotiations, all 3 (three) suppliers were requested to submit their Best and Final Offer (BAFO) which included all negotiation outcomes and Eskom's requirements which might have impacted the project risk profile on 3 March 2017 at 10h00 South African time. All 3 (three) suppliers submitted their BAFO via the Eskom Tender Office on 3 March 2017 and the BAFOs were evaluated.

The outcome of the negotiation proceedings was as follows:

Alstom S&E Africa Pty Ltd Trading as GE Steam Power Systems (Alstom GE): The tenderer submitted major contract deviations with its tender which required clarification and negotiation. The deviations were in respect of Eskom's key conditions of contract which are Retention, Payment terms, Delay damages, Defects period, Limitation of Liability, Sub-contracting and Technical requirements. The parties held negotiations between 27 January 2017 and 03 February 2017. After intensive deliberations, the parties reached agreement on all the conditions.

Murray & Roberts Power & Energy and Shanghai Electric Power Generation Services Company (MRSEC): The tenderer submitted a tender as a consortium. The tenderer also submitted major deviations from the contract conditions which needed clarification and negotiation. All deviations were discussed and agreed to during the negotiations.

Dongfang Electric Corporation (DEC): The supplier had proposed major deviations with its submitted tender. The deviations were negotiated and agreed to by the parties.

The Table below sets out the Best and Final Offers (BAFO) of the respective tenderers:

Table 1 BAFO of the Tenderers

Supplier Name	BAFO (Excluding VAT)	Comments	BAFO escalated
GE Alstom	R 3,027,316,340	Without Escalations	R 3,537,536,099
MRSEC	R 3,299,784,042	Without Escalations	R 3,756,624,683
DEC	R 4,011,008,499	Fixed Price	R 4,011,008,499

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		Revision	0
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Analysis of the respective BAFO's as received from the respective bidders:

A. PRICING

1. Based on the external financial review, although DEC is the lowest ranked based on the 90/10 application of the final evaluation criteria, DEC presents the lowest risk profile out of all the three bidders having submitted a fixed and firm price with no escalations.
2. The former two bidders' prices are fixed with a variable cost escalation risk to Eskom. In the case of Alstom GE, 75% of the price is subject to cost escalation and 90% of MRSEC's price is subject to cost escalation. These types of pricing mechanisms have in the past led to cost overruns as a norm.
3. DEC scored the lowest points in respect of price. However, this is the only tenderer whose price is fixed and firm for the duration of the contract. In comparing the BAFOs with escalation, DEC's price is R254M more than that of MRSEC and R473M more than Alstom GE, the risk of inflationary increases has been mitigated through the price being fixed and firm for the duration of the contract period.
4. In the absence of similar offers by MRSEC and Alstom GE, the external financial review obtained, indicates that the risk of inflation is prevalent which will impact on the tendered price.

B. RISK ANALYSIS

Key risks identified in respect of the bidders were as follows:

1. *Delays in the execution of the project* as has been seen in the Medupi and Kusile project where Alstom GE was a contractor and Murray and Roberts was a sub-contractor.
2. Murray and Roberts was involved in *collusion* in the construction of the 2010 Soccer World Cup stadiums and one of its subsidiaries was involved in collusion in the construction of roads.
3. DEC in determining a fixed price has taken a *risk sharing approach* to the project in that the project costs are determinable upfront by the parties. The accountability for unexpected events is shared as the onus is on both parties to agree on a determinable and executable schedule. While Eskom has provided for the risk of unexpected events in the contingency amount, this will not be disclosed to the contracting party as Eskom will be holding the proposed contract party to the final BAFO and the risk assumed by it.

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		Document Type	OCSDTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary	

C. QUANTIFICATION OF THE RISK

1. In the Medupi Project, CPA escalation was 28% of the original total cost and 45% of the total cost for Kusile Project.

2. A fixed cost project provides far greater certainty regarding commitment of cash flow and the ability to hedge exposures.

In light of the above financial risk as well as the quantified part of the financial review conducted and in the interest of Eskom, it is submitted that the fixed price option will deliver better economic benefits than the variable price option. Hence the conclusion that the contract be awarded to DEC.

It is the team's intention that the Letter of Acceptance be signed on 23 March 2017 and the Conditions of Contract which is an NEC 3 ECC contract that contains all the terms and conditions as per negotiation outcomes will be signed on or before the Tuesday 28 March 2017.

3.2. Key assumptions

The key assumptions made by the team are:

3.2.1 Eskom has secured the right supplier that is capable and has the capacity to recover Unit 3 at Duvha Power Station within the stipulated contract period.

3.2.2 The sucessful Supplier accepts the final contract with all conditions within acceptable time and does not withdraw.

3.3. Financial implications

- The Board mandate provided for [redacted] in respect of the scope of work tendered for and therefore Dongfang's price is within the Board mandate.
- The pricing was evaluated using the Group Capital Total cost to completion model.
- The external review conclusion is based on a risk view of the results of the above modelling.

3.4. Human resources implications

None.

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3.5. Risks (including Environmental, Legal or Contractual risks)

RISK	CAUSE	LEVEL (High/Medium/Low)	MITIGATING FACTORS
Failure to have a signed contract by 30 March 2017 resulting in Eskom suffering a R1.67 billion insurance penalty.	• Delays in expediting the negotiation process and conclude and sign a contract before 31 March 2017. • Delay by the chosen contractor to sign the contract agreement.	High	• Expediting evaluation, negotiation process and conclude contract by 28 February 2017. • Agree on conditions of contract before the finalisation of negotiations.
Suppliers not submitting mandatory requirements for contract award.	Delay in notifying successful Supplier resulting in a successful Supplier not to have adequate time to get required documentation and approvals.	High	Award the Contract by the 13 March 2017 to allow successful Supplier adequate time to acquire all documents.

3.6 Verification by independent party (if applicable)

KPMG has been appointed to provide assurance in the evaluation and negotiations process.

4. OTHER APPROVALS REQUIRED

None.

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Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-2222
		Document Type	OCSDTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary	

SIGNED

Charles Kalima
GENERAL MANAGER (ACTING)
COMMERCIAL DIVISION

27.03.2017
Date

Prish Govender
GROUP EXECUTIVE (ACTING):
GROUP CAPITAL

27/03/2017
Date

Edwin Mabelane
CHIEF PROCUREMENT OFFICER
COMMERCIAL DIVISION

2017/03/27.
Date

Who hereby represents that the above information is correct

Submission prepared by: Thami Mnguni
Contact Number: (011) 800 5873

084 305 1701

COMMISSION OF INQUIRY INTO STATE CAPTURE

121 "BN-9"

Eskom

The Honourable Ms Lynne Brown MP
Minister of Public Enterprises
Private bag X15
HATFIELD
0028

Dear Minister Brown

APPOINTMENT OF GROUP CHIEF EXECUTIVE OFFICER

The above matter has reference.

At the last sitting of Eskom's People and Governance Committee on 9 September 2015, which is the subcommittee of the Board of Directors tasked with dealing with the appointment of senior executive managers within Eskom, it was resolved that the appointment of Brian Molefe to the position of Group Chief Executive Officer of Eskom, be confirmed as soon as possible.

The rationale for the appointment of Mr Molefe as a permanent employee, rather than on a secondment basis, is based on the following considerations:

i) He has a well-known track record in the market both nationally and abroad for being able to turnaround ailing companies and this experience has been demonstrated in the stability and marked improvement in performance he has brought to Eskom since he joined 5 months ago;

ii) His academic background and more particularly, his considerable financial acumen has already been demonstrated in the more positive outlook Eskom, and consequently South Africa, enjoys with the ratings agencies which are key to addressing the liquidity issues;

iii) His hands on approach to operational matters, particularly with regard to maintenance and load shedding, at the time of crisis which the company found itself in, has made high performance in Eskom, not negotiable;

iv) To support this culture, he has already revisited the approach to performance management so as to instil appropriate levels of accountability at all levels of staff thereby raising the bar on all fronts for his executive management team to follow;

v) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee in the most optimal manner to address the issues that have bedeviled the company for too long a time;

vi) During his tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of 22 July 2015, which was also endorsed by the Board; and

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

vii) Implementation of this plan has resulted in marked improvements in all areas of the Eskom operations
   a. A generation maintenance strategy with minimal load shedding is now in place and implementation is monitored;
   b. Staff morale is on the upturn and an employee engagement strategy is now in place and being rolled out across the country to all Eskom employees;
   c. Eskom's reputation and brand is being rebuilt with more positive stories in the media.

Public confidence has increased exponentially and Mr Molefe's ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead.

Future strategies have been developed and are in the process of being developed for final consideration by the Board. Most importantly, the quality and clarity of information presented to Board has improved and he enjoys the full support of the Board.

Certainty of leadership at the top would allow for stabilising the management team internally together with allowing him to be able to attract the requisite skilled professional talent outside of Eskom to take up critical roles in Eskom which are vacant at present or may occur in the future and thereby create the confidence and predictability required of Eskom at this time.

Given the fact that Eskom is the core driving force of the South African economy, we are of one mind that no other person would at this point be able to maintain the current upward trajectory that Mr Molefe has placed the company on since his secondment in April this year. It is with this is mind that the board unanimously supports his appointment.

Accordingly, on behalf of the Eskom Board of Directors, I recommend to Honourable Minister that Mr Brian Molefe be appointed as Group Chief Executive Officer of Eskom Holdings SOC Ltd.

Should Minister require any other information prior to taking a decision on the matter, please let me know.

Yours sincerely

Dr BS Ngubane
INTERIM CHAIRMAN
Date:

INTO STATE CAPTURE

123 "BN10"

Venete Klein

From:	Masenya Selatswa <Masenya.Selatswa@dpe.gov.za>
Sent:	02 October 2015 02:55 PM
To:	Baldwin.ngubane@gmail.com; DanielSM@eskom.co.za; Venete Klein
Cc:	Ordilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo
Subject:	Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Attachments:	SKMBT_C36415100214370.pdf

Good day

On behalf of Minister Lynne Brown the Minister of Public Enterprises, kindly find attached a letter on the above mentioned subject for the attention of Dr B Ngubane, Interim Chairperson of Eskom.

Please acknowledge receipt.

Thank you,

Kind regards,

Mr Selatswa Masenya
Registry
Ministry of Public Enterprises

+27 (0)12 431 1158 | +27 (0) 21 469 6760 +27 (0) 12 431 1039 | ministry.registry@dpe.gov.za

1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 431 1000

COMMISSION OF INQUIRY INTO STATE CAPTURE

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MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X9078, Cape Town, 8000 Tel: 021 461 6376/7/469 Fax: 021 465 2381/461 1744

Mr Brian Molefe
Chief Executive Officer
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: danielsm@eskom.co.za/
Baldwin.ngubane@gmail.com

Dear Mr Molefe

Appointment as Chief Executive Officer and *Ex Officio* Member of the Eskom Board of Directors

I am pleased to inform you of your appointment to Eskom as Chief Executive Officer and *ex officio* member of the Board of Directors.

Your appointment to the Eskom Board is *ex officio* and therefore the following stipulations apply:

- Your appointment to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon the date of notice of termination of employment or notice of resignation or notice of suspension;

- You shall not be entitled to any additional remuneration, other than that provided for in your contract of employment as Chief Executive Officer of Eskom; and

- All Board activities you perform, including but not limited to preparing for Board meetings, travelling time to and from Board meetings, and participation in Board activities/responsibilities, whether within or outside normal working

hours, are regarded as official duties and do not require you to take leave to attend to them.

I have requested the Chairperson to facilitate, in consultation with you, the alignment of your contract of employment in accordance with the above stipulations. I have no doubt that you will make a real contribution to the future success of Eskom.

Please confirm your acceptance as *ex officio* to the Board by signing the attached statement and returning a copy to myself.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 02/10/2015

CC: Dr Ngubane, Interim Chairperson of the Eskom Board

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public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, in my capacity as Chief Executive Officer, hereby accept the appointment as an *ex officio* member of the Eskom Board. I undertake to observe and comply with the principles and provisions of all legislation relevant to Eskom, the Protocol on Corporate Governance and the provisions of the Shareholder's Compact between the Board of Eskom and the Minister of Public Enterprises, to devote sufficient time for the execution of my responsibilities, to utilize my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Eskom and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

_____ _____

Mr Brian Molefe **Date**

COMMISSION OF INQUIRY INTO STATE CAPTURE

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MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X9079, Cape Town, 8000 Tel: 021 461 8376/7469 Fax: 021 455 2881/461 1741

Dr. B Ngubane
Interim Chairperson
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com /
DanielSM@eskom.co.za
venete@kleininc.co.za

Dear Dr. Ngubane

Re: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Your letters regarding the above-mentioned matter, dated 11 September 2015, have reference.

Subsequent to receiving Cabinet's endorsement, I approve the appointments of Mr Brian Molefe as the Chief Executive Officer and Mr Anoj Singh as Chief Financial Officer of Eskom and *ex-officio* Directors of the Eskom Board of Directors. Please extend my congratulations to Mr Molefe and Mr Singh on their appointments.

I have enclosed herewith, letters to Mr Molefe and Mr Singh confirming their appointments. Kindly ensure that it is delivered to and signed after finalising their appointments to Eskom.

The Board must ensure that the employment and performance contract is aligned to meet strategic objectives within, but not limited to, the following stipulations:

- Their appointment as ex officio to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon date of notice of termination of employment, notice of resignation or notice of suspension, in line with the provisions of the MOI.
- As ex officio to the Board, the Executives shall not be entitled to any additional remuneration, other than that provided for in the contract of employment.

In drafting the contracts, kindly liaise with the Department in the finalisation of the employment and performance contract of the CEO and provide me with a copy within three (3) months of the date of my letter.

In terms of remuneration, in line with the DPE Remuneration Guidelines, I approve a guaranteed remuneration of R7, 032,000.00 for Mr Molefe and a guaranteed remuneration R4, 607,000.00 for Mr Singh.

I trust that these appointments will add to the much needed leadership stability at Eskom and further encourage the Board and CEO designate to finalise, amongst other immediate priorities, the filling of vacancies at Executive level.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 02/10/2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

129

MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X9079, Cape Town, 8000 Tel: 021 461 8378/1469 Fax: 021 465 2981/461 1741

Mr Anoj Singh
Chief Financial Officer
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: danielsm@eskom.co.za/
Baldwin.ngubane@gmail.com

Dear Mr Singh

Appointment as Chief Financial Officer and *Ex Officio* Member of the Eskom Board of Directors

I am pleased to inform you of your appointment to Eskom as Chief Financial Officer and *ex officio* member of the Board of Directors.

Your appointment to the Eskom Board is *ex officio* and therefore the following stipulations apply:

- Your appointment to the Board shall, irrespective of any other term stipulated in any other agreement, terminate with immediate effect upon the date of notice of termination of employment or notice of resignation or notice of suspension;

- You shall not be entitled to any additional remuneration, other than that provided for in your contract of employment as Chief Financial Officer of Eskom; and

- All Board activities you perform, including but not limited to preparing for Board meetings, travelling time to and from Board meetings, and participation in Board activities/responsibilities, whether within or outside normal working

hours, are regarded as official duties and do not require you to take leave to attend to them.

I have requested the Chairperson to facilitate, in consultation with you, the alignment of your contract of employment in accordance with the above stipulations. I have no doubt that you will make a real contribution to the future success of Eskom.

Please confirm your acceptance as *ex officio* to the Board by signing the attached statement and returning a copy to myself.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 02/10/2015

CC: Dr Ngubane, Interim Chairperson of the Eskom Board

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public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

I, _____, in my capacity as Chief Financial Officer, hereby accept the appointment as an *ex officio* member of the Eskom Board. I undertake to observe and comply with the principles and provisions of all legislation relevant to Eskom, the Protocol on Corporate Governance and the provisions of the Shareholder's Compact between the Board of Eskom and the Minister of Public Enterprises, to devote sufficient time for the execution of my responsibilities, to utilize my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of Eskom and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities.

Mr Anoj Singh _____ **Date** _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

"BN11"
47 132

MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Private Bag X6574, CAPE TOWN, 8000 Tel: (021) 461 8378/7/459 8760 Fax: (021) 469 2381/461 1741

Dr. B Ngubane
Chairperson
Eskom Holdings SOC Limited
P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Bakwiri.ngubane@gmail.com/
DanielSM@eskom.co.za

Dear Dr Ngubane

Re: Remuneration of Mr B Molefe: Chief Executive of Eskom

Your letter regarding the above-mentioned matter, dated 16 October 2015, has reference.

After having seen the contract of employment between Mr Brian Molefe and Transnet SOC Limited and the recommendations of the Board, I hereby approve the total guaranteed remuneration of R7 656 000.00 to Mr Molefe with effect from the date of appointment.

Following my letter to you, dated 2 October 2015, Cabinet further noted the appointment, subject to the period of employment being confirmed. In this regard, it is my view and that of Cabinet that the period of employment be stipulated as five (5) years, subject to annual performance reviews.

The specified term of the employment contract must also apply to the Chief Financial Officer.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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I look forward to receiving the draft employment contract and performance agreement as requested in the aforementioned letter.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 1/11/2015

COMMISSION OF INQUIRY INTO STATE CAPTURE

M.L

"BN12"
54 134

Eskom

The Hon Ms Lynne Brown (MP)
Minister of Public Enterprises
Infotech Building, Suite 401
1090 Arcadia Street
Hatfield
Pretoria
0001

Dear Minister

RETIREMENT ARRANGEMENTS –BRIAN MOLEFE

As requested by the minister, Eskom is currently drafting the Group Chief Executive's 5 year contract for the minister's input.

As part of the drafting process, however, an important principle regarding Mr Molefe's retirement fund needs to be addressed and I request the minister's prior approval before we submit the draft contract for further input.

It is a fact that the growth in retirement investments and pension funds start off slow but increases exponentially towards the end of an employee's working life. Mr. Molefe has served in numerous high ranking South African organisations at executive level, essentially to stabalise and ensure the future sustainability and performance of those organisations. Due to the nature of these engagements and the short term contractual obligations in Mr Molefe's case, he has not been able to benefit from the growth opportunity in a single pension fund.

To breach this gap, the following contractual stipulations are proposed:

- Regardless of Mr Molefe age after the 5 year termination date, he be allowed to retire from Eskom's service on the basis that he is aged 63.
- That the penalties prescribed by the Eskom Pension and Provident Fund (EPPF) for retirement prior to age 63, be waived.

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

M.K
Brg

RESOLVED THAT:

7.4.1 the alignment of the Board fee structure between that of Eskom and Transnet be recommended to the Minister of Department of Public Enterprises for approval.

The Chairperson noted the significant efforts of the Board Chairman to date to correct the misaligned Board fee structure.

7.5 Group Chief Executive: Conclusion of contract

Mr Minnaar reminded the meeting that the Minister had requested that the contract be concluded for a 5 year period and that she had also requested to have oversight over the contract. In addition, Eskom was given until the end of January 2015 to conclude the matter. A letter had however been addressed to the Minister regarding the retirement of the GCE and a response was awaited.

Mr Minnaar noted that a fixed term contract of 5 years at this level was a first for Eskom and was also not aligned with best practice. He explained the negative impact of this on the retirement benefits of the relevant individuals (GCE and CFO) and proposed that approval be granted for remedial action based on past practices and precedents in Eskom to counter this impact, which could include additional pensionable service being granted and/or penalties being waived. Mr Minnaar quoted a number of examples where this had been done in Eskom in the past.

Mr Minnaar thereafter spelled out the required resolution noting the current rule that staff over 50 years of age with at least 10 years' service were entitled to retire as per the Eskom Pension and Provident Fund rules. The request was for the Eskom rules to be amended in respect of executive directors with fixed term contracts to make up the shortfall in years, wave the penalties and refund to the Pension and Provident Fund the actual cost relating to the additional service. He explained that refunding the cost would not reflect as emoluments of the executive director in question as this would constitute a transaction between Eskom and the Fund only with no money being paid to the individual.

The Chairperson summarised her understanding of the proposal as far as it would relate to the GCE. In respect of the CFO, the matter would be more complicated as he would not be 50 years of age at the time that the fixed term contract came to an end. The meeting enquired whether a proposal could be considered for the CFO and tabled for consideration in due course.

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;

Eskom	ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary	

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 costs for additional service added, plus penalties applicable to early retirement; and

7.5.3 a proposal in respect of the Chief Financial Officer to be considered and submitted to the Committee in due course.

8. CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

8.1 Minutes of the Previous Meeting
Reference Document 5.1(a)

The minutes of the In-Committee meeting No. 06-2015/16 held on 22 October 2015, having been circulated, were considered. The Chairperson requested that the minutes be carefully reviewed to ensure correctness. She noted, for example, an error in the minutes that needed to be corrected. The Company Secretary confirmed that the wording of the relevant item would be revised accordingly. The Chairperson furthermore noted that discussions around the travel policy and appointment of non-executive directors on the board of subsidiary companies had been discussed. The Company Secretary was requested to consider the matter based on the provisions of the Eskom Memorandum of Incorporation.

RESOLVED THAT:

8.1.1 the minutes of the People and Governance Committee In-Committee meeting No. 06-2015/16 held on 22 October 2015 are approved as an accurate reflection of the proceedings, subject to the proposed amendments; and

8.1.2 the Chairperson of this meeting is duly authorised to sign the minutes.

9. MATTERS ARISING FROM PREVIOUS MINUTES

9.1 Matters arising
Reference Document 6.1(a)

The Action List as included in the meeting papers was **NOTED.**

10. GENERAL

There were no further matters for discussion.

M.K

139
"BN14"

Brian MOLEFE
P. O. Box 18, Cornwall Hill, 0178.
mbm1@mweb.co.za

11 November 2016

Dr. B Ngubane

Chairman

Eskom SOC

Megawatt Park

SUNNINGHILL

Sir

EARLY RETIREMENT –EMPLOYEE NO 4610263

I hereby request for approval for early retirement in terms of the rules of the Eskom Pension Fund read in conjunction with a resolution of the People and Governance subcommittee of the board dated 09 February 2016.

My last day of service will be 31 December 2016.

I would like to take this opportunity to thank the board for its guidance and leadership through very difficult times during my tenure as Froup Chief Executive of Eskom.

Yours Sincerely,

11.11.16.

Brian MOLEFE

COMMISSION OF INQUIRY INTO STATE CAPTURE

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"BN 16"

Mr B Molefe
UN: 06102515

Dear Brian

EARLY RETIREMENT

Your letter dated 11 November 2016 is hereby acknowledged and it is confirmed that your last day in service will be 31 December 2016.

In terms of the rules of the Eskom Pension and Provident Fund (EPPF) and Board resolution, your early retirement is approved.

The following payments are due to you:

- Salary up to 31 December 2016 (also refer "Suspense Account" below).
- Accrued leave pay.
- Short Term Bonus calculated on your Pensionable Earnings (nine months proportional bonus based on a 50% on-target performance).
- Payments in terms of the LTI Scheme. Currently, there are two grants outstanding according to the letter dated November 2016, namely:
  - Grant 11 that was awarded in April 2015 and vests in March 2018
  - Grant 12 that was awarded in April 2016 and vests in March 2019

  In terms of the rules of the scheme, the LTI payments will be made as soon as possible after the two vesting dates. Both grants will vest at 50%.

1. <u>Pension Fund</u>

   Your early retirement has been approved in terms of EPPF rule 28 and 21.4, which means that penalties will be waivered and that potential service to age 63 is granted.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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2. **Suspense Account**

To make provision for any other unforeseen costs after your retirement date, an amount of R15,000.00 will be retained in a suspense account for this purpose. Costs incurred after resignation normally relate to taxable expenses associated with the Bank Fleet card and security services.

3. **Occupational Diseases**

Any claims against Eskom for occupational diseases is subject to an Eskom exit medical examination report issued by your nearest Eskom medical centre. Otherwise, no claims will be considered.

4. **Certificate of Service**

A certificate of service covering the period of your employment with Eskom will be handed to you on 31 December 2016.

5. **Eskom Property**

Any other Eskom equipment in your possession, including the following should be returned to Executive Support (Megawatt Park, C3 U41) on 31 December 2016.

- Eskom security permit
- Bankfin petrol card and e-tag
- Samsung Slate
- 3G card

Eskom has copyright on all documents, records and any other material which you may have prepared or have come into possession since your employment starting date with Eskom. It is necessary that this should remain in Eskom's possession.

6. **Tax Certificate**

An IRP5 tax certificate in respect of the 2016 / 2017 tax year will be issued.

I wish you every success for the future.

Yours sincerely

Dr Baldwin Ngubane
CHAIRMAN
Date: 24/11/16

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

SUPPLEMENTARY 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. **Purpose of this affidavit**

2.1. On or about 4 August 2020 I deposed to an affidavit in which I dealt with various matters which had been raised with me by the

BSN
PDH

Commission's investigators ("**the main affidavit**").

2.2. I deposed to the main affidavit voluntarily with the view to assist the Commission in its work.

2.3. While preparing for my appearance at the Commission, which is scheduled to take place on Thursday, 10 September 2020, I established that I had made in accurate statements in some respects.

2.4. I depose to this supplementary affidavit to clarify those inaccuracies, as I do below.

3. **The eventual payment of pension benefits to Mr Brian Molefe**

3.1. In paragraph 7.2 of the main affidavit I stated that 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 and that such amount came to R25, 80 204.19.

3.2. In paragraph 7.3 I went on to state that on 21 November 2016, Mr Molefe's request for early retirement was discussed at a special meeting of the P&G Committee and that the meeting agreed to support Mr Molefe's request and payment to him of the retirement benefits as

calculated by EPPF.

3.3. On reflection, I have established that the above statements are in accurate, insofar as they suggest that EPPF provided Eskom with the calculations of Mr Molefe's retirement benefits and that such calculations were discussed at a special meeting of the P&G Committee of 21 November 2016. That is incorrect. I do not have personal knowledge that those figures were provided to Eskom by the EPPF. I am aware that such figures were never presented to the Board, nor were they discussed at the special meeting of the P&G Committee.

3.4. Furthermore, I have referred to numerous amounts in paragraphs 7.6, 7.7 and 7.10 of the main affidavit in relation to retirement benefits paid to Mr Molefe. I wish to clarify that I do not have independent knowledge of these facts. I made these statements based on information previously provided to me by Eskom officials.

4. **The R1.68 billion guarantee**

4.1. In paragraph 12.2 I stated that the R1.68 billion guarantee was approved by the Board during December 2015. minutes of this meeting.

4.2. In paragraph 12.3, I went on to state, amongst others, that the Board

COMMISSION OF INQUIRY INTO STATE CAPTURE

approved the proposed round robin resolution and approved the issuing of the guarantee.

4.3. I wish to clarify that the guarantee issue never served before the Board nor was it approved by it.

5. **Conclusion**

5.1. 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.

5.2. Moreover, these matters happened years ago. In making my affidavit to the Commission I relied on my memory and the sparse documentation that I could glean, without access to the official records of 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 Sandton on the 09 day of September 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

Tshisevhe Gwina Ratshimbilani Inc
Precious Nobuhle Mudau
Commissioner of Oaths
Practicing Attorney RSA
Vdara 6th Floor, 41 Rivonia Road
Sandhurst, Sandton, 2196
Tel: 011 243 5027

Eskom Inquiry: Ben Ngubane

Public Enterprises

07 March 2018

Chairperson: Ms Z Rantho (ANC)

Audio
Eskom Inquiry: Ben Ngubane 1
Eskom Inquiry: Ben Ngubane 2

Documents
Dr Baldwin Ngubane submission - part 1
Dr Baldwin Ngubane submission - part 2
Dr Baldwin Ngubane submission - part 3

Meeting Summary

The Committee heard evidence from Former Eskom Board Chairperson Dr Baldwin Sipho "Ben" Ngubane.

The Committee questioned Dr Ngubane on the pre-purchase of coal from Optimum Coal Mine (OCM); former CEO Brian Molefe's resignation; the suspension of the four executives; his relationship with the Gupta family; and corporate governance during his tenure as Eskom Board Chairperson at the power utility.

In his statement, Dr Ngubane, he informed the Committee that in the funding of the pre-purchase of coal, Eskom was told it was going to achieve a value benefit of R238.9 million. The motivation by management indicated that the proceeds of the R1.86 billion pre-payment of coal was to be used by Optimum Coal Mine (OCM) to extinguish existing liabilities to ensure that the business continued as a going concern. The shutdown of OCM would potentially result in loss of thousands of jobs.

The Committee said it was not happy or impressed with Dr Ngubane's responses to questions. It was of the view that Dr Ngubane refused to take responsibility for the collapse of corporate governance at Eskom.

The Committee noted inconsistencies in Dr Ngubane's answers when compared with evidence provided by others appearing before the Committee Inquiry.

During questions by Members, Dr Ngubane looked to the Chairperson and said he could not sit in the Committee and "listen to this rubbish" – referring to the manner of questions being asked. The Chairperson told Dr Ngubane that he could not use such language in Parliament. Both the Members and the witness needed to be patient with each other.

When asked to draw conclusions from evidence before the Committee, Dr Ngubane kept telling the Committee to wait for the Commission of Inquiry into state capture to commence its work so that evidence could be presented there and witnesses could be cross examined.

Meeting report

The Chairperson said the Committee was scheduled to meet with Dr Ben Ngubane, former Eskom Board Chairperson, and Ms Dudu Myeni, former South African Airways (SAA) Board Chairperson. Dr Ngubane was running late due to traffic, but was on his way to Parliament. Ms Myeni indicated via email to the Committee that she was not in a healthy condition to travel to Cape Town via airline or road, and her doctor had booked her off from travelling. She however made a written submission and hoped that it would suffice. The Committee needed to engage with each witness that provided a written submission to the Committee and therefore her submission could not be supplied.

The Chairperson said that Ms Myeni had told her what illness she had but was not at liberty to share in front of the media. She would disclose the illness to members privately.

Committee members requested that Ms Myeni should appear before the Committee Inquiry in not more than seven days.

The Chairperson said Minister Malusi Gigaba had asked for an additional 10 days to be given to him so that he would able to source the information from the Department of Public Enterprise and come with credible information before the Committee. The Chairperson asked for input from Committee members on this.

Dr Z Luyenge (ANC) said that 10 days was a fair request.

Ms Mazzone suggested that the Minister be asked to appear before the Committee on 13 March 2018 since there was no sitting or cabinet meeting on that day.

The Chairperson said the Committee was scheduled to meet with the Guptas and associates on 13 March 2018, and the Committee needed to be prepared to continue on the 14th. The 'associate' of the Guptas referenced was Mr Duduzane Zuma.

Dr Luyenge suggested that the Committee meet with the Guptas first, but if the Minister would only available on the 13th then they could meet with the Minister first.

Mr M Dlamini (EFF) agreed that the Committee should meet with the Guptas first, followed by Minister Gigaba.

Mr R Tseli (ANC) asked if the lawyer of the Gupta brothers was the same lawyer for Mr Duduzane Zuma.

The Chairperson replied that Mr Duduzane Zuma had his own lawyer and would be interrogated separately from the Guptas even though the invitation was for the Guptas and Mr Zuma to appear on the same day.

Mr S Swart (ACDP) asked if there was written confirmation that the Gupta brothers would definitely appear before the Committee on 13 March 2018.

The Committee Secretary responded that the lawyers of the Gupta brothers had indicated that the brothers would attend the inquiry on the date they had been invited to appear.

Mr Swart was doubtful that the Gupta brothers would in fact appear.

The Chairperson said that the Committee would write to the Chair of Chairs and request more time for the Committee on 13 March 2018 so that they could deal with Minister Gigaba, Mr Duduzane Zuma, and the Gupta brothers.

The Chairperson said the Committee would now be interacting with Dr Ben Ngubane, the former Eskom Board Chairperson.

Witness: Dr Baldwin "Ben" Ngubane
The Chairperson read the oath to Dr Ngubane who took the oath to tell the truth.

Dr Ngubane read his statement.

Adv Vanara: Firstly, I would like to confirm that your statement forms part of record of proceedings in its entirety together with annexures. Secondly, I would like to go a board meeting on 2 March 2017 that you were you were chairing.

Dr Ngubane: I think it was a People and Governance (P&G) board committee meeting on 2 March.

Adv Vanara: What were the issues you discussed at that meeting?

Dr Ngubane: I think there were a couple of issues touching on the recruitment process and other P&G issues. However I brought to that meeting a document that I found on my desk which was not dated or signed, and contained certain allegations about Mr Matshela Koko. I gave this document to the Board members and we came to the conclusion that we had to give this document to Mr Koko and ask him to respond by end of the working day. The statement was duly given to Mr Koko. Somewhere in the afternoon before the scheduled meeting he came to me and said the timing was not sufficient. He also told me that he was facing a lot of difficulties as acting Group Chief Executive because he was moving people around at Medupi and Kusile because of certain serious issues such as fictitious companies being created and funded, but he was handling this as the Group Chief Executive. I went back to my colleagues, and when we came to the meeting at about 6pm the intention was to suspend Mr Koko and institute an inquiry, but in our discussions it emerged that we needed to give him 48 hours to respond before we could suspend. Also there was no name to the document which made this not a grievance letter but a whistleblower document. I was reminded that Eskom policy requires whistleblowers to be dealt with through the Audit and Risk (A&R) committee and through the Assurance and Forensic division of Internal Audit. We then took a decision to submit this document to the A&R committee who subsequently dealt with it through Assurance and Forensic, which eventually led to the inquiry taking place.

Adv Vanara: The subsequent Acting Chair of the Board testified here on this particular issue that it was your unilateral decision not to suspend Mr Koko. That is Mr Zethembe Khoza. What is your response to that?

Dr Ngubane: I don't know where he takes that from. We had a meeting and discussed this matter quite extensively. And then ultimately I said we should refer the issue to A&R and let it be handled as a whistleblower document. There was no time where I took the decision alone. We were all at the meeting.

Adv Vanara: We do have on record the meeting in question, and if you want we could play the meeting. It was very clear that it was not only the complaint you had received but rather most members of the Board had received various complaints in respect of the same individual. That meeting was clear that there would be a meeting at six o'clock and Mr Koko would be called in to give reasons why he should not to be suspended. Is that your recollection?

Dr Ngubane: That is correct.

Adv Vanara: Your testimony is that you outside of the meeting went to meet Mr Koko.

Dr Ngubane: After he received the document to which he had to respond, he then asked to see me.

Adv Vanara: I guess you didn't know what he wanted to see you about?

Dr Ngubane: I assumed that it was because of the document he had received and had to respond to, so I granted him the meeting.

Adv Vanara: Sorry, you have lost me a bit. You assumed it was in connection with a document he had received?

Dr Ngubane: No. he got the document to which he had to respond or else face suspension.

Adv Vanara: How did he get the document?

Dr Ngubane: It wasn't me who delivered the document personally if I remember correctly. There are people at Eskom who do those tasks.

Adv Vanara: I guess the question is on whose instruction was that document sent to Mr Koko?

Dr Ngubane: It was a decision of the meeting we had earlier where we decided that he must respond or face suspension.

Adv Vanara: I recap the decision of that meeting to which you agreed. He was to be called at six o'clock to provide reasons why he should not be suspended. In other words at six o'clock he comes to a meeting, and he is given the allegations against him, and is told to respond to those allegations.

Dr Ngubane: Your take puts it differently. The earlier meeting took the decision that we must get a response from him in terms of the allegations. And the decision was that he would be suspended if those reasons or responses were not to the satisfaction of P&G or the Board.

Adv Vanara: That record will show that you people had already taken a decision to suspend him until you were persuaded by Mr Zethembe Khoza to call that meeting at six o'clock where he would be given an opportunity to respond in the same manner when you called the meeting on the 11th of March to suspend Mr Matshela Koko, Mr Tshediso Matona, and Ms Tsholofelo Molefe. That is the process you followed, isn't it?

Dr Ngubane: That as a totally different process which was brought upon us.

Adv Vanara: That record is very clear. It has not been disputed by any of the other Board members that attended the meeting. You had made up your mind, having been persuaded by other Board members that you wanted him gone as in yesterday until you were persuaded by Mr Khoza at two o'clock. What is it that persuaded you personally from what Mr Koko told you, resulting in your not suspending him?

Dr Ngubane: The issue of time was raised for the first time. That before suspending we need to give a person 48 hours to respond as to why the person should not be suspended. That arose for the first time in my meeting with him.

Adv Vanara: What is the other reason beside the 48 hour notice that stopped you from suspending him, if any?

Dr Ngubane: This was a dynamic process. You may have formal discussion in your minutes, but we were all at Megawatt Park talking about this, and it was clear that we had also omitted the policy requirement that this must got to A&R who must deal with it through Assurance and Forensic. It's a policy at Eskom. To suspend him directly on a whistleblower note without having gone through this process would have been illegal.

Adv Vanara: You took into consideration that this was a whistleblower document. What other reasons if any did you take into consideration?

Dr Ngubane: This was part of the discussions we were having. Obviously he would have taken us to the CCMA and Labour Court and won if we had taken steps that were not in law or policy.

Adv Vanara: To add to the reasons, so it was a threat of litigation?

Dr Ngubane: Yes.

Adv Vanara: Let's look at these three reasons you have advanced. To entertain how rational your decision was. One ...

Dr Ngubane: It wasn't just my decision. We were there as members of the Board and members of P&G. I did not just say "No, suspension

anymore. It was a product of our consultation".

Adv Vanara: I take your evidence to the extent that you are testifying that. But I need to take into account what other Board members have said as well. But on your version it was a collective decision. 48 hours had lapsed and you had not suspended him so we can tick that off as not the reason he was eventually not suspended.

Dr Ngubane: No. By that time we had referred the matter to the A&R committee. We had taken it further, and eventually it led to dealing with the issue.

Adv Vanara: That after 48 hours he had not been suspended?

Dr Ngubane: That's correct.

Adv Vanara: Who was the Chairperson of Audit and Risk, was it not Ms Mabude?

Dr Ngubane: Yes.

Adv Vanara: She was at the earlier meeting of P&G.

Dr Ngubane: Correct.

Adv Vanara: She was also vocal that Mr Koko had to go.

Dr Ngubane: Correct.

Adv Vanara: Over and above the whistleblower report, there were other issues that you had raised, including yourself. You had a note from a meeting between yourself and the Minister where the Minster had raised serious concerns about said individual. Is that not correct?

Dr Ngubane: That's correct.

Adv Vanara: Why were those factors not considered in the meeting as part of the reasons not to suspend, is that not correct?

Dr Ngubane: Absolutely.

Adv Vanara: Why did that package of other issues, except the whistleblower which formed part of your decision to suspend him, not stand at the six o'clock meeting to suspend him barring the whistleblower?

Dr Ngubane: I don't have a copy of the whistleblower document before me, but there were many issues raised in that document, and it was the collectiveness of those issues that made us decide to suspend him. And also, I checked the note from the Minister with the same Board members and we knew that it was something that has to be dealt with.

Adv Vanara: The point I am making Doc is that you had received this whistleblower note which you had shared at that P&G meeting earlier that day, correct?

Dr Ngubane: That's correct.

Adv Vanara: Over and above that document, you contributed other reasons why he should go. You have just admitted to that.

Dr Ngubane: That's correct

Adv Vanara: And Ms Mabude contributed additional reasons why the man had to be suspended.

Dr Ngubane: That's correct.

Adv Vanara: Ms Klein who said you people must stop pussy footing around this man and advanced reasons around why this man had to go.

Dr Ngubane: That's correct.

Adv Vanara: In your meeting with Mr Koko, and one of the reasons you did not suspend was because of the whistleblower report. I understand that, and I am saying put it aside. Why when you were at that meeting based on the contributions of yourself, Ms Klein, Ms Mabude, and others at the meeting which had made you come to the conclusion that he must go, why on the basis of that meeting did you not suspend him?

Dr Ngubane: But I have said Advocate that the issues contained in that document encompassed a lot of other matters. However, even if it was on a single matter that had been seen on its own separately, you would still have to follow procedure in suspending a person.

Adv Vanara: We have dealt with the 48 hour issue and the reasons in terms of eliminating. There is only one reason, and that is the threat of litigation. That same board, and I heard your response earlier on how you treated Tshediso Matona, Tsholofelo Molefe, and others differently, but you still maintain it was the same Eskom policy applied by the same board. How can you explain the different standards that your Board applied to different people?

Dr Ngubane: You are bringing me to a more complex situation. When Chairman Tsotsi said the four people must be suspended, we differed with him because he did not give us cogent reasons as to why they must be suspended. And remember this was our very first meeting as a new Board in March. We said the reasons he was giving us were defamatory, unsubstantiated, and we could not suspend them. We suggested that they take special leave while the concerns he had raised were being investigated. It was Head of Legal he had brought into the meeting who said special leave only applied in special cases. Not for investigation purposes. That's how we ultimately agreed to go with the suspension. Our resistance to that led him to call in the Minister to our meeting on 13 March where we voiced our concerns. But the Minister while not saying "Suspend the people" also raised her concerns. The concerns were from the War Room which was claiming it was not receiving consistent information from management at Eskom and therefore it could not develop strategies to turn around Eskom and stop load shedding. After that we resolved to go on with the investigation, but the people concerned were heading the departments that the investigation dealt with and therefore they must be put aside for three months. It was clear this would be for three months and they would be informed of the outcome. That's how we took that decision. On 14 July 2015 Mr Saeed Suleiman who was the link between the A&R committee chairperson and the Dentons inquiry wrote a letter stating;

"Dear Ms Cassim,

Investigation into the affairs of Eskom Holdings SOC Ltd.
1. I refer to the above,
2. I note that the terms of reference in respect of the investigation do not require that misconduct by any specific individual be investigated,
3. Accordingly make no recommendations concerning action against any specific individual.

Yours sincerely
Saeed Suleiman, on behalf of Dentons".

That's why I said you were bringing in a very different situation. Here was a set of allegations which were known by all of us. Before there were nebulous allegations being made such as Mr Tsotsi saying Ms Tsholofelo Molefe had contacted people who had tendered during the evaluation of tenders. He promised a document that would detail all those allegations but he never did.

Adv Vanara: But the point I am making is that arising from your decision on 11 March you were taken to court by Tshediso Matona. What is your answer?

Dr Ngubane: Yes, I was at the CCMA with Mr Matona. I persuaded him that...

Adv Vanara: We will get to those details. I just want you to confirm that Matona did take you to the Labour Court as a result of your decision.

Dr Ngubane: Yes.

Adv Vanara: Then subsequent to this incident after Mr Molefe came back and you terminated or rescinded your decision to re-employ him, he took you to court?

Dr Ngubane: As far as I know he took the Minister to court. Not the Board.

Adv Vanara: The Democratic Alliance (DA) took you to court because of your decision is that correct?

Dr Ngubane: That's correct.

Adv Vanara: Solidarity took you to court on the same decision, correct?

Dr Ngubane: Partly true. Essentially the DA and Solidarity wanted to block Mr Molefe's return and his receiving any benefits.

Adv Vanara: Essentially, the point I am making is it is decisions you made. The EFF also joined in challenging your decisions. If you couldn't suspend Mr Koko for threat of litigation, why did the same threat of litigation not prohibit you from taking some of the decisions that you went to court for and which you eventually lost?

Dr Ngubane: I really don't follow. Here was a situation where we were not giving enough time, and the allegations were contained in a whistleblower document. Those were very different circumstances.

Adv Vanara: Just to make you understand so that we move on from this point, I am entertaining the rationale of this threat of litigation having persuaded you against you suspending this person after you had taken a clear decision to suspend him. How sustainable is that in light of the various other decisions that you took?

Dr Ngubane: I beg to differ. Circumstances were quite different. Here we had taken a decision but not based on legal requirement and on Eskom policy requirement. We had taken a decision. If one is made aware that the decision we have taken is not correct, is there anything wrong to following the right procedure because we then referred it to the A&R committee to deal with it. We took action to proceed in a proper way where we would be sure we followed the rules.

Adv Vanara: Did you receive a call from the former Minister of Public Enterprises not to suspend Mr Koko on that day?

Dr Ngubane: No. we had met almost half the day or the entire day talking about this matter. The Minister used to call me quite often, particularly when she finished work in Parliament or whatever, to ask me about the happenings in Eskom because there were a huge number of concerns in terms of stability and so on. She did phone me, but she had phoned many other times before.

Adv Vanara: I am asking a very specific question. Did the former Minister of Public Enterprises Ms Brown call you at any time between your earlier meeting where you took the decision to suspend Mr Koko, and before or during the meeting when you were to suspend Mr Koko?

Dr Ngubane: She phoned me, but that was not about Koko.

Adv Vanara: It was about what?

Dr Ngubane: It was about Eskom business. I did not keep a note of the conversation I had, but it was about a whole lot of processes that dealt with stability.

Adv Vanara: You can't recall them?

Dr Ngubane: I can recall them. For instance there was an issue about archival for some of our power stations; there was an issue of succession; there was an issue of management. If I go back, Mr Abram Masango wanted an urgent meeting with me. I was at Tintswalo having another meeting with business people totally unrelated to the business of Eskom. So I said to him "If it is so urgent come, come and see me. I will be here till around 5pm". He came and told me he wanted me to intervene because Matshela Koko was forcing him to go to Harvard. Harvard has a programme for upgrading the skills of Eskom people. They go there on rotation. Even Brian Molefe went there to learn about the management of nuclear power stations and so on. He said Matshela was wanting him to leave his work and go to Harvard. He had family issues with that. I should intervene because it was causing a problem between him and Matshela. Subsequently I called them both to the meeting and asked him to explain why Abram had to go to Harvard at all costs. Matshela explained that it was a rotational system. He had ordered Masango to take his lot on the Harvard issue. After a long discussion, Abram had agreed to go.

Adv Vanara: I am sorry Doc. I don't have time. The Minister called you to discuss business of Eskom. What is it that the Minister called you about?

Dr Ngubane: For a briefing of what is happening at Eskom.

Adv Vanara: Remember we eliminated these calls between you and the Minister which are natural and normal. We are between your two o'clock meeting and the six o'clock meeting where you said the Minister called. I want to know what it is that the Minister called to talk to you about.

Dr Ngubane: I have told you that this was to me a normal call.

Adv Vanara: Whether it was abnormal or normal, I want to know the reason, what is difficult about you saying "The Minister called wanting me to go to her residence or this and that"?

Dr Ngubane: We had a number of meetings with the Minister with the company secretary present, with Ms Venete Klein present to discuss various issues around Eskom. I really don't know what you want me to say.

Adv Vanara: I give up Doc. There is evidence before this Committee that you received a call where the Minister instructed you not to suspend Mr Koko. What is your response to that?

Dr Ngubane: I presume she told this to some people. I talked to the Minister, it was on my phone, and it wasn't on speaker, so I don't know where that comes from.

Adv Vanara: I just want to move to the employment of Mr Molefe. On page 18, why did you write to the Minister in the first place about the employment of Mr Molefe?

Dr Ngubane: Because the Minister's rule was that she would only get letters from the Chairman.

Adv Vanara: I understand the protocol part of it, but what was the rationale behind writing to the Minister regarding Mr Molefe's employment issues?

Dr Ngubane: Because the change from permanent employment to fixed term caused a lot of problems in terms of handling Mr Molefe's benefits and so on. Therefore with the possibility of Mr Molefe going, because he said he had lost out a lot from moving from one organisation to another, P&G worked out a proposal to keep Mr Molefe at Eskom by all the things I have ...

Adv Vanara: I am not there as yet. I am at a stage where Mr Molefe was seconded from Transnet and then you recommended that he be appointed permanently, and you had engaged lawyers that advised on the process. Then you wrote to the Minister that letter of 9 November 2015 about Mr Molefe's employment. I am saying what is it you wanted from the Minister, did you want the Minister to say "Yes I am employing this person?

Dr Ngubane: Let's go back. Mr Molefe came at the height of load shedding. Within three months we started to notice changes. The whole mindset at Eskom began to change. Where the person at Generation was not talking to the person at Transmission, and the person at Transmission was not talking to the person at National Control, all of this changed. There was synchronisation of the actions of all the main players: Generation, Distribution, National Control. It was a significant shift. The three months were ending, and the rationale was we cannot remove this man at this point when we are seeing progress.

Adv Vanara: Let me be correct, you wanted the Minister to employ Mr Molefe?

Dr Ngubane: It was to ask her to extend by three months which she did. But the problem was not completely over then. We were still struggling with New Build projects. We were spending huge amounts of money on diesel. The program was not completed. I wasn't the only one who decided. It came from P&G to request the Minister to keep Molefe here because he is doing a good job.

Adv Vanara: I am not asking you to justify why you wanted him to be employed. All I am asking is when you wrote to the Minister, when you had now made the decision that you wanted to keep your man you wrote to the Minister to engage the terms of Mr Molefe's employment.

Dr Ngubane: But we had to do that because ...

Adv Vanara: I am not questioning that.

Dr Ngubane: You said "rationale", and that's what I am trying to give you.

Adv Vanara: Did you write to the Minister having now as the Board made the determination as a Board that you want to keep your man? In writing to the Minister did you want to get her approval or inform her you had appointed your man?

Dr Ngubane: The Minister had to approve this because it was a deviation from usual practice.

Adv Vanara: But before you received the Minister's approval, on 9 November you presented to Mr Molefe a permanent contract of employment where you say at that stage you had not received the Minister's response because you say "For some or other reason the Minister's letter dated 4 November sent to me and addressed to Ms Daniels did not come to my attention or the attention of the Board". The question is why did you offer Mr Molefe a permanent contract of employment when you did not receive the approval you sought from the Minister?

Dr Ngubane: The sequence is wrong. The Minister approved the employment of Mr Molefe. Remember Ms Ruthnam in the Minister's office sent us the guidelines for the appointment, and this was responded to through a second legal advice, and the Minister approved.

Adv Vanara: Let's go to the construction of the pension. You say 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". This is after you became aware that you had to offer Mr Molefe a five year fixed term contract as opposed to a permanent contract. Is that correct? And you had given reasons why you had to accommodate Mr Molefe's pension concerns. You wrote a letter to the Minister motivating why the pension proposals needed to be amended, correct?

Dr Ngubane: That's correct.

Adv Vanara: At the time you wrote the letter to the Minister were you aware that Mr Molefe had been previously employed at National Treasury for seven years?

Dr Ngubane: Yes, I know he moved from Treasury to Public Investment Corporation (PIC); from PIC to Transnet.

Adv Vanara: Were you aware that he had moved from Treasury where he had spent seven years?

Dr Ngubane: No. I wasn't aware of the time.

Adv Vanara: So you did not look at his CV when you employed him?

Dr Ngubane: Yes, definitely we did. I knew he was from Treasury but I wasn't cognizant of the number of years he had spent there.

Adv Vanara: But you ought to have known if you looked at his CV.

Dr Ngubane: I am sure at some stage I had looked at it.

Adv Vanara: You would have known that he moved from Treasury to become PIC CEO for another seven years?

Dr Ngubane: That's correct.

Adv Vanara: Further that you would have known he moved to Transnet for an additional four years from where you recruited him.

Dr Ngubane: That's correct.

Adv Vanara: Was it your view then that he would not have amassed a pension in those respective roles?

Dr Ngubane: That was the issue he raised. We consulted Mr Minnaar, and he confirmed that he would lose out if he didn't work the full period to reach pensionable age.

Adv Vanara: Forget about what Minnaar said to you. I am saying what the information ought to have been in your minds when you wrote the letter.

Dr Ngubane: That's correct but you need to verify information when you write such letters.

Adv Vanara: Did you know what his salary was at Transnet?

Dr Ngubane: Not off hand.

Adv Vanara: But you would have known at the time?

Dr Ngubane: It was not far from what he was earning at Eskom.

Adv Vanara: You are giving this man a five year fixed term contract at a remuneration package of R5.56 million per annum is that correct?

Dr Ngubane: That's correct.

Adv Vanara: So he was the highest paid at Eskom?

Dr Ngubane: Not at all. Other Eskom CEOs received much higher than that range as permanent employees.

Adv Vanara: No. I am saying when he was an Eskom employee at the time he would have been the highest paid.

Dr Ngubane: I can't agree to that because I would need to see the figures again.

Adv Vanara: When you took a decision to buy 10 years additional service to increase a pension of somebody who earned R7 600 000 per annum as a total package, who in his previous job would have earned around R6 million. Did you for once think about those officials at Eskom who earn a very low salary? Did it ever cross your mind that perhaps you had employees earning far less than what this man was earning?

Dr Ngubane: Eskom is both a market company and a state company. So the benchmarks have always been to accommodate that aspect. Molefe's salary was no different in terms of basic package than all the previous CEOs at Eskom. The fact that there is a pay differential in this country between top CEOs and the lowest worker in a company may be a basis of serious inequality but this is the system in which we operate.

Adv Vanara: All I am asking is that at the time you were considering Mr Molefe's pension, did you take a minute to think about the other 40 odd employees in relation to the same issue of pension?

Dr Ngubane: Advocate, that is a very unfair and loaded question. I can't come to Eskom and change the processes there. I don't set the levels of payment at Eskom or in any other SOC. The Chairman of the Board does not set the level. He gets that from the system.

Adv Vanara: You are aware the court recently ruled on this matter?

Dr Ngubane: Certainly.

Adv Vanara: Let me remind you what the court said in relation to your Board that took the decision. Three judges ruled "The decision of Eskom to waive penalties and buy Mr Molefe an extra 13 years of service totalling R30.1 million stretches incredulity and is unlawful for want of compliance of the rules of the pension fund".

Dr Ngubane: Well, I wonder…

Adv Vanara: I am not asking you a question sir. I am just reading. What is most disturbing which you perhaps need to take note of is the total lack of dignity and shame by people in leadership positions who abuse public funds with naked greed for their own benefit without a moment's consideration of the circumstances of fellow citizens". What do you want to say to that indictment?

Dr Ngubane: That indictment can apply to Steinhoff and many multinationals in this country. I agree there is a lot of greed at the expense of an ordinary person. But that is the nature of the state in which we are in. Our clause said if the contract reaches the end of the five year term then we would buy Mr Molefe an extra number of years to sustain his benefits. It was clearly stated in the resolution.

Adv Vanara: Let's move to the meeting of 9 February 2016 para 2.5.7 where you resolved to reconstruct this pension regime for Mr Molefe. Mr Molefe was at the meeting correct?

Dr Ngubane: No.

Adv Vanara: He was.

Dr Ngubane: Well, if he was he would have recused himself. I don't have the minutes of that meeting. We never discussed prescribed officers' salaries with them in the meeting. We always went in committee.

Adv Vanara: Are you disputing that he was at the meeting where you were discussing his pension benefit?

Dr Ngubane: I would say he could have been in the general meeting, but when it comes to discussing prescribed officers' salaries and remuneration, they always recuse themselves. It happens all the time.

Adv Vanara: That happens when corporate governance reigns supreme in an organisation. But where it has collapsed, those things don't happen. What is your comment?

Dr Ngubane: Well, I am telling you that this is what we always do.

Adv Vanara: Let's hear what the court says about that aspect, para 9.7. [Adv Vanara read the paragraph]. That is a collapse of corporate governance, would you agree?

Dr Ngubane: Well, I wish to see the minutes of that meeting because I can't believe that happened because every time we discuss salary issues they are asked to leave.

Adv Vanara: I am saying there is a court judgement where three judges have said what I have just said, and based on what they say, I am putting it to you that this suggests a collapse of corporate governance.

Dr Ngubane: Well, I am denying that. Let me see the minutes.

Chairperson: I am sorry to interrupt. I want Dr Ngubane to put it on record that he denies what the court judgement is saying or he denies the fact that Mr Molefe was part of the meeting according to what he understands in the governance of Eskom. Is that proper?

Dr Ngubane: I am not disputing what the judge is saying. They will say based on the information they have. What I know is that every time we come to discuss the remuneration of prescribed officers, whether short term, long term, they leave the meeting. That is what they do. It is the practice.

Chairperson: Thank you very much. You can continue, Advocate.

Adv Vanara: You are aware that your decision to give Mr Molefe early retirement was inconsistent with Eskom Pension and Provident Fund rules?

Dr Ngubane: Well, the guideline say people can take early retirement when they reach age 50. Those are the guidelines we got from the administration and Mr Minnaar. We did not say when Molefe applied for his early retirement that the clause of five year service was eliminated or discarded. Based on the rule that they can take early retirement is what we agreed to.

Adv Vanara: But why then did you sign that Mr Molefe was retiring on early retirement in terms of the resolution of 9 February 2016 when you knew that the purpose of that resolution was wrong as it was reserved for him after he had served five years?

Dr Ngubane: People can retire any time once they have reached a certain age. He was 50, but it did not mean he would get the benefits he would have got if he had served five years.

Adv Vanara: So is it your contention here today that when you signed a letter to Mr Molefe that it was not your intention or your Board's that he would be entitled to the Eskom Pension Fund?

Dr Ngubane: He was contributing to the pension fund every month. If he reaches 50 which was allowed by Eskom rules, then he will receive whatever his contribution has been.

Adv Vanara: Just help me and the Committee in terms of your decision making process. When faced with the matter you had just received a briefing on and based on the briefing you say yes or no, or did you interrogate issues that were brought to you by the managers, and apply yourself to those issues?

Dr Ngubane: The issue of his retirement had been dealt with ad nauseum in P&G and in letters to the Minister. This wasn't a new matter. P&G met, they took a resolution. Mr Minnaar came to me with a letter that was coming from that meeting. The company secretary was present at that meeting. I had no reason to doubt the correctness of it.

Adv Vanara: But why did that P&G committee agree to a pension dispensation on the same issues you had raised to the Minister and the Minister had not provided a response to it?

Dr Ngubane: I say in some of the documents the letter setting out the arrangements for Molefe's benefits were stated in the letter sent to the Minister. The acknowledgement came from the Minister's PA, it came from the Registrar in the Minister's department. There was no reason to question whether the Minister had accepted it.

Adv Vanara: So you assumed the Minister had given her go ahead?

Dr Ngubane: Well, that was the conclusion.

Adv Vanara: You testified earlier that the two of you would interact at any time on issues that related to Eskom. Before that meeting, did you pick up the phone and say "Minister, we have written a letter to you, you have not responded, we are about to make a decision?"

Dr Ngubane: No, I didn't.

Adv Vanara: And that to you it amounts to a Ministerial approval?

Dr Ngubane: No, it doesn't. It amounts to the fact that the Minister is aware of what we are doing.

Adv Vanara: My last parting shot relates to this early retirement. If you were thorough and applied yourself to submissions that were brought to you as a Board or subcommittee of the Board, and relying on the Eskom Pension Fund rules as you did in your letter to Mr Molefe, how did you miss that he was a temporary employee who did not qualify to be a member of the Pension Fund?

Dr Ngubane: He was on the Pension Fund. He was contributing to the Pension Fund

Adv Vanara: You took time and you earlier said you have dealt with this thing almost routinely, this issue of constructing the pension fund. And in your mind you had an idea that he must benefit from the Eskom Pension Fund. You had the Rules in front of you, you went to Rule 28 that you quoted. I am saying, how did you miss the finishing section of the Rules, the portion that talks to eligibility in the Rules?

Dr Ngubane: We were considering the end of his tenure after five years. That five year contract could be extended in which case he would fit in with everybody else at Eskom. Or if it is not extended, he would not lose out. Therefore we made the provision.

Adv Vanara: The last question. You say on page 25 you had approved a prepayment which was later converted into a guarantee and you learned that from the press. What did your Board do upon learning about what had transpired?

Dr Ngubane: I was no longer at Eskom.

Adv Vanara: Thank you very much.

Questions asked by Members

Ms L Mnganga-Gcabashe (ANC): Reading from the minutes and resolutions of the Board committee that you have provided as annexure one, page 37 talks about what transpired in the P&G committee where Mr Minnaar was presenting and discussing the matter of Mr Molefe's appointment and pension. My interaction will be comments and some questions. I'll repeat what I said to Mr Minnaar when he appeared before the Committee. Mr Minnaar started to mislead that board subcommittee because it says in paragraph 7.5 "Mr Minnaar noted that a fixed term five year contract at his level was a first for Eskom and was also not aligned with best practice". That statement alone is misleading - the part that it is not aligned with best practice. Metros as I have come across personally have fixed five year contracts in our country. Mr Minnaar should have sought clarity from the Director General of Public Enterprises to get clarity for the DG to unpack if Eskom did not understand what is entailed in a five year fixed contract. He decided to mislead the subcommittee and by extension that Board. He went on and on motivating why this cannot be practical and totally disregarded the instruction of the Minister based on the resolution of Cabinet. The Board can seek clarity from the Minister, but none of that happened. Cabinet had taken a resolution that CEOs and DGs would from now on be employed on five year contracts. We have a serious problem with the total disregard of a cabinet decision. If this had been unpacked they would have learned that on a fixed five year contract you do not qualify for pension. You are given a package which is benchmarked on the market and other spheres of government and arrive at a particular package. To me, you were misled and officials were thinking of themselves.

Dr Ngubane: I take your point. However, the five year provision hinged on whether his contract is extended in which it becomes a normal pensionable contract.

Mr R Tseli (ANC): While you were responding to Adv Vanara earlier, you said when you agreed to the early retirement of Mr Molefe it was on the basis that he would be paid only what is due to him as per the age. But the resolution talks about the waiving of the penalties which would be at the cost of the company. Is that not a contradiction?

Dr Ngubane: Advice to us was that other senior executives had Eskom pay the penalty when they took early retirement. That was the point of departure. In our case it was only to be applicable after five years' service, not just immediately without that service. I presume we could have unpacked this even more, but that was the assumption.

Mr Tseli: The court judgment Adv Vanara read we all agree to be a true reflection of what transpired. If found to be correct, will you admit that you lied under oath about Mr Molefe's presence in the meeting, where you discussed his benefits?

Dr Ngubane: I would like to see the minutes of that because I didn't attend all P&G meetings.

Mr Tseli: I agree. I am saying in the light of you still verifying this and it is found to be correct, would it be right to say you lied under oath that he was not there when the matter was discussed in the committee?

Dr Ngubane: Can we please accept the fact that to lie is a deliberate act. Here I am quoting practice at Eskom that when we discuss prescribed officers' salaries and benefits, they are asked to recuse themselves.

Mr Tseli: Let's go to the whistleblower document you did not bring along. Would you agree with me that it is one of the very important documents you should have brought along?

Dr Ngubane: Unfortunately at the end of the meeting the Company Secretary should have those documents. I searched for that document but I did not find it.

Mr Tseli: But you agree it is one of the very important documents you should have brought?

Dr Ngubane: Absolutely.

Mr Tseli: Have you ever shared the identity of the author of the document with any other person?

Dr Ngubane: I did not know the author of the document. It was undated, it was unsigned. But now that Mr Masango claims he wrote it, I know who wrote it.

Mr Tseli: Mr Masango says he had a one to one session with you and you advised him to write all those issues he had in one document, and I think that is the document he wrote.

Dr Ngubane: I differ. The only issue we talked about was his being sent to Harvard. He was violently against that. If he had given me a document it would have amounted to a letter of grievance against Mr Koko. There was no such letter.

Mr Tseli: How would you describe your relationship with Salim Essa?

Dr Ngubane: I came to know him around 2013 for oil business in West Africa. I was sitting at JBs with some people involved in West Africa – Mali, and Salim came to me and introduced himself, and then I introduced him to the people I was with. He knew we were talking about oil business and said he also has an oil company and wanted to be part of my company which was Gade Oil and Gas. He was going to arrange the trip to Central African Republic (CAR) to go for oil blocks there. It was a business relationship.

Mr Tseli: So he ended up being part of that company?

Dr Ngubane: He ended up being part of the company. But because of the violence in CAR we ended up cancelling the whole project and that is when he resigned from this company.

Mr Tseli: Have you ever declared your interest in relation to Salim since joining Eskom?

Dr Ngubane: No. I declared Gade Holdings. Under Gade Holdings was Gade Oil and Gas. That company became dysfunctional. It did not trade. It was an oversight of me when I declared Gade Holdings, I should have also declared Gade Oil and Gas.

Mr Tseli: What role did you play in the R1.8 billion prepayment?

Dr Ngubane: The Company Secretary requested an urgent meeting. But because people were in different places we agreed on a round robin discussion. It had first to go through the Investment and Finance Committee (IFC). IFC had its own round robin. They approved the emergency payment in order to secure coal supply. It was a proposal that came from management. Since IFC said it made sense, the Board agreed on the round robin and it was approved.

Mr Tseli: Do you think there is anything wrong with this R1.8 billion prepayment to Tegeta?

Dr Ngubane: Let's go back to the situation. The situation was horrible in South Africa. We were in danger of a national black out.

Mr Tseli: In essence, to be direct, there is nothing wrong?

Dr Ngubane: Well, at the time we could see nothing wrong because of urgency.

Mr Tseli: That extension of T-Systems was procured while the procurement process had already started. Why the motivation when the procurement process had started?

Dr Ngubane: I think this issue of replacing the IT supply had been going on before 2014. I came in 2014 around Christmas. The Chairman then, Mr Tsotsi, asked me to Chair the Board Tender Committee (BTC).

Mr Tseli: My apologies Doc. My interest is why motivate the extension of a contract in the middle of a procurement process?

Dr Ngubane: That happens all the time at Eskom. Many calls for tenders are cancelled, modified, and re-issued. It wasn't anything new. Exco switches the Exco procurement subcommittee. They recommended that because of lack of capacity in IT, this contract must be cancelled.

Mr Tseli: You spoke about Mr Laher who was accused of flouting procurement processes, but the very same Salim Essa is now paid a settlement amount. Why was there that kind of suggestion?

Dr Ngubane: This happened before my time.

Mr Tseli: There is SekelaXabiso which was appointed to undertake a sensitivity analysis. What exactly were these people expected to do?

Dr Ngubane: I was not part of those processes. It is what I elicited when I enquired what happened with Dongfang. Consultations with lawyers and audit firms took place, and they came to the conclusion that Dongfang was the right company to appoint. I have just brought that in as a document which I have elicited on preparing for this meeting.

Mr Tseli: I am sure by now you have heard about a meeting that is said to have taken place in Durban that was attended by Mr Tsotsi and Dudu Myeni?

Dr Ngubane: Well, that is what Mr Tsotsi said.

Mr Tseli: What did he say?

Dr Ngubane: He said he was instructed to suspend certain officials and so on. That is what we were discussing at our first meeting, and we even called for the Minister to come in because we did not believe that story. Ultimately we decided to appoint Dentons to carry out a forensic fact finding inquiry.

Mr Tseli: And what was the outcome of the inquiry?

Dr Ngubane: It came with a lot of recommendations.

Mr Tseli: If you can just share with the Committee.

Dr Ngubane: The inquiry looked at the poor performance of our coal fleet which was causing the load shedding. It inquired about 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. It looked at 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. It looked at the security at Eskom as a key national point. It looked at the integrity of the procurement process and how it complied with the rules. Dentons gave us a big report and we handed it over to A&R. A&R came up through Mr Molefe Nkabu who is the Head of Internal Audit and Forensic and Assurance. He gave each division of Eskom issues that had to be corrected. By the time I left, I think about 18 of the issues had been corrected and implemented.

Mr Tseli: To your knowledge Dr Ngubane, what work has been undertaken by Regiments and or Trillian with regards to the Duvha 3 boiler insurance claim? Specifically, what did they do?

Dr Ngubane: I was not really part of that process. What I received did not mention Trillian or Regiments. It just talked about the process which is before court at the moment. Murray & Roberts took the matter to court on an interdict. The interdict was granted but the review of that tender is still before the court and has not been settled.

Mr Tseli: Was there any other work conducted by Trillian while you were at Eskom?

Dr Ngubane: The trouble at Eskom is that appointment of consultants is a managerial function. They don't come to us to ask to appoint companies. What comes to the BTC is anything above R750 million. Anything below that is dealt with by management.

Ms N Mazzone (DA): I have it on record that Andy Macaulay was the CEO of Gade Oil and Gas; Iqbal Sharma was a Director; and Salim Essa was a Director. Can you tell me if any Gupta brothers or any children of the Guptas were involved in this company of yours?

Dr Ngubane: Long before I came to Eskom, I was the owner of the company. I was the Director, and Salim became a Director because he was going to arrange for our prospective exploration in CAR. Just two people.

Ms Mazzone: So at no stage did you know of any involvement of the Guptas through Salim Essa?

Dr Ngubane: No.

Ms Mazzone: Your wife is Sheila Ngubane, and together you own Huntrex 305 which owns Zululand Quarries, Natal Sands, and Hanis Investments. It has been reported that R50 million was borrowed from the state owned enterprise, Ithala Development Finance Corporation. Has that money in fact been paid back?

Dr Ngubane: Chairperson, with due apologies this matter is before the court. It has nothing to do with Eskom or my role in Eskom. It happened in 2011 so I will not discuss that issue.

Ms Mazzone: Former Minister of Mineral Resources, Mr Ramatlhodi, has very openly accused you and Mr Molefe of trying to strong arm him to withdraw the Glencore mining licences. Can you please explain the situation between the three of you?

Dr Ngubane: Minister Ramatlhodi suspended Glencore mining licences. Glencore was supplying Hendrina, Komati, and Arnot power stations. He suspended them because they did not do retrenchment in the way it was supposed to be done. We appealed to him not to do that because it was going to cause massive load shedding. That is what we discussed.

Ms Mazzone: Did you know of any meetings that took place in Switzerland with Minister Zwane and any coal mine executives?

Dr Ngubane: No. In fact I hardly ever get involved in that type of work. It is managerial. If there is a decision to be made it goes to BTC.

Ms Mazzone: During Mr Qoma's testimony, he discussed with us your almost protective nature over Mr Molefe. In actual fact he testified that on the day that Mr Molefe was dismissed you requested him and Suzanne Daniels to accompany you give moral support to Mr Molefe. Is this in fact true?

Dr Ngubane: The only time I met Mr Molefe after he left Eskom was after the meeting with the Minister where the Minister said the R30 million pension was untenable and needed to be changed. Either Molefe was to resign or agree to a lower payment. Qoma was not there. It was Suzanne, Venete and myself dealing with those issues. There was no time where Qoma accompanied me to see Molefe.

Ms Mazzone: Chair, just for the record there is a disparity in the testimony there. On 2 March, it was in fact testimony of Ms Daniels that you

convened that meeting and that a unanimous decision was taken to suspend Mr Koko. And there is a recording to that extent. Do you deny that there was a unanimous decision taken to suspend Mr Koko?

Dr Ngubane: We agreed on that. It was simply the modality of dealing with the issue that became the question.

Ms Mazzone: Mr Qoma further testified that you personally told him that Minister Brown had phoned you and told you that the suspension had to be lifted. Why would he come to this Committee and lie?

Dr Ngubane: I don't know. To me Mr Qoma said Mr Khoza told him that at a party at Mr Khoza's house he had phoned the Guptas to ask the Minister to insert me. I phoned Khoza to ask him about Mr Qoma and he denied this. The issue of the Minister talking to me came from Mr Qoma saying that is what Mr Khoza told him. I don't know why he is doing that.

Ms Mazzone: Suzanne Daniels testified that she had mocked up the offer of employment following a letter sent to Mr Anton Minnaar by DPE. It was clear from the inception this was going to be a fixed term contract. Why was this even brought into question, because we have seen the original contract and it stated it was a fixed term contract?

Dr Ngubane: That was a later contract after we had concluded a permanent contract. All these movements we were trying to deal with, that initial situation of permanent contract subsequently going to a fixed term contract.

Ms Mazzone: I find this extremely disturbing that there are contracts after contracts; before contracts; subcontracts; maybe contracts. Was this the normal goings on at an entity such as Eskom?

Dr Ngubane: Initially all we knew was the Minister had given us authority that Molefe was going to be the Group Chief Executive, and that he was on permanent employment. There was no mention of any fixed term contract and that is why he got registered on the Eskom Pension and Provident Fund (EPPF), and that is why money was deducted for the EPPF every month. This came later and complicated issues.

Ms Mazzone: I am afraid I don't buy that. And I put it to you in fact that this pension initiative mark-up was a scheme enacted as a get rich quick programme. I would like your opinion on that.

Dr Ngubane: Then you must assume that all of us at Eskom are crooks, are terrible people to think of such things. Why should we want to enrich Brian Molefe? The only thing we were trying to deal with was his disgruntlement with the new situation where he had assumed permanent employment and then we told him he was on fixed term. He was very unhappy about that. In fact he could have left. We wanted to keep him in and try to work a scheme that would be sustainable after five years.

Ms Mazzone: Why the obsession with keeping Brian Molefe in his position?

Dr Ngubane: You are making assumptions. At that time we were on the cusp of a national blackout. At that time Molefe had brought a lot of joy to us when people's food was not rotting in their refrigerators, and people could have normal lives. There was no one who could have turned Eskom around in such a short period of time; reduce the expenditure on diesel which was a billion rand a month; fast track the commissioning of Ingula; fast track the commissioning of the first unit of Medupi; and fast track the whole build programme. It was a fantastic change from the billions of rands that were flowing out of Eskom from poor leadership.

Ms Mazzone: Eskom has gone through remarkable downgrades, they are in a state of complete and utter financial ruin; the board has been forcibly removed and replaced with a new board and suspended people that were a part of that board. This isn't my assumption. I also look at the fact that FEDUSA requested that you and Mr Molefe face a Commission of Inquiry. NUM said "The entire Board of Eskom is a disgrace to the power utility and government". How can you say that such a fantastic job was done when there has been downgrade after downgrade, and we almost face an economic crash in this country thanks to Eskom?

Dr Ngubane: When we came in the problems were already there. The Minister complained, and at one stage Chairman Tsotsi together with Matjila who was the Acting CEO actually phoned her while she was having lunch and said "We will not be able to pay salaries at the end of January". It was almost a disaster and here comes Molefe. The international funders buying Eskom bonds resumed buying Eskom bonds; we accumulated enough money and made an EBITA of R30 billion first time. By the time I left the finances were shooting up because we were having a buy-in by all the bond holders. I will put it to you that the devastation that would come with Molefe going away was a disaster for Eskom and the people of this country because we were on a trajectory to change the whole situation. Then came the people in acting positions, and senior Eskom people and engineers started fighting, instability started going. General Rakau was reporting to the Minister that people were almost killing each other at the power stations and I and Suzanne were at that meeting. I knew that removing good leadership would be calling for trouble, and that's why I made an emotional statement to say this was not only a blow to Eskom, but also to the people of this country.

Ms Mazzone: We are going to have to agree to disagree on this because I am of the opinion with millions of South Africans that don't think that the leadership at Eskom was in any way the leadership that we as a country deserved. I think you need to take ownership of what happened at Eskom. I think you need to accept that state capture is a real thing that this Committee has proved time and time again, and piece by piece utilities were sold to the highest bidder at the expense of South Africans. You were Chairperson at SABC, it collapsed; you

were Chairperson at Land Bank, it collapsed; you were Chairperson at Eskom and it collapsed. I would put it to you that you are a delinquent board member and if I were you I would certainly hang your head in shame and not make excuses for what has happened at Eskom. No further questions.

Dr Ngubane: It is a real denigration of my service to this country. Ask Phakamani [Hadebe] who is now the CEO at Eskom, he was the CEO at the Land Bank. We worked together, we recovered the Land Bank. No one was refusing to roll over their bonds. It shot to the sky. SABC you mentioned was broke from 2007. We raised money, and got advertisers to come back. When I left we had paid off Nedbank a R2 billion loan supported by a government guarantee. I don't know where you get this thing. The press may write whatever they write. I have never been a favourite of the press or anyone. To now come and paint such a picture is ridiculous. Load shedding was stopped under our command. It changed the whole situation. The fact that NERSA reduced the tariff and caused a serious revenue gap in Eskom is an issue that even this present Board will have to deal with. The municipal debt running into billions is an issue that this present Board will have to deal with. The pass through to independent power producers (IPPs) which are billions of rands is an issue which this new Board will have to deal with. Unless they find another methodology, a new model, these issues will continue. They are not just with us.

Mr M Dlamini (EFF): In your statement you say Eskom was supposed to get R238.9 million savings. Did Eskom get that saving?

Dr Ngubane: I am not sure about that. It is the finance department that would know. But that is what we were told, that if we continue with the cost plus mine type of purchase, the money we spend in the short term and medium term contracts would be reduced, and that was the amount we were referred to.

Mr Dlamini: So as Board Chairperson you are saying the finance department comes to you and says they are going to make a prepayment of R1.8 billion and that you are going to have a saving of R238 million, and you don't follow up to check if that happened or not?

Dr Ngubane: Internal Audit certified that the coal was delivered.

Mr Dlamini: Did you read that audit that you are talking about now?

Dr Ngubane: They gave a catalyst report from month to month.

Mr Dlamini: But I am asking you, did you read that audit because I don't want to go through this process and then you come back and say you didn't read it?

Dr Ngubane: If the rationale is that we get cheaper coal compared to short term and medium term coal supply, and I am told through the catalyst report that the coal has been delivered, then obviously that has been achieved.

Mr Dlamini: That is why I am asking a simple question, did you read the report?

Dr Ngubane: I read the report.

Mr Dlamini: In your statement you are saying BTC approved a prepayment to Tegeta of R659 million. That was in April. How much was actually paid from Eskom to the Tegeta account in April so that we can get clarity on this?

Dr Ngubane: It is the amount on the statement that was approved.

Mr Dlamini: When you are saying this amount was approved, are you saying that is the amount paid from Eskom to Tegeta?

Dr Ngubane: Yes.

Mr Dlamini: What was it for?

Dr Ngubane: It was to supply Arnot. There had been strikes at the mines that normally supply Arnot.

Mr Dlamini: That was a prepayment to supply Arnot. Was it executed in full, payment done and coal supplied in full?

Dr Ngubane: Absolutely.

Mr Dlamini: Was there an audit report, and who gave the report to say that on the R659 million spent the actual work had been done and there was proof of return.

Dr Ngubane: Absolutely. And proof of that was that we survived that winter with sufficient coal stocks. Had we not, we would have had load shedding.

Mr Dlamini: Was the prepayment for six months, five months, or 12 months?

Dr Ngubane: I think it was five months.

Mr Dlamini: I need you to give me clear answers.

Dr Ngubane: I will have to check that.

Mr Dlamini: Okay, check.

Dr Ngubane: I think it was five months.

Mr Dlamini: Okay, five months. And how much was the tonnage required for Arnot per month?

Dr Ngubane: I wouldn't know off hand.

Mr Dlamini: 485 000 was the tonnage required per month. How much was the tonnage, because Koko came here and said the tonnage required was 485 000. Are you disputing that?

Dr Ngubane: I am not. It is not my area of work. It is reports that I get so I can't remember all the details.

Mr Dlamini: But the report was given to you and you said you read it to make sure the work was done. These are the key major items for the R659 million – to say we are giving you R659 million on a five month contract and here is the tonnage. That can't be difficult?

Dr Ngubane: But surely if our audit system certifies that the coal was delivered, that is enough for me.

Mr Dlamini: So you have no idea how much coal was delivered? Did you read the report?

Dr Ngubane: I read the report.

Mr Dlamini: What did the report say about how many tons were delivered per month?

Dr Ngubane: Tons equivalent to the amount of money paid.

Mr Dlamini: No.

Dr Ngubane: No, chairman in this country...

Mr Dlamini: But I am not talking about other chairmen in this country, I am talking about you. I am saying to you the coal that was requested there per month is 485 000, and Koko confirmed that. Are those figures making sense to you? You were the Chairman, at least you know what you are dealing with.

Dr Ngubane: Yes. I read these reports. I can't carry it in my head all the time. I would need to actually see these reports in front of me. What I am reporting here is what was reported.

Mr Dlamini: What was reported?

Dr Ngubane: What I have in this document.

Mr Dlamini: Koko came here and said that the output of Arnot, Hendrina and Komati combined was 485 000 tons per month. Koko is an operator and he confirmed that. Are we in agreement?

Dr Ngubane: Yes, that's his job.

Mr Dlamini: There was an issue with the rate in terms of the negotiation – that the rate you agreed to was R150 per ton. Do you know how much the rate per ton paid to Tegeta was in this agreement?

Dr Ngubane: First of all, the R150 per ton as far as I know applied to Optimum. Arnot uses a higher grade of coal. It cannot be R150 per ton.

Mr Dlamini: On the prepayment how much was the rate per ton?

Dr Ngubane: But I think, Chairperson, I am being asked operational matters. I am not an operational chairman. I deal with reports that come to the Board through the normal channels. Koko is the operator, they do the negotiations. All I know from where I sit is that the price of coal to Arnot is much higher than R150 per ton because they use almost export quality coal, and not the rubbish that comes from the washing.

Mr Dlamini: I am not asking you operational matters. I am asking you on matters in the report that you said you read which you were satisfied with as Board Chairperson.

Dr Ngubane: I read the report from Internal Audit, not the BTC report.

Mr Dlamini: So Internal Audit did not show you in the report how much per ton was paid. I am going to tell you how much per ton was paid on that contract. It was R155 per ton for Arnot, Hendrina, and Komati. Those were the three power stations supplied under Optimum.

Dr Ngubane: Well, you have that information. I do not have it. As far as I know Arnot was supplied by seven companies.

Mr Dlamini: But how do you dispute the information? I am saying to you this is what happened and you are saying it is not correct. So what is the correct version?

Dr Ngubane: I am not saying it is not correct. I am saying that is what you have. I don't have all that information. All I know is that the tonnages that were paid for were received.

Mr Dlamini: And you don't know what you paid per ton. As a Chairperson you do a prepayment for five months but you don't check on what was presented and compare with the closing up report that the rates match each other?

Dr Ngubane: You are asking an unfair question.

Mr Dlamini: It is not unfair. What other contracts am I talking about?

Dr Ngubane: You want to say I must know in detail all the sale ...

Mr Dlamini: If you don't know, you must tell us.

Dr Ngubane: But I told you. I said I read the catalyst report from Internal Audit which said these things were delivered.

Mr Dlamini: It doesn't look like you know what happened. Let me tell you, that contract proposal was R150 per ton but when you calculate the numbers the money paid to the Guptas was about R372 million for the coal. When you take the number of tons multiply by the R150 that was agreed on for five months. But you paid the Guptas R659 million. Those are the facts in the report that you should have read. What is your understanding of the fixed term contract pertaining to Brian Molefe?

Dr Ngubane: It means you are a contracted worker. You do not get pension rights. Your medical aid, car allowance, and other items are lumped into your salary. It becomes much higher than a permanent employee who has pension because it is concentrated in a five year period.

Mr Dlamini: Why was there extra consideration for pension incentives for Brian?

Dr Ngubane: He thought he was employed on a permanent contract, and he was a contributing member of the Eskom Pension Fund.

Mr Dlamini: Chairman Tsotsi wanted to suspend those four executives. Initially you did not agree with that thinking. Is that correct, or did you agree with it?

Dr Ngubane: Initially we didn't agree. That's why we had a meeting with the Minister.

Mr Dlamini: But eventually you voted in favour of the suspension.

Dr Ngubane: Because there was no other way. We thought of special leave but it was denied by Legal.

Mr Dlamini: Do you know the Guptas, have you met any of them?

Dr Ngubane: Yes, of course I have.

Mr Dlamini: Which one?

Dr Ngubane: Almost all of them.

Mr Dlamini: Where, have you been to their house during your tenure at Eskom?

Dr Ngubane: Of course I have been to social events, to their weddings, to the South African of the Year awards.

Mr Dlamini: No. I am talking specifically during your tenure at Eskom.

Dr Ngubane: Yes I have.

Mr Dlamini: Is there any day where you took any of your board members to the Gupta house?

Dr Ngubane: No, I didn't.

Mr Dlamini: You just went alone?

Dr Ngubane: I was invited for special occasions and I went.

Mr Dlamini: What is your take on the Guptas with everything that has come out through the email leaks, Estina farm, and everything else?

Dr Ngubane: I am waiting for the Commission of Inquiry to happen and then I will know the facts.

Ms G Nobanda (ANC): What are the criteria for being in the Eskom Pension Fund?

Dr Ngubane: If you are a permanent employee of Eskom you get registered for pension, pay your subscriptions, and when you retire you get paid out.

Ms Nobanda: So only when you are a permanent employee and not a fixed term contract employee?

Dr Ngubane: That's correct.

Ms Nobanda: So what was Mr Molefe exactly, permanent, fixed, half permanent?

Dr Ngubane: Mr Molefe started as a permanent employee registered on the EPPF. Later on that was changed to five years, and then the adjustment was made that after five years if his contract is not extended he would be compensated in terms of the resolution.

Ms Nobanda: Can you give me the date of his employment when he started as a permanent member?

Dr Ngubane: 1 October 2015.

Ms Nobanda: So he was effectively a member of the pension fund on 1 October?

Dr Ngubane: Yes.

Ms Nobanda: According to the Pension Fund Board when they were here, what they had received from Eskom was that Mr Molefe was joined the fund on 14 September 2015. On the exit form, 25 September 2015 is cited as the employment date. According to them he was employed on 25 September. According to you he was employed on 1 October 2015.

Dr Ngubane: I will have to check those dates.

Chairperson: Could you please the mic closer to your mouth when you speak.

Dr Ngubane: He was acting until he was appointed. So I am not sure how he could have become a member of the pension fund.

Ms Nobanda: It's okay. It is on record that he was formerly employed from 25 September and you know him from the 1 October. Is 1 October 2015 the first contract or second contract of Mr Molefe? Remember in para 2.5.0 it states that "Mr Molefe signed a second contract of employment". If he is employed on 1 October would this be the first contract or second contract?

Dr Ngubane: On 10 September 2015 the Board resolved that the P&G committee should submit a recommendation to the Minister about the employment of Mr Molefe as GCE.

Ms Nobanda: Chair, page 21, paragraph 2.1.16 [read out].

Dr Ngubane: I don't see the contradiction in that because he was first employed on a permanent basis. Subsequent to that the terms of employment are changed and that's when he signed the second contract.

Ms Nobanda: So in 2015 he was appointed for the second time.

Dr Ngubane: In?

Ms Nobanda: In 2015, according to this.

Dr Ngubane: Yes. That's when he signed the fixed term contract.

Ms Nobanda: From 2.4.16 to 2.4.18 [read out]. All these paragraphs show me that there was no clear date of employment for Mr Molefe. If every now and then you change your contract of employment you would sign something and give it to the Minister, and the Minister would sign and bring it to you. But you were not aware that he was actually not permanent, it was supposed to be fixed. And the Minister is not agreeing with permanent. And then the following year on 7 March there is another contract where he is now fixed. According to the pension fund, they know him from 14 September 2015. Would you say if it was not you but an ordinary South African looking into this, there was something brewing here with all these dates?

Dr Ngubane: As a person who has no access to information I would certainly say that.

Ms Nobanda: There was a Committee meeting on 23 May 2017 at Townhouse Hotel where you and Ms Daniels were part of the meeting. The Committee enquired about the R30 million given to Mr Molefe, and in that meeting none of you mentioned the fact that Mr Molefe was not a permanent employee, he was on fixed contract. All your explanations were on the fact that he was a permanent employee and part of the pension fund, and you had followed all the requirements in paying out all that money. Do you still agree with that?

Dr Ngubane: Honourable Chair, I have explained in detail...

Ms Nobanda: Chair can you ask Dr Ngubane to answer the question. Does he still believe that everything they said on 23 May 2017, and what has been happening, and what he has said today, does he still believe that every process they were supposed to follow was followed in calculating and paying out Mr Molefe the R30 million?

Dr Ngubane: All the actions we took were with legal consultants, administrative staff, and it was informed by extensive consultation. That's all I can say.

Chairperson: Do you believe that you did the correct thing as the Eskom Board to agree to a resolution to pay Mr Molefe R30 million?

Dr Ngubane: The R30 million was not calculated by us.

Ms Nobanda: Chair, does he agree that the processes they followed were correct?

Dr Ngubane: I do.

Ms Nobanda: Thank you. Having worked with Ms Daniels, how would you characterise her?

Dr Ngubane: Ms Daniels is a very gifted young woman. She is very astute at law but also very astute at company management as a company secretary.

Ms Nobanda: Do you believe she provided credible advice on the reinstatement of Mr Molefe?

Dr Ngubane: Well, she didn't only provide advice. She went out to Senior Counsel and Legal Counsel, and I believed what she advised.

Ms Nobanda: Looking back on all these issues, especially the Brian Molefe issue, do you believe that from his appointment to stepping down/resignation/retirement/sabbatical leave or whatever happened, and the conclusion of the pension fund up to the point where Mr Molefe decided to resign and he then becomes a Member of Parliament, and then he comes back and you reinstated him. Do you believe you could have done anything differently?

Dr Ngubane: Well, we did what we did on best advice. If we had advice to the contrary, that is what we could have followed.

Ms Nobanda: Dr Ngubane, with all the advice that you were given, you are now sitting here looking back. Do you think you could have done anything differently?

Dr Ngubane: No, I don't think so, facing those circumstances.

Ms Nobanda: Thank you. Do you believe you were a good Chairman, efficient, honest, and all that?

Dr Ngubane: We did a Board evaluation as is required by the PFMA and Company Law, and we scored good marks as evaluated by external auditors.

Ms Nobanda: Do you believe, given the opportunity of being Chairperson at Eskom, that you were a good and honest chairperson?

Dr Ngubane: I was a good and honest chairperson who did his best.

Mr S Swart (ACDP): You quoted from the Public Protector and you indicated that you had taken legal advice not to take it on review. One of the findings of the Public Protector Report is that she says "It appears the conduct of the Eskom Board was to solely benefit Tegeta in awarding contracts to them and that it appears to be inconsistent with the PFMA". The short question is would you not agree that the evidence in the Inquiry and in the media is overwhelming to the effect that the conduct referred to in this Public Protector report was to the benefit of Tegeta in awarding coal contracts to them?

Dr Ngubane: That's why I look forward to this Commission because the books will be examined and the truth will come out. What has been printed in the media is what people believe. We worked with documentation that satisfied me that proper processes and steps were followed.

Mr Swart: A lot of evidence has been tendered before this inquiry as well, and of course there is also investigations taking place, and we know the Asset Forfeiture Unit (AFU) has already acted in terms of the Trillian – McKinsey contract. We don't have to wait for a Commission. Whilst I appreciate there will be further evidence, there is already now evidence that indicates state capture of various SOEs and Eskom. Would you still say you would rather wait for a Commission of Inquiry?

Dr Ngubane: I would prefer a situation where people don't just come and say what they believe or want to say. If there was a situation here where someone came and said something the evidence leader cross examines them, my lawyer cross examines them that would be the fair process. Remember we never had a chance to go and present ourselves to the Public Protector.

Mr Swart: I appreciate that but you also indicated that you decided as a Board not to take the Public Protector on review. But there was input from the executives. Mr Molefe and Mr Koko made substantial input to the Public Protector. Let's look at the run up to November – December 2015. We haven't done an inquiry into the turnabout of Eskom at that stage when it came to the power and blackouts. Would you say that situation continued towards the end of November – December 2015?

Dr Ngubane: At that stage we were having a number of improvements in the construction of new power stations. That alleviated the risk of poor electricity reserves. We were always hovering around the 1500. Not the 4000-5000 that had been there before which necessitated load shedding. The situation had improved.

Mr Swart: And when one considers the round robin meeting that took place in December for the R1.8 billion guarantee, what was so urgent then if it was a situation of a turnaround?

Dr Ngubane: Optimum Coal Mine (OCM) had decided not to supply Hendrina. And Hendrina produces 2000MW of power, and it was clear that we were going to run into trouble. On top of that they had run into business rescue. There were a number of factors that were creating a crisis. When management came to us saying there would be a crisis, we had to act.

Mr Swart: Was the situation not that Optimum had asked for an imposition of the hardship clause, and that had been negotiated, and you might not be aware of that, prior to Mr Molefe's arrival which would have resolved that problem. But when he arrived, he refused to accept the increased price that Optimum had offered before being placed under business rescue and which had gone through certain board committees, but when it got to Mr Molefe he refused to continue with that contract.

Dr Ngubane: I am not aware of the details. But what Mr Molefe told me was that Mr Glasenberg, the head of Optimum Holdings, had wanted export parity prices and wanted to change from R150 to something over R300, and that is what he rejected.

Mr Swart: I understand. But if you see the totality of the picture that we are now sitting with, and you can say it has not been subject to proper cross examination, but you have got a company that provides to Hendrina and they are under a hardship clause and are entitled to increase that price in negotiations. Those negotiations according to evidence was accepted by Eskom. It was referred to the CEO. Mr Molefe then at the last straw for his sign off, rejected the clause. Then we start to see the pressure put on Optimum to sell to Tegeta. Are you aware of the meeting of 24 November that took place with Mr Matshela Koko and the business rescue practitioner where certain conditions were imposed on Optimum for the sale, and where they were saying they were prepared to sell but it had to be the whole of Optimum Holdings including the terminal, Koornfontein, and those types of conditions. Are you aware of that?

Dr Ngubane: No. I am actually surprised you say Mr Koko was part of that.

Mr Swart: His evidence before us was that he sat in a meeting with the business rescue practitioner. It is on record, and maybe you haven't seen it. There was an involvement of Eskom in this whole process.

Dr Ngubane: Eskom's involvement was in terms of securing its interests in coal. Not in the sale.

Mr Swart: I understand your version. At the same time a R2 billion penalty was imposed on Optimum. Do you not agree that it adds pressure

to sell?

Dr Ngubane: Again this is what I heard from as early as 2012 Optimum was washing its coal for export - the ERB1 quality grade - for export and giving the middlings (what remains out of the washing) to Eskom.

Mr Swart: I understand. Forgive me for interrupting. I do understand that process and background but we know that that was reduced to a fine of R500 million after the Tegeta sale was concluded. I am just illustrating additional pressure to sell. We also know that Minister Zwane was in Switzerland putting pressure on Optimum to sell. Are you aware of that at all?

Dr Ngubane: From the reports, yes.

Mr Swart: And then you have got a meeting in December where there is R1.8 billion guarantee. Have you ever as a Board Chairman of SOEs experienced a guarantee by a SOE for a company to buy another company?

Dr Ngubane: That issue never came to the Board about a guarantee. What came to the Board was the amount that was required to secure coal.

Mr Swart: I do understand, but it was in excess of the Board's mandate as well. It should have gone to the Minister. Do you agree?

Dr Ngubane: No. Let's put it this way, if the budget in the corporate plan is accepted by the Minister, the IFC can authorise spending to the amount of the budget. That does not require fresh authorisation. The purchase of coal is part of the corporate plan.

Mr Swart: I understand. But the Minister indicated that she had to give that approval for that specific guarantee but it wasn't obtained. Can I just ask you because it is very clear, and I put it to the former acting Eskom Board Chair, Mr Khoza, and he also said that Eskom played no role in the purchase, and after a few questions, he conceded that Eskom played a significant role and in fact the finding of the Public Protector that the Eskom Board acted in benefit of Tegeta was in fact true. Do you still hold that it is not so?

Dr Ngubane: In terms of what came to us at that round robin resolution it was expressly to pay for coal.

Mr Swart: I understand. In hindsight?

Dr Ngubane: In hindsight the things I have read in the press and heard in some of the evidence convinces me that it is urgent that the Commission sits, goes through all the documentation you are alleging to, and finds out exactly what happened.

Mr Swart: I understand. The Public Protector came out with serious allegations in November 2016, and billions of rands have left the country. We cannot wait for another Commission of Inquiry. We are in a serious situation. Eskom is in a serious situation.

Dr Ngubane: I agree. I am saying we wanted to raise the review exclusively to cover those issues.

Mr Swart: Weren't you concerned about the funds leaving the country. The meeting on 12 April where the R659 million prepayment was agreed to, was it not coincidental that it was the same day that Tegeta needed R600 million to buy Optimum?

Dr Ngubane: I can assure you that never came to the Board's attention.

Mr Swart: But the Public Protector said it should have. And people of your knowledge should have been aware of that. Can I just read to you, on 22 November Eskom Board member, Mr Mark Pamensky, writes an email found in the Gupta Leaks; "In terms of the Investment Committee I am available to start right away" He writes it to Atul Gupta. "I am at the tail end of securing Optimum Coal". That is a Board member saying they are involved in the acquisition of Optimum Coal. Now you obviously were not aware of that, I would presume?

Dr Ngubane: It came out of the Gupta Leaks. It never came out of him or anyone on the Board.

Mr Swart: We will establish the veracity of that, but it seems to fit into the narrative because again he writes another startling email on 10 December to Atul Gupta which fits to the state capture allegations "Congratulations on a brilliant and well thought planned strategy acquisition of Optimum group of companies. Well done. I am proud of you. This is the beginning. I am sure you and the team will make a huge success. Let me know when you and the team are ready to discuss the operational implementation". He is speaking as an Eskom Board member. Don't you think that is outrageous if it is proved to be true?

Dr Ngubane: It is.

Mr Swart: Are you aware that Mr Molefe refused to meet with one of the most black empowered companies, Exxaro, but he was continually in contact with the Gupta companies. Don't you think if that came to your attention as Eskom Board Chairman, it would be outrageous?

Dr Ngubane: Certainly. But what I know is that the Exxaro contract expired in 2015.

Mr Swart: But they requested to extend the contract. They wrote letters to the Minster. The Minister refused to speak to them and that resulted in the closure of the Arnot colliery in which 1500 people were kicked out of their jobs. But the Minister intervened to ensure that the Gupta related companies got this deal. Don't you think that this is outrageous?

Dr Ngubane: Well, that is outrageous. However, Exxaro was getting R51 per gigajoule, and all the other people were getting around R18 or R19.

Mr Swart: The Mafube contract was supplying coal at R132 per ton. Yes, it might not have been the best quality but it was a million tons per year on a conveyer belt and that was stopped. No, reason was given. We have got the evidence. And then what happened is that the OCM coal that was supposed to go to Hendrina was sent to Arnot at R450 per ton as opposed to the R150 that Hendrina was getting. But then Hendrina's output was reduced. If you look into that I am sure you would share our concern as that information is there.

Dr Ngubane: I certainly do.

Mr Swart: Thank you.

Mr E Marais (DA): Being the Board Chairperson you worked closely with the CEO and Minister Lynne Brown. How would you describe your relationship with Minister Lynne Brown?

Dr Ngubane: It was a good working relationship. We tried to steer the ship as close as possible.

Mr Marais: Would you say you had an open communication with each other?

Dr Ngubane: I would say so.

Mr Marais: How would you describe the governance overall of the executive of Eskom after taking over as Board Chairperson?

Dr Ngubane: I would say it was good. Right from the time we were inducted Exco gave us good information. The trouble of course happened that the information was not believed by the War room. The Minister was under pressure because they wanted to be sure that what information Eskom was giving was correct. As far as I am concerned, particularly under Brian Molefe the whole mood changed and there was real synergy in terms of how the Eskom Board and how Exco worked.

Mr Marais: It would appear that when Brian was transferred from Transnet to Eskom it seems that is when the trouble started as far as clarity on whether his appointment was fixed term or permanent. Mr Minnaar filled in a form that went to the pension fund where he indicated on a code he filled in that Mr Molefe was a permanent employee when it should not have been. On page 20 para 2.5.7 [read out]. This situation seems it could have happened previously with other public entities as well, except with Transnet because there was a transfer of pension funds of R4.2 million or so to the Eskom pension fund. I just want to make the point that when there is a salary of R7.65 million on an annual basis, then you actually make up with that type of salary when there is no pension fund involved. How do you see it?

Dr Ngubane: As I said, the Eskom Group Chief Executives were benchmarked on market surveys, and this is what Mr Minnaar was quoting, and this to him was a fair level of payment.

Mr Marais: You have stated that you have an open line of communication with the Minister, and it seems there was no clarity on the five year fixed term contract or permanent basis. As Chairperson, and I ask you in all honesty, did you bother to pick up the phone and seek clarity from the Minister whether it was a permanent or fixed term five year contract because you have an open communication line to the Minister?

Dr Ngubane: We wrote a letter which is contained in the submission. The people around the Minister said she had been given the letter. It later turned out that she had not been. We were not really asking for her permission. We were informing her that we have made these arrangements to suit the concerns raised by Mr Molefe, and based on the advice that we had received. The Memorandum of Incorporation (MOI) at Eskom at that time gave the Board a lot of discretion in terms of appointment, so we were asking for support, and not necessarily that we were asking her to approve it.

Mr Marais: I just want to make a point that the CEO is the number one employee in any company, and Minister Lynne Brown represented the main shareholder that is the state so there should be follow up either by you or someone from the executive to get clarity about this appointment, on which status it should be done.

Dr Ngubane: I agree. We should have done that. However we relied very much on the expertise of Mr Minnaar.

Mr Marais: Page 21, para 2.5.10 where there is now clarity about the signing of the second contract on 7 March 2016 for a fixed term of five years effective from 1 October 2015. Who initiated that short term and long incentives should be reviewed?

Dr Ngubane: It was not just specific to him. Across the board, short term and long term incentives were being reviewed.

Mr Marias: But part of governance would be that if I sign a contract and as a contract worker I have agreed this would be my payment on a monthly basis for a period of five years. For governance purposes why would this then be reviewed because it was done and dusted?

Dr Ngubane: Because his salary package was never reviewed in terms of the fixed term contract. It remained one for a permanent employee and that's what went to the pension fund to which he was contributing.

Mr Marais: This was initiated after he signed the second contract of employment that was a fixed one. Let's put it on record as 2.5.10 that it was agreed.

Dr Ngubane: You are quite right. That's a mistake we made. We should have insisted that one go and calculate the whole package on a fixed term package. That never happened.

Mr Marais: Thank you for that. Just a matter of interest, you resigned as Board Chairman on 12 June 2017. Was there any specific reason why you resigned from Eskom?

Dr Ngubane: It was just personal.

Mr Marais: How would you regard the state of Eskom after you left?

Dr Ngubane: Problems started when Molefe left. I think that is when the dissonance started to appear.

Mr Marais: Wouldn't you say the problem started when Brian Dames left?

Dr Ngubane: I take Brian as a friend of mine. He did an excellent job at Eskom, but he also made some mistakes. When he took away procurement from the power stations and centralised it at Megawatt Park I think that is when the trouble started. The station manager would want an outage to be able to maintain the turbines and boilers, but all that would have to first come to Megawatt Park. That disempowered the station managers, and I would say the problem of load shedding worsened from changing that model. But obviously he meant well. The keeping the lights on strategy that he advocated especially for 2010 so that there was no disruption all contributed to the lowered levels of maintenance of our coal fleet. He was a brilliant man, but there were mistakes.

Mr Marais: With the appointment of the current CEO and the new Board, what is your view of them, will they pull through?

Dr Ngubane: I have a lot of confidence in Phakamani. I worked with him at Land Bank. It was in huge debt. We initiated some arrests. We brought confidence back to the farmers to take up our bonds and loans. Phakamani is a good operator. He created what was called fit for purpose. Fit for the future of the Land Bank. I think he is doing very well. I have no doubt that he will do very well at Eskom. However you cannot have financial sustainability when your tariff part is continually going down.

Mr Marais: What is your view of the previous CFO, Mr Singh?

Dr Ngubane: Mr Singh was very good with figures. However, what has come out about the Trillian payments and all those things is worrying. However I don't think he can be judged as guilty or not guilty until the facts are on the table.

Dr Z Luyenge (ANC): Did you have any connections, or did you ever greet Tata Mandela, the struggle icon, yourself?

Dr Ngubane: Yes.

Dr Luyenge: What do you think Madiba would say if today you are sitting here talking about people who are very clearly hell bent to loot state resources and therefore kill the gains of 1994? I am asking that Dr Ngubane because you are a doctor, and as a doctor you had a responsibility to correct things that went wrong. I don't expect a doctor to say "I only came across this patient today. I cannot say anything about his or her past illnesses". That is irresponsible. Why do we as intellectuals in South Africa after 24 years not accept and take responsibility and say "I erred". An error is created in the human being. No one is perfect. But it is ethically and morally correct for a human being to accept a mistake. The expertise and experience that we have in young intellectuals like your Kokos and Brian Molefes, but because of greed and that people want billions, they are used to billions, we are in this quagmire. Since you came to Eskom it is said you had a meeting with Brian Molefe where you actually motivated to then Minister Ramatlhodi to suspend all Glencore mining licences.

I go further to identify that on 13 April in a meeting of the Eskom Board late in the night, that solely sat to approve the prepayment of R659 million to Tegeta in order for Tegeta to finalise the Optimum purchase. The following day on 14 April, Tegeta pays Glencore R2.1 billion, and Optimum, Koornfontein, and Richards Bay allocation are transferred to Tegeta. Optimum was given a further contract for Arnot. With this additional contract Eskom pays Tegeta R500 million between 29 January and 13 April. I wonder where the masses of South Africans are when people are doing this overnight. Eskom in February sold Brakfontein to another Gupta company – Shiva coal – which this Shiva is not 51% black owned. It means this Gupta related company did not qualify to be a service provider because it does not have the points required in

terms of transformation. In November Eskom Board discusses mothballing Komati, meaning that Eskom might have to settle the R7 billion Koornfontein contract. What is this thing about Eskom playing around with money? There is nothing here talking about electrification, just billions going to individuals, and these individuals are mesmerised by the Guptas. Dr Ngubane, with due respect, can you breathe on this? Where is the ethical conduct? How do you justify actions of this nature?

Dr Ngubane: Well, it is difficult to respond to such condemnatory language and statements. Let us wait for the Commission. I keep saying that. All documents will be on the table and we will know who did exactly what. If I get the motivation from management, and it is well structured and follows all the policies and processes of procurement, how do I then go and say you are wrong unless I have the information and proof of that. BTC sits, takes a decision, and then I must go and say they are wrong? As far as I know, the negotiation for the sale of Optimum involved other companies. It was a commercial issue. The creditors of Optimum I am told agreed to the sale, and the banks were involved in that. The Competition Commission agreed to the sale. Where does Eskom come in on that? If we buy coal for a certain amount, and the person from whom we purchased used the money for other things, how can we be blamed to say we gave him the coal to do x, y, and z.

Dr Luyenge: I think it is so pathetic that you are still hell bent to stand on one leg and say what is being done. The questions you are asking are time-wasting. What actually prompted Parliament to say there is a need for the Commission of Inquiry, and what actually made Thuli Madonsela to say there be such an investigation when there is actually nothing wrong? Can you put South Africans into the right context, 'Mkhuluwa'?

Dr Ngubane: Adv Madonsela mentioned a lot of observations depending on the information she had. She said these things must be investigated further and there must be an appointment of a Judicial Commission. I cannot sit here and condemn people without evidence. I know there is public opinion, but that public opinion depends on what comes out on social media, formal media. I agree things sound terrible but I can't sit here and say x, y, z put out the fake tender and gave procurement in a fake way unless I have evidence.

Dr Luyenge: What is good about Anoj Singh when he is a 'skelm' in looting state resources? Is that fair, you may not say that to us, you may not say that to the Chairperson, you may not say that to anyone in front of you, but the poor see and hear what you are saying.

Dr Ngubane: I have worked many years with the poor, my friend. I used to treat people who had no money, so don't tell me about the poor. I am from there.

Dr Luyenge: Listen, you must answer me.

Chairperson: Members, and Dr Ngubane, do not forget that I am chairing the meeting. You should be giving each other time to listen to each other. Don't get inside each other's mouths. There are people out there sending smses saying "They are watching the proceedings and they want to hear what Dr Ngubane is saying, and they want to hear your questions". So please give each other time. Don't panic. We have time.

Dr Ngubane: I am saying...

Dr Luyenge: What are you saying, Dr Ngubane. I am the one who must ask questions. I am not going to respond to you. I was never Eskom Chairperson. You are the one who was Chairperson. I want you to respond.

Dr Ngubane: But I am responding.

Dr Luyenge: No, you are not responding.

Dr Ngubane: You want me to say that Anoj Singh was a crook, and that is for the courts to prove that. How do I become judgmental about people when there are processes that will examine what was paid to McKinsey, what was paid to Trillian. I don't have evidence to say x, y, z ...

Dr Luyenge: The Asset Forfeiture Unit (AFU) is not right to do their work and make sure that they put together all those who are claiming to be a champion of the poor when people are hungry out there and the resources have degenerated at Eskom?

Dr Ngubane: Chairperson I am not sitting here to take this type of rubbish.

The Committee was outraged at the statement made by Dr Ngubane.

Chairperson: Dr Ngubane, you cannot use that type of language in a Committee meeting. I have just recently asked you to be patient and listen to "that rubbish" that is been said by Honourable Luyenge and respond to it because he is also responding to what you are saying. I am not taking sides here. Don't say Luyenge is talking rubbish and that you are not going to sit here and listen to the rubbish that he is saying. We are a Committee of Parliament. It is not for the first time you are saying that. In fact in the media you said this Committee was asking you questions which were nonsensical. So you are repeating your statement made in June 2017. We cannot accept that!

We cannot allow you to insult us. You are not insulted by Honourable Luyenge. Honourable Luyenge is asking you about activities that happened at Eskom. Mr Singh was here, and according to information we have received, Mr Singh lied to us. You cannot come here and say

we are talking rubbish. That is not acceptable. We are a Committee of Parliament and we need to get to the bottom of the truth of what is happening. Whoever has done wrong must be interrogated by the court of law or whoever has the power to do so.

Mr Dlamini: Chairperson, before that man responds we cannot sit here and be insulted by that man. We are not your friends.

Chairperson: No, Honourable Dlamini. I cannot say to Dr Ngubane "Your language is wrong" and then accept yours when yours is wrong.

Mr Dlamini: He can't come here and insult a Member of Parliament. Who is he?

Chairperson: I have dealt with that. Please let us respect each other.

Mr Dlamini: That man must not come here and insult us. That we will never accept. That thing of saying when a Member is asking questions about the work he was doing at Eskom, that he is talking rubbish. He must withdraw it now. We are not his friends or his kids.

Mr Tseli: I agree with Honourable Dlamini, Chairperson. We cannot proceed with this process until he has apologised to this Committee. If he is not ready to apologise, let him say so. There is nothing wrong in you leaving here now. We will relieve you and conclude on the value of what was presented so far. You owe us an apology. Do it now or else we will relieve you.

Dr Ngubane: Chairperson, I withdraw that. However, Parliamentarians have got an equal responsibility to respect the citizens of this country. I came here to an Inquiry that is factual, that is seeking information. To insinuate that I am a crook and all sorts of things is unfair. It is totally unfair.

Chairperson: Honourable Luyenge, have you said that Dr Ngubane is a crook?

Dr Luyenge: How can I say that? I am not new in this Parliament. I may not have your billions that you think I am a rubbish. I don't need his billions. I am fine with my two hundreds. And it is enough for me and my integrity.

Chairperson: Can you continue.

Dr Luyenge: The AFU has obtained a preservation order against Trillian and McKinsey. McKinsey was here and it is McKinsey who said we are paying back the money that got into our coffers illegally. Was that wrong on the part of McKinsey to say that?

Dr Ngubane: First of all, Chairperson, I do not have billion. You are making South Africans believe that by saying it in Parliament. I do not. You can check my bank account, you can go anywhere. However the AFU used law, and they were sanctioned by law. That is absolutely fine. It is part of the legal system of this country. But to sit and say I am colluding with x, y, z – insinuations – that is just denigrating. And I can't accept that. I was a Member of Parliament for many years and we never did such things. If it is a question of Inquiry let it be factual, let it be proper facts.

Dr Luyenge: Chairperson, I am not going to allow a situation where we are lectured by Dr Ngubane here. That is wrong. I cannot accept that. I am a Member of Parliament. I am elected by the poor masses. But I think let me not continue with this.

Chairperson: I just want to put it on record that we have all the documents with us. I am not sure when you say you are waiting for the Commission of Inquiry because you have all the documents. Are you going to give the Commission of Inquiry different documents from the ones that we have? We are guided by the evidence we got by people we invited in this inquiry. Those people were carrying documents, and Eskom sent us documents from meetings and all the activities happening at Eskom.

Dr Ngubane: I was not aware that you have all the documents at Eskom.

Chairperson: When you were Eskom Chairperson and you were been chartered around Africa on Gade Oil business, were you paying for these chartered services out of your own pocket or from Eskom?

Dr Ngubane: Gade Holdings ceased to exist in 2013/14. I am not sure of the precise date but the company did not function. It failed to get the oil resources from West Africa.

Chairperson: Can you explain why Eskom and the Department of Mineral Resources (DMR) suddenly changed their attitude to coal suppliers when Tegeta entered in the picture in late 2015?

Dr Ngubane: Well, I am not aware that DMR changed its policy. We always had coal policy which rested on cost plus mines which Eskom funded. We had short and medium term coal supply contracts. I am not aware there was a change.

Chairperson: So all the prepayments that were done by Eskom was something that Eskom has done before with other companies?

Dr Ngubane: Exactly.

Chairperson: In your response to Honourable Dlamini you said you read only the Internal Audit report, and that you had not read the BTC report. I thought with my little knowledge of how you work at Eskom, in the BTC, the Board, especially the Board Chairperson was part of BTC, so the report made is developed by BTC. The Chairperson is the person that the report has to go to, and you say you don't know of any report that came from BTC, specifically what Honourable Dlamini asked.

Dr Ngubane: No, Chairperson. I think that is miscommunication. All the Eskom boards have a delegation of authority to take final decisions on business that comes to them, and then quarterly they send a report to the Board which report is then included in the report to the shareholder. No, Chairperson or CEO can be part of BTC. That is by rule.

Chairperson: Okay. Another contradictory statement to the information we received last week. What would be your response to allegations that your family – your wife – had a project working at either Kusile or Medupi, those are power stations that I think are under Eskom, and you were Eskom Board Chairperson?

Dr Ngubane: My wife became a shareholder in Southey, which is an engineering company in 1998. She later resigned as a Director. Her participation in that company remains as a shareholder, not as a Director. She has never been part of any decision or application by Southey to do Eskom business.

Chairperson: You are saying to us you are not party to the work of the executive especially when it comes to giving work to certain companies – like the Trillian matter – the implementation of the Trillian–McKinsey contract. But do you get reports from the executive in their implementation of work or dealings with the companies on contract with Eskom? When you get that report, do you interact with that report as a board, or do you interact with the report with the Eskom legal team?

Dr Ngubane: Depending on the delegation of the level of authority, certain things end up with management. But when it comes to R500 million it escalates to Exco. When it exceeds R750 million it comes to the BTC. That is the nature of the delegation of authority. Quarterly, all the committees have to send reports to the Board which are then included in the shareholder report. In my case, Ms Daniels was a constant adviser in terms of what was coming to the Board.

Chairperson: "Mr Molefe brought joy in Eskom". Those are your direct words. There was a CEO before Mr Molefe that was working on the load shedding. Can you put it on record by saying the Eskom CEO before Brian Molefe was unable to manage load shedding? The CEO before Molefe was the one that would have taken the country to a total blackout if Mr Molefe had not come?

Dr Ngubane: I had very little exposure to Matona. Remember when we came to Eskom, there was this suspension of executives. Mr Matona opted not to come back, but to take a settlement and go. So my interaction with him was very limited. Probably not more than three months and then he left. The problems of course were there. The person I worked with was Molefe and we saw the difference. I cannot comment on the abilities of Mr Matona.

Chairperson: I have never worked at Eskom, but I am putting it to you now that Mr Brian Molefe has taken a reward that was not for him because the work had already started in fighting load shedding. I am not going to talk about the attitudes of people who were not going to the boilers, who had their cliques in Eskom. But he took the reward of other people, and Mr Matona was not given a chance to prove to the country that he was able to deal with load shedding.

The Chairperson thanked Dr Ngubane for honoring his invitation to appear before the Committee.

Meeting adjourned.

Eskom

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.

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: 11/3/2015 Time: 19h55

Ms T Molefe

Signature _____ Date: 11/03/15 Time: 19h55

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 _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Head Office
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johnnesburg 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

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 _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

"AM5"

Eskom

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Head Office
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PO Box 1091 Johnnesburg 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: _____ Date: 11/3/15 Time: 19h45
Mr Koko

Signature _____ Date: 11/03/15 Time: 20 h 40
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 _____

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

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.

Head Office
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johnnesburg 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: 12/3/15 Time: 0845

Mr Daniel L Marokane

Signature _____ Date: 12/03/15 Time: 08h45

Mr Zola Tsotsi

SETTLEMENT AGREEMENT

between

ESKOM HOLDINGS SOC LIMITED
REGISTRATION NO: 2002/015527/30

and

Mr Tshediso John Matona
IDENTITY NO: 6203145604082

COMMISSION OF INQUIRY INTO STATE CAPTURE

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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 Unless inconsistent with the contents, the expression set forth below shall bear the following meanings:

1.2.1 **"Agreement"** means this agreement;

1.2.2 **"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;

1.2.3 **"Mr TJ Matona"** means Mr Tshediso John Matona, the Chief Executive of Eskom, an adult male employee with identity number 6203145604082, currently residing at 372 Jutlander road, Beaulieu, Midrand;

1.2.4 **"the Parties (Party)"** means Eskom and Mr TJ Matona, who are parties to this Agreement;

1.2.5 **"the Signature Date"** means the last day of signature of this Agreement by either of the Parties.

1.2.6 **"the Termination Date"** means 31 May 2015.

2 RECORDAL

2.1 Mr TJ Matona is employed by Eskom as Chief Executive 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 TJ Matona's employment will terminate on the Termination Date.

3.2 Eskom agrees that Mr TJ Matona 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 monies owing to the Employee, whether arising in terms of statute, delict, contract or otherwise. The terms of these arrangements are set out in further detail in clause 4 below.

3.4 Mr TJ Matona agrees that upon his termination of employment and exit, he will be subject to Eskom's normal exit management processes.

3.5 Eskom will give to Mr TJ Matona on or before 15 June 2015 –

3.5.1 a certificate of service which will be in accordance with section 42 of the Basic Conditions of Employment Act, No. 75 of 1997;

3.5.2 a favourable reference regarding his employment with Eskom, and will not issue any other references to third parties without his consent and agreement regarding the contents thereof.

4 PAYMENT AND BENEFITS

4.1 Mr TJ Matona will receive his normal monthly salary payments up to the Termination Date.

4.2 Subject to clause 4.4 below, Eskom will pay Mr TJ Matona a total

separation payment of R6 000 000.00 (six million rand) ("the Separation Payment") which equates to one year's total annual cost-to-company remuneration package. The Separation Payment is fully inclusive of any notice pay or outstanding leave pay owed to Mr TJ Matona.

4.3 Eskom understands that had Mr TJ Matona worked for a further 10 months as a Director-General in the employ of the Government of the Republic of South Africa ("the Public Services"), where he had been employed prior to his employment with Eskom, he would have been eligible for certain benefits from the Government Employee Pension Fund ("the GEPF") provided to employees employed at that level within the Public Services for a period of 10 years or more, as per the rules of the GEPF. Eskom has agreed that Mr TJ Matona must not be prejudiced by his current circumstances and that Eskom must take all steps necessary - to ensure that Mr Matona receives the relevant benefits from the GEPF as if he had been gainfully employed in the Public Services for a further 10 months as a Director-General - including but not limited to the following:

4.3.1 Eskom, with the co-operation of the Department of Public Enterprises, must use its best endeavours to persuade the GEPF to allow Mr TJ Matona to qualify for retirement benefits that he would have received had he been employed at that level within the Public Services for a period of 10 years or more;

4.3.2 Eskom undertakes to make payment of the amount of the contributions that would have been provided to the GEPF by Mr TJ Matona and/or his employer under such circumstances, equating to, but not exceeding, this period of 10 months' pension fund contributions on behalf of Mr TJ Matona (i.e. the amount that would have been paid to the GEPF had Mr TJ Matona been an employee at a Director-General level within the Public Services for this further period of 10 months, in order for him to qualify for these benefits);

4.3.3 In the event that the GEPF determines that this arrangement is not permissible in terms of its rules, this undertaking by Eskom will fall away

and will be of no force and effect. Under such circumstances, the remaining provisions of this Agreement shall continue to be of full force and effect.

4.4 Eskom will apply for an income tax directive from the South African Revenue Services as regards the income tax to be deducted from the amount stipulated in clause 4.2 above. This tax directive will be obtained by Eskom within 21 calendar days of the Signature Date.

4.5 The amount stated in clause 4.2 above less such amount that Eskom is required to deduct in respect of tax will be paid electronically into Mr TJ Matona's banking account within 14 calendar days of receipt of the original tax directive.

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 TJ Matona 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 amount not set out in this Agreement.

5.3 All surviving clauses of Mr TJ Matona's Employment Contract that are not extinguished by this Agreement will continue for the period specified therein and Eskom reserves the right to make any claims or request any refund for, among others, any over payments, breach of confidentiality, loss of any equipment, intellectual property, or company property not returned.

6 CONFIDENTIALITY

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.

7 STATEMENTS

7.1 The Parties have agreed that an official communication will be made as set out in Annexure A.

7.2 Mr TJ Matona 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 TJ Matona.

8 BREACH

8.1 Should Mr TJ Matona commit any breach of his obligations as set out above, notwithstanding any previous waiver on Eskom's part of its rights, the termination of Mr TJ Matona's employment shall continue to be of full force and effect but Eskom shall be entitled, in its absolute discretion, to

elect to:

(i) claim damages from Mr TJ Matona arising out of his breach; or

(ii) demand immediate repayment by Mr TJ Matona of the gross amount of the Separation Payment paid to him;

provided that Eskom shall not be entitled to exercise any right arising from any breach by Mr TJ Matona unless he has been afforded 10 (ten) days after receipt of a written notice calling upon him to remedy such alleged breach and, despite such notice and the elapse of 10 (ten) days, the breach has not been remedied.

8.2 Should Eskom commit any breach of its obligations set out above, then the termination of Mr TJ Matona's employment shall continue to be of full force and effect but Mr TJ Matona shall be entitled to institute a claim for damages against Eskom in respect of such breach; provided that Mr TJ Matona shall not be entitled to exercise any right arising from any alleged breach by Eskom unless Eskom has been afforded 10 (ten) days after receipt of a written notice calling upon it to remedy such alleged breach and, despite such notice and the elapse of 10 (ten) days, the breach has not been remedied.

9 NON-VARIATION

9.1 No variation, 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.

9.2 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.

10 NOTICES AND DOMICILIA

10.1 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 TJ Matona
_____
_____
_____
_____
_____

10.2 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.

10.3 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.

11 GENERAL

11.1 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.

11.2 All the terms set out in this Agreement are material.

11.3 Mr TJ Matona acknowledges that he concluded this Agreement of his own free will and without duress. In addition, Mr TJ Matona acknowledges that he has carefully read and reviewed the contents of this Agreement, that he has had the opportunity to take legal advice in relation to its contents, and acknowledges that he fully understands all of its terms and conditions and all the consequences of entering into this Agreement.

12 SIGNATURE

Signed on behalf of the Parties, each signatory hereto warranting that he/she has due authority to do so.

COMMISSION OF INQUIRY INTO STATE CAPTURE

SIGNED at JOHANNESBURG on 15 MAY 2015.

For and on behalf of
ESKOM HOLDINGS SOC LIMITED

Signature

ZETHEMBE KHOZA
Name of Signatory

ACTING CHAIRMAN OF THE BOARD.
Designation of Signatory

SIGNED at JOHANNESBURG on 15 MAY 2015.

For and on behalf of
Mr TJ Matona

Signature

T. J. MATONA
Name of Signatory

COMMISSION OF INQUIRY INTO STATE CAPTURE

ANNEXURE A

Official communication

Eskom and its Chief Executive, Mr TJ Matona, have mutually agreed to part ways on an amicable basis. It is expressly noted that no misconduct or wrongdoing is alleged by Eskom against Mr TJ Matona. Mr Matona believes that the agreement to separate is in the best interests of Eskom, to allow the Board to pursue its plans for the company under the current leadership.

Having considered his contribution at Eskom, and his vast professional and leadership experience, Eskom is of the view that Mr Matona can still play a vital role for South Africa, whether within commercial business or the Public Service.

Eskom thanks Mr Matona for his contribution during his term at Eskom.

SETTLEMENT AGREEMENT

between

ESKOM HOLDINGS SOC LIMITED
REGISTRATION NO: 2002/015527/30

and

MR DANIEL LESEJA MAROKANE
IDENTITY NO: 7106175369089

COMMISSION OF INQUIRY INTO STATE CAPTURE

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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 writting 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 statue 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 RAIGHALL on 28th MAY 2015.

For and on behalf of
Mr DL Marokane

Signature

DANIEL LESEJA MAROKANE
Name of Signatory

SETTLEMENT AGREEMENT

between

ESKOM HOLDINGS SOC LIMITED
REGISTRATION NO: 2002/015527/30

and

Ms Tsholofelo Beatitude Lettie Molefe
IDENTITY NO: 6811040566089

COMMISSION OF INQUIRY INTO STATE CAPTURE

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COMMISSION OF INQUIRY INTO STATE CAPTURE

Without Prejudice

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 Unless inconsistent with the contents, the expression set forth below shall bear the following meanings:

1.2.1 "**Agreement**" means this agreement and annexures thereto;

1.2.2 "**Eskom**" means Eskom Holdings SOC Limited, a company with limited liability and share capital registered and incorporated in terms of the Company laws of the Republic of South Africa, a duly registered state owned enterprise with registration number 2002/015527/30, with its registered address and principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg;

1.2.3 **"Employment contract"**means the written contract of employment entered into by and between Ms T B L Molefe and Eskom.

1.2.4 **"LTI"** Long term incentives

1.2.5 "**Ms T B L Molefe**" means Ms Tsholofelo Beatitude Lettie Molefe, an adult female employee with identity number 6811040566089;

1.2.6 "**the Parties (Party)**" means Eskom and Ms T B L Molefe, who are parties to this Agreement;

1.2.7 "**the Signature Date**" means the last day of signature of this Agreement by either of the Parties.

1.2.8 "**the Termination Date**" means 30 June 2015.

2 **RECORDAL**

2.1 Ms T B L Molefe is currently employed by Eskom as the Finance Director. Ms T B L Molefe is employed by Eskom in terms of a written contract of employment

2.2 The Parties have mutually agreed to terminate the Employment Contract and the Ms T B L Molefe's employment with Eskom subject to the terms and conditions recorded in this Agreement.

3 **TERMS AND CONDITIONS**

3.1 By mutual agreement Ms T B L Molefe's employment will terminate on the Termination Date.

3.2 By mutual agreement Ms T B L Molefe will not be required to serve the requisite notice period as provided in the Employment contract.

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 monies owing to Ms T B L Molefe , whether arising in terms of the Employment contract, statute, delict, any other contract or otherwise. The terms of these arrangements are set out in further detail in clause 4 below.

3.4 Ms T B L Molefe agrees that upon her termination of employment, she will be subject to Eskom's normal exit management processes. (copy of the process)

3.5 The records of Eskom shall record the termination of employment as a resignation with thelast working day being the Termination Date and Eskom shall at all times provide a favourable reference regarding Ms T B L Molefe's employment with Eskom, the first reference letter being Annexure A hereto.

3.6 Eskom shall give Ms T B L Molefe a certificate of service by no later than 15 July 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 Ms T B L Molefe will receive her normal monthly salary payments up to the Termination Date.

4.2 Ms T B L Molefe will receive all and any leave pay that is outstanding as at the Termination Date

4.3 Subject to clause 4.7 below, Eskom shall pay, , Ms T B L Molefe a total separation payment of R6 049 417.00 (six million forty nine thousand four hundred and seventeen rand) ("the Separation Payment"). Except for as set out in clauses 4.2, 4.4, 4.5 and 4.6 herein, the Separation Payment is fully inclusive of any benefits, bonuses, notice pay or any other amount owed or that may become owing to Ms T B L Molefe.

4.4 Eskom shall pay to Ms T B L Molefe the following allocation of Grants as approved in terms of the Rules of the applicable Schemes:

4.4.1 Full allocation of Grant 8 (36 months vesting) being an amount of R914 888.10 (nine hundred and fourteen thousand eight hundred and eighty-eight rand and ten cents);

4.4.2 Full allocation of Grant 9 (36 months vesting) being an amount of R914 888.10 (nine hundred and fourteen thousand eight hundred and eighty-eight rand and ten cents).

4.5 Eskom acknowledges that as Ms T B L Molefe was in its employment in the financial year 2014, Ms T B L Molefe also qualifies for participation in Grant 10 of the LTI. The formula for calculating Ms T B L Molefe's award is her pensionable earnings (which is R2 450 000.00 (two million four hundred and fifty thousand rand)) 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, Ms T Molefe's award will be calculated and will be paid pro-rata for 12 (twelve) months. The amount shall then be paid by Eskom to Ms T Molefe within 14 (fourteen) days of receipt of the original tax directive from the South African Revenue Services ("SARS").

4.6 Eskom shall pay to Ms T B L Molefe an amount of R299 169.63 (two hundred and ninety-nine thousand, one hundred and sixty-nine rand and sixty-three cents) in lieu of the installation of a security system at her place of residence, as approved by Eskom in terms of the relevant Eskom policies. This amount is in accordance with the quotation obtained from Stemar Security Systems on 6 October 2014 and is subject to the applicable tax.

4.7 Eskom shall apply for an income tax directive from SARS with regards to the income tax to be deducted from the amounts stipulated in clauses 4.3, 4.4, 4.5 and 4.6. Eskom shall apply for this tax directive within 5 working days of the Signature Date in respect of the amounts referred to in clauses 4.3, 4.4 and 4.6 and within 5 working days of the multiplier being determined in respect of the amount referred to in clause 4.5.

4.8 The amounts stated in clauses 4.2, 4.3, 4.4, 4.5 and 4.6 less such amounts that Eskom is required to deduct in respect of tax, will be paid electronically into Ms T B L Molefe's banking account within 5 working (five) days of receipt of the original tax directives referred to in clause 4.7.

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 Employment contract, delict, statute ,any other contract 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 Ms T B L Molefe or Eskom, whether arising out of Employment contract, delict, the common law, statute, any other contract 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 amount not set out in this Agreement.

5.3 All surviving clauses of Ms T B L Molefe'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 Ms T B L Molefe's resignation and as provided for in annexure "B", 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 shall issue the statement attached hereto marked annexure "A" within 5 (five) days of Termination Date.

Ms T B L Molefe 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, Ms T B L Molefe.

Eskom undertakes to make available to Ms T B L Molefe any adverse findings relating to her area of responsibility contained in the Enquiry Report.

Ms T B L Molefe shall be afforded the opportunity to make representations on the adverse findings, which representations shall be published with the final Enquiry Report.

Ms T B L Molefe shall be entitled to utilise the Director's and Officer's Liability Policy in the event that Ms T B L Molefe requires legal representation in attending to the Enquiry Report, as provided herein above.

8 **BREACH**

8.1 Should Ms T B L Molefe commit any breach of her obligations as set out above, notwithstanding any previous waiver on Eskom's part of its rights, the termination of Ms T B L Molefe's employment shall continue to be of full force and effect but Eskom shall be entitled, in its absolute discretion, to elect to:

(i) claim damages from Ms T B L Molefe arising out of her breach;

provided that Eskom shall not be entitled to exercise any right arising from any breach by Ms T B L Molefe unless she has been afforded 10 (ten) days after receipt of a written notice calling upon her to remedy such alleged breach and, despite such notice and the elapse of 10 (ten) days, the breach has not been remedied.

has not been remedied.

8.2 Should Eskom commit any breach of its obligations set out above, then the termination of Ms T B L Molefe's employment shall continue to be of full force and effect but Ms T B L Molefe shall be entitled to institute a claim for damages against Eskom in respect of such breach; provided that Ms T B L Molefe shall not be entitled to exercise any right arising from any alleged breach by Eskom unless Eskom has been afforded 10 (ten) days after receipt of a written notice calling upon it to remedy such alleged breach and, despite such notice and the elapse of 10 (ten) days, the breach has not been remedied.

9 NON-VARIATION

9.1 No variation, 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.

9.2 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.

10 NOTICES AND DOMICILIA

10.1 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:

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom
Megawatt Park,
Maxwell Drive, Sunninghill
Johannesburg
2001

P.O Box 1091
Johannesburg
2001

Ms T B L Molefe
27 EARTHBOUND
BLANDFORD ROAD
NORTHRIDING
RANDBURG
2194

10.2 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.

10.3 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.

11 GENERAL

11.1 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.

11.2 All the terms set out in this Agreement are material.

11.3 Both parties acknowledge that they concluded this Agreement of their own free will and without duress. In addition, both parties acknowledge that they have carefully read and reviewed the contents of this Agreement, that they have had the opportunity to take legal advice in relation to its contents, and acknowledges that they fully understand all of its terms and conditions and all the consequences of entering into this Agreement.

12 **SIGNATURE**

Signed on behalf of the Parties, each signatory hereto warranting that he/she has due authority to do so.

SIGNED at Megawatt Park on 25 June 2015.

For and on behalf of
ESKOM HOLDINGS SOC LIMITED

Signature

Baldwin Sipho Ngubane
Name of Signatory

Chairperson
Designation of Signatory

COMMISSION OF INQUIRY INTO STATE CAPTURE

SIGNED at JOHANNESBURG on 25TH JUNE 2015.

For and on behalf of
Ms T B L Molefe

Signature

T.B.L. MOLEFE
Name of Signatory

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
		Document Type	OCSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

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

BY INVITATION

Mr F Ndou	Acting Divisional Executive: Office of the Chairman

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.

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

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

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.

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;

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: Ngubane **DATE:** 18/11/16

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LIMITED SPECIAL BOARD MEETING IN COMMITTEE	Unique Identifier	221-209
		Document Type	OCSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

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.

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.

- 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.

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LIMITED SPECIAL BOARD MEETING IN COMMITTEE	Unique Identifier	221-209
		Document Type	OCSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

Signed by Dr Ngubane for purposes of noting the meeting's proceedings

CHAIRMAN: _____ **DATE:** 15/11/16

HERE

COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK8"

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LIMITED SPECIAL BOARD MEETING IN COMMITTEE	Unique Identifier	221-209
		Document Type	OCSDFM
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

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

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?

- 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 9even 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;

- 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.

Eskom	MINUTES OF THE ESKOM HOLDINGS PEOPLE & GOVERNANCE COMMITTEE	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary Department	

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.

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

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 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)

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 **DATE** 01/12/2017

Eskom	MINUTES OF THE ESKOM HOLDINGS SPECIAL BOARD IN-COMMITTEE MEETING	Unique Identifier	221-206
		Document Type	OCSDTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary Department	

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

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

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.

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 advisee 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

- 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** 18/11/16

Eskom	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
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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

COMMISSION OF INQUIRY INTO STATE CAPTURE

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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.

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

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 Ntsgingila 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.

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 specifity 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, Mt 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.

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.

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	MINUTES OF THE ESKOM HOLDINGS SOC LTD BOARD MEETING	Unique Identifier	221-209
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MINUTES OF THE ESKOM BOARD MEETING 02-2015/16 HELD ON 23 APRIL 2015 HORSESHOW BOARDROOM, ESKOM BELLVILLE OFFICES, CAPE TOWN FROM 09H00

STRICTLY CONFIDENTIAL

PRESENT

Dr BS Ngubane	Acting Chairman
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
Mr MV Pamensky	Member (Tele-conference)

OFFICIALS

Mr M Phukubje	Company Secretary

IN ATTENDANCE

Mr W Venner	Committee Secretary

COMMISSION OF INQUIRY INTO STATE CAPTURE

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1. OPENING AND WELCOME

The Acting Chairman welcomed members to the meeting.

2. APOLOGIES

There were no apologies.

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.

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

Mr Pamensky and Ms Klein stated that they did not approve of the Agenda as it had been distributed late. Mr Khoza apologised for the late distribution and advised that it was as a result of circumstances beyond his control. The Acting CE stated further that it was a necessity for the Board to approve the Corporate Plan for submission to the Shareholder by 30 April 2015.

It was requested that 2 additional items be added to the Agenda under the In-committee session of the meeting, vis (i) Removal of a Director and (ii) the CCMA case under discussion.

7. MATTERS FOR APPROVAL AND INFORMATION

7.1. Appointment of Mr B Molefe as Interim Chief Executive

On 20 April 2015, the Minister of Public Enterprises announced the secondment of Mr Brian Molefe from Transnet SOC Ltd as Interim Chief Executive for Eskom Holdings SOC Ltd, with effect from 20 April 2015, to replace Mr Z Khoza, who had been in that position since 11 March 2015.

Resolved that:

1. the secondment of Mr. Brian Molefe from Transnet SOC Ltd as Interim Chief Executive for Eskom Holdings SOC Ltd, is approved with effect from 20 April 2015; and
2. the Chairman of the Board is authorised to sign any and all agreements and documents to give effect to the above resolution.

7.2. Mandate to Conclude Negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station
Reference document 7.4 (a) (b) (c)

The Referral from the Board Tender Committee for approval of the mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station was tabled, details of which had been circulated to members.

It was requested that the submission should be taken off the Agenda and submitted to the Acting CE before being tabled for approval. In response to a member's suggestion that Resolution 2.5 (around the mandate to negotiate but not to conclude with Optimum, for Eskom to take up a free carry shareholding of 10% to 15% equity and/or to engage with Optimum to facilitate the purchase of Optimum by Eskom or one of the state owned mining companies) should be revised to include a seat on the Board for Eskom as well as oversight, it was reported that this had been included in the Board Tender Committee discussion.

Resolved that:

1. the Referral from the Board Tender Committee for approval of the mandate to conclude negotiations with Optimum Coal Mine for Coal Supply to Hendrina Power Station is not approved: and
2. the mandate should be referred to the Acting Chief Executive before being tabled at Board for approval.

7.3. Approval of the 2015/16 - 2019/20Corporate Plan Approval
Reference document 7.2 (a) (b) (c) (d) (e)

The 2015/16 - 2019/20 Corporate Plan ("the Plan") was tabled for approval to submit to the Department of Public Enterprises ("DPE") and the National Treasury in terms of Section 52 of the PFMA and Section 29 of the National Treasury Regulations, details of which had been circulated to members.

It was reported that Exco had approved the Plan on 9 February 2015 for submission to Board. The 2015/16-2019/20 Corporate Plan (version 2.18) and 2015/16 Shareholder Compact were concluded and were to be tabled for approval at the Eskom Board meeting on 26 February 2015, the meeting was cancelled. Through the Chairman's office, letters were sent to the Treasury and DPE ministers requesting for an extension for the submission of both the Corporate Plan and the Shareholder Compact to 1 June 2015. DPE had granted

Eskom an extension until 30 April 2015 and required Eskom to submit an integrated and comprehensive Corporate Plan and Shareholder Compact.

The CFO reported that the Plan had been discussed individually with all members and there had been few changes and the Plan had been updated accordingly. It would be necessary to ensure that the Plan was adequately funded and management would have to remain within the Budget. It was noted that Ernst and Young had been requested to examine the Plan and provide an objective opinion.

The representatives from Ernst and Young joined the meeting for the purposes of the discussion.

The presentation from Ernst and Young was tabled for information, details of which had been distributed to members. The key findings were that the Corporate Plan & Financial Plan addressed the turnaround and integrated the specific assumptions, risk and issues included in the scope of the review. The context within which Eskom was operating was rapidly evolving. Within this context, the Corporate Plan & Financial Plan could be viewed as a base plan that needed to be implemented with the urgency of a turnaround strategy, and then developed over time.

The Summary of Review Findings was noted as follows, details of which were included in the presentation:

- Financial and corporate planning assumptions appeared to be appropriately integrated & aligned.
- The assumptions appeared reasonably aligned with the external data.
- The specific significant risks identified by Eskom appeared to be appropriately integrated into the Corporate Plan and the Financial Plan.
- The Corporate Plan and Financial Plan appeared to be aligned with the PFMA, National Treasury requirements and the Companies Act, although some gaps were identified.
- The MYPD process was addressed within the Corporate Plan and the Financial Plan, although a greater level of focus and action could be focused on improving the quality of the relationship with the Regulator.
- The Corporate Plan addressed the requirements and focus of the Government War Room.
- The link between a business objective, planned initiative to achieve the objective, and the cost to deliver the initiative could be directly identified. This potential lack of clear linkage raised a question around whether the Corporate Plan could be successfully implemented.
- It was common for the turnaround strategy to be made completely central to the business planning and execution of organizations experiencing similar challenges to Eskom. The review identified that although the turnaround strategy was included in the Corporate Plan, it was not the primary focus of the plan.

- Eskom had experienced significant change internally and externally in the months that had followed the preparation of the Corporate Plan and Financial Plan in late 2014, and the context within which Eskom needed to execute the turnaround strategy continued to evolve rapidly. As a result, the Corporate Plan should be seen as a base plan that needed to be reviewed and updated regularly throughout the year to ensure it was increasingly focused and aligned with the current challenges that Eskom was experiencing

In response to a query as to whether the objectives and strategy were clear and the objectives achievable it was reported that all plans were linked and between the plans and the implementation there could be more clarity around whose responsibility it was to implement, especially around generation.

The Plan had been developed in consultation with the Shareholder during regular monthly meetings, at which the turnaround strategy had also been discussed. There were KPIs for every section of the Plan which would be tracked going forward.

The GE: Gx reported that the turnaround strategy for Generation was available and included in the Plan. However the strategy was not fully funded and once funding was available it would need to be ring fenced outside of normal operations.

It was agreed that the current Plan should be within the available resources. In this regard the Plan had deliberately excluded items that were not funded.

The Acting CE stated that the Plan was a high level document that touched key activities during the year and indicated targets where funding was available. In this regard the Plan was practical but it was not the turnaround strategy. He stated that the next activity for the Board would be to translate the Plan into a turnaround strategy.

In response to a query it was reported that the Plan had been canvassed with DPE and the DPE had requested a list of unfunded items which would be included in the turnaround strategy.

With respect to HR costs it was reported that the 8,5% increase for the Bargaining Unit was part of the two year agreement. It was noted that 8% was considered good for the years going forward and management would commit to controlling staff costs.

A member stated that the failure of the War Room to address the issues facing Eskom would be blamed on Eskom. In this regard it reported that key decisions had been identified that Eskom wanted the War Room to unblock. The Acting CE stated that the War Room was a separate issue and would be dealt with separately from the Plan.

The Acting CE stated that he was not satisfied with the target for fatalities in that it was assumed that Eskom was the employer for contractors. He noted that Eskom's behaviour should not be such that it creates the impression that Eskom is the employer for contractors nor create the perception that Eskom has total control of contractors. The GE: Tx reported

that it had been debated that the targets did not include contractors. There had also been a significant improvement in Eskom fatalities but there was a deterioration in contractors. He undertook to exclude contractors from future targets but would ensure that contractors do comply with Eskom safety standards and processes. A member noted globally and legally Eskom was not responsible for contractor fatalities but morally it should hold contractors responsible. The Acting CE agreed but stated that it should not be made a matter that Eskom promised to perform with.

A member recommended that a chapter should be added to the Plan to reflect the shareholder aspirations and to show the business unusual approach and Eskom's focus around the following issues:

- The new Build programme in terms of lock down on time to completion, cost and quality;
- Generation turnaround and the 80:10:10 strategy;
- Load shedding and actions to restrict it.

A member noted that the R23Bn injection by government was shown in the Plan but there was no indication of the spend. It was reported that R10Bn would be received in June 2015, R10Bn in December 2015 but there was no indication at present for the balance of R3Bn.

A member stated that the Plan was well constructed. However he noted that the borrowing programme included in the Plan had not yet been approved by the IFC because the IFC could not approve it without the Plan which had never been tabled at IFC. In this regard the CFO stated that the issues were the different tranches and the delegation of authority around the approvals. This would be tabled at Board in due course.

Resolved that:

1. the 2015/16 - 2019/20 Corporate Plan ("the Plan") is approved for submission to the Department of Public Enterprises ("DPE") and the National Treasury in terms of Section 52 of the PFMA and Section 29 of the National Treasury Regulations;
2. the turnaround strategy should be aligned with the current Memorandum of Incorporation for Eskom;
3. a separate exercise should be conducted to identify any changes required for the Memorandum of Incorporation.

7.4. War Room Update

Reference document 7.3 (a)

The update on the War Room was tabled for information, details of which had been circulated to members.

It was reported that the War Room was led by government and Eskom was a member thereof. The Acting CE and CFO were standing members of the committee. In response to concerns by members about Board representation at the War Room besides the Acting CE

and CFO, it was reported that a letter had been sent to the Chairman of the War Room to note that the War Room was not a statutory body and therefore engagements should be between management and the War Room. Furthermore the War Room was not a decision making body. It was reported that the government had set up the war Room and it had been Eskom's decision to join it. The Acting CE stated that there was no contradiction to Board representation if only the CE and CFO were present at the War Room as they were both accountable to the Board and would ensure that a report was made to Board and any decisions were aligned with the Board decisions.

The Chairman stated that he was satisfied that the Board was adequately represented at the War Room and that feedback from the War Room should be a standing item on the Board agenda. It was agreed further that the Acting CE should clarify this point with the Shareholder as the Shareholder had stated that the Board was absent from the War Room. The Chairman requested that a letter be drafted in this regard and it should state that the Board is participating at the War Room through the executive directors.

It was requested that a tracking sheet be put in place for all information sent to the War Room for the War Room to acknowledge receipt and the information was accurate and complied with the request. It was requested further that the Terms of Reference of the War Room be tabled at Board to allow Board to confirm what expectations the War Room had of the Board.

In respect of the War Room investigation into the affairs of Eskom it was requested that the DPE request a non-disclosure agreement be signed before the work commences. It was noted further that Eskom's engagement of Denton's to do the inquiry was a separate exercise and the War Room had been advised accordingly.

The Chairman of the Audit and Risk Committee ("ARC") expressed a concern as to how ARC would deal with Dentons and the War Room investigation in that should ARC see the report before it finalises the AFS as there may be a contradiction between the two reports. It was noted that the Terms of Reference should indicate the interaction between the parties. It was reported that the War Room had been requested to direct any queries around the inquiry to the DPE as Eskom could not allow the War Room inquiry to proceed until it was approved by the Minister of PE.

It was reported that the Deputy President had appointed a panel of advisors on 15 December 2014 to assist the War Room. It would be necessary to discuss how Eskom would interact with the panel as they should be requested to sign a non-disclosure agreement as well as submit their Terms of Reference to the Chairman and CE. It was recommended that this also be dealt with through the DPE and a letter should be sent to the Minister of PE around the non-disclosure and Terms of Reference.

In response to a report that the panel was already doing site visits it was stated that the Acting CE should address this issue as a non-disclosure agreement had not yet been signed. The Acting CE undertook to formally raise the issue at the War Room.

It was reported further that sensitive information was being requested from the Office of the Deputy President and it was recommended again that the Acting CE deal with this issue formally.

The Chairman stated that any request for information by the War Room could be made to the Office of the CE but formal communications should pass through the DPE. In response to concerns that attendees at the War Room were business people who were being given deep insight into Eskom's business, the Chairman stated that this should be left to the Acting CE to determine a plan to resolve and revert to the Board once a solution was in place. This would include rules of engagement for the entire War Room team and clarity on the various roles and responsibilities.

The Acting CE stated that Eskom's expectation of the War Room was that it would provide a space for Eskom to do maintenance. However Eskom had to find 5000Mw as urgently as possible and still do the maintenance without load shedding. In this regard if Eskom did not have a problem then the War Room would not exist. Therefore it was incumbent upon management to do the work necessary to find the 5000MW without motivation. Consideration would be given to establishing a special group in management to find the 5000MW. Once this was found then there would be space to sort out all the other issues.

The Acting CE also undertook to ensure that all good news in Eskom was adequately communicated and published.

The Short-term focus to close Gap of 5000MW was tabled, details of which were included in the presentation. It indicated how 3875 MW could be found but there was still a shortfall of 1125MW. In response to a query it was reported that the 3875MW was equal to R24Bn. The Acting CE stated that as Generation completed maintenance the 3875MW would reduce and therefore as money was raised it should be ringfenced.

The Acting CE said consideration should be given to selling off Eskom Provident and Pension Fund to the Trade Unions.

The Eskom focus in terms of the 5 Point Plan was noted, details of which were included in the presentation. It was noted that the support by Eskom from the War Room included coal contracts licences. It was reported that the open coal mine licences issue had been tabled at government and the current holders thereof wanted to sell their licences to Eskom.

It was noted that the War Room had to be seen in terms of the IMC as the War Room reported to the IMC. In this regard there had to be clarity and alignment around the expectations of the War Room and the IMC.

Resolved that:

1. the update on the War Room is noted;
2. feedback from the War Room should be a standing item on the Board agenda;

3. the Acting CE should clarify the issue of Board representation at the War Room with the Shareholder and should indicate that the Board is participating at the War Room through the executive directors;
4. a tracking sheet be put in place for all information sent to the War Room for the War Room to acknowledge receipt and that the information is accurate and complied with the request;
5. the Terms of Reference of the War Room should be tabled at Board to allow Board to confirm what expectations the War Room had of the Board;
6. the DPE should be engaged to request a non-disclosure agreement be signed before the work commences for the War Room investigation into the affairs of Eskom;
7. a letter should be sent to the Minister of PE around the non-disclosure agreement and Terms of Reference for the panel of advisors appointed by the Deputy President to assist the War Room;
8. the Acting CE should address the issue of the panel conducting site visit before the issues in Resolution 7 are resolved;
9. the request for sensitive information by the Office of the Deputy President should be dealt with formally by the Acting CE.

8. General

The Chairman stated that process to cut off non-paying municipalities was in progress but the Board should wait for the media statement from the Minister of Finance before implementation. Mr Pamensky reported that some municipalities were using electricity payments by their residents to fund other operations.

It was noted that the Board had made a decision in this regard and would continue with the implementation of that decision notwithstanding any agreements between the Minister of Finance and COPTA around the ring-fencing of municipal grants.

9. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed and the Board went into an In-committee session.

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN: _____ **DATE:** 02/07/15

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		Office of the Company Secretary Department	

MINUTES OF THE SPECIAL BOARD MEETING HELD ON 28 MAY 2015 IN HUVO NKULU BOARDROOM MEGAWATT PARK

STRICTLY CONFIDENTIAL

PRESENT

Dr BS Ngubane	Acting Chairman
Ms N Carrim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member
Ms C Mabude	Member
Mr B Molefe	Acting Chief Executive ("Acting CE")
Dr P Naidoo	Member
Ms V Naidoo	Member
Mr MV Pamensky	Member

OFFICIALS

Mr M Phukubje	Company Secretary
Ms S Daniels	Senior Manager (Chairman's Office)

1. OPENING AND WELCOME

The Chairman welcomed all present and declared the meeting open.

2. APOLOGIES

The apologies as indicated above were noted.

3. QUORUM

A quorum being present, the Chairperson declared the meeting duly constituted.

4. DECLARATION OF INTERESTS

There were no declarations of interest pertaining to items on the Agenda.

5. CONFIRMATION OF THE AGENDA

The agenda was confirmed as tabled.

6. MINUTES OF PREVIOUS MEETINGS FOR APPROVAL

It was agreed that all minutes from 2014 could not be approved as a true reflection of the proceedings as the Board had changed in December 2014 and therefore all of those minutes would only be noted but not signed by the Acting Chairman.

It was discussed that draft minutes should clearly indicate by way of a watermark across the page marked "Draft".

6.1. Minutes of Board In-committee Meeting No. 09-2014/15 held on 28 November 2014

Reference document 11.1.1 (a)

The minutes of the Board In-committee Meeting No. 09-2014/15 held on 28 November 2014 having been circulated, were considered.

Resolved that:

1. the minutes of the Board Meeting No. 09-2014/15 held on 28 November 2014 are noted.

6.2. Minutes of Board In-committee Meeting No. 12-2014/15 held on 16 January 2015

Reference document 11.1.2 (a)

The minutes of the Board In-committee Meeting No.12-2014/15 held on 16 January 2015 having been circulated, were considered.

Resolved that:

1. the minutes of the Board In-committee Meeting 12-2014/15 held on 16 January 2015 are approved as an accurate reflection of the proceedings; and
2. the Chairman of this meeting is duly authorised to sign the minutes.

6.3. Minutes of Board In-committee Meeting No. 14-2014/15 held on 9 March 2015

Reference document 12.8 (a)

The minutes of the Board In-committee Meeting No.14-2014/15 held on 9 March 2015 having been circulated, were considered.

Resolved that:

1. the minutes of the Board In-committee Meeting 14-2014/15 held on 9 March 2015 are approved as an accurate reflection of the proceedings; and
2. the Chairman of this meeting is duly authorised to sign the minutes.

6.4. Minutes of Board In-committee Meeting No. 15-2014/15 held on 11 March 2015

Reference document 11.1.3 (a)

The minutes of the Board In-committee Meeting No. 15-2014/15 held on 11 March 2015 having been circulated, were considered.

Resolved that:

1. the minutes of the Board In-committee Meeting 15-2014/15 held on 11 March 2015 are approved as an accurate reflection of the proceedings; and
2. the Chairman of this meeting is duly authorised to sign the minutes.

6.5. Minutes of Board In-committee Meeting No. 17-2014/15 held on 25 March 2015
Reference document 11.1.4 (a)

The minutes of the Board Meeting No. 17-2014/15 held on 25 March 2015 having been circulated, were considered.

Resolved that:

1. the minutes of the Board In-committee Meeting 17-2014/15 held on 25 March 2015 are approved as an accurate reflection of the proceedings, subject to minor amendments; and
2. the Chairman of this meeting is duly authorised to sign the minutes.

6.6. Minutes of Board In-committee Meeting No. 18-2014/15 held on 30 March 2015
Reference document 12.11 (a)

The minutes of the Board In-committee Meeting No. 18-2014/15 held on 30 March 2015 having been circulated, were considered.

Resolved that:

1. the minutes of the Board In-committee Meeting 18-2014/15 held on 30 March 2015 are approved as an accurate reflection of the proceedings; and
2. the Chairman of this meeting is duly authorised to sign the minutes.

6.7. Minutes of Board Meeting No. 01-2015/16 held on 07 April 2015
Reference document 12.12 (a)

The minutes of the Board In-committee Meeting No. 01-2015/16 held on 07 April 2015 having been circulated, were considered.

Resolved that:

1. the minutes of the Board Meeting In-committee 01-2015/16 held on 07 April 2015 are approved as an accurate reflection of the proceedings; and
2. the Chairman of this meeting is duly authorised to sign the minutes.

6.8. Minutes of Board In-committee Meeting No. 02-2015/16 held on 23 April 2015
Reference document 12.12 (a)

The minutes of the Board In-committee Meeting No. 02-2015/16 held on 23 April 2015 having been circulated, were considered.

Resolved that:

1. the minutes of the Board In-committee Meeting 02-2015/16 held on 23 April 2015 are approved as an accurate reflection of the proceedings; and
2. the Chairman of this meeting is duly authorised to sign the minutes.

6.9. Minutes of Board In-committee Meeting No.16-2014/15 held on 19 March 2015
Reference document 11.1.8 (a)

The minutes of the Board In-committee Meeting No. 16-2014/15 held on 19 March 2015 having been circulated, were considered.

Resolved that:

1. the minutes of the Board In-committee Meeting 16-2014/15 held on 19 March 2015 are approved as an accurate reflection of the proceedings; and
2. the Chairman of this meeting is duly authorised to sign the minutes.

7. MATTERS ARISING FROM PREVIOUS MINUTES FOR NOTING

7.1 Board Action List up to 16 January 2015
Reference document 11.2 (a)

The Action list for items outstanding from the Board In-committee meetings up to 16 January 2015 was noted and taken as read.

The Company Secretary undertook to revise the Action list to colour code actions into different categories to indicate whether actions were (i) completed, (ii) in progress, or (iii) still outstanding.

Resolved that:

1. the Action list for the Board meetings held up to 16 January 2015 is noted;
2. the finalised action items could be removed from the Action list; and
3. the Action List should be colour coded to indicate whether actions were (i) completed, (ii) in progress, or (iii) still outstanding.

8. ITEMS FOR INFORMATION

8.1 Continuous Director Training and development Programme 2015/16
Reference document 11.2 (a)

The Continuous Director Training and Development Programme 2015/16 was noted and taken as read, details of which were included in the meeting pack.

Resolved that:

8.1.1 the Continuous Director Training and Development Programme 2015/16 is noted.

8.2 Directors' Security

The question of Board members' security, particularly that of lady Board members who were required to attend meetings at MWP in the evenings was raised as a concern. It was proposed that a threat assessment be made by the CE for the Board. The issue of the recall of security from the erstwhile Chairman's house was reported on, as well as an update on developments around a Board member who had failed to return Eskom's slate.

8.3 Suspended Executives

The matter of the suspended executives was also reported on and it was confirmed that settlement had been reached with the former CE and one other executive, while another one was due to be signed shortly.

8.4 Inquorate Meetings

Reference document 11.3.2 (a)

The issue of inquorate meetings was discussed and it was reported that a resolution had been passed to allow Dentons full access to Eskom's power stations for purposes of preparing their report.

9. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 10h25.

Signed by Dr Ngubane for purposes of noting the meeting's proceedings

Ngubane

CHAIRPERSON

29/04/16

DATE

ESKOM

BOARD MEETING

11 MARCH 2015

Gauteng Transcribers
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COMMISSION OF INQUIRY INTO STATE CAPTURE

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible***, the aforegoing is a ***VERBATIM*** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

ESKOM

BOARD MEETING

11 MARCH 2015

DATE OF HEARING:	11 MARCH 2015
TRANSCRIBERS:	V FAASEN
TRANSCRIBED ON:	30 AUGUST 2020

COMMISSION OF INQUIRY INTO STATE CAPTURE

Gauteng Transcribers
Recording & Transcriptions

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.

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 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

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]

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.

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]**

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.

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

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 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 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.

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 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 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

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.

[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]

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

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.

[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 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

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, 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]

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

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]

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 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]

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?

[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 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]

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...

[18:02]

CHAIRPERSON: H'm, not acceptable.

[18:03]

FEMAILE 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.

[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

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 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 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

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 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.

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

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 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 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]

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 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 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

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 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 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

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 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.

[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]

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 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 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

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 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 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

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 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 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.

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.

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 and 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.

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

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 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 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

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.

[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 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

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.

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 – 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

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 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 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.

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 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 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]

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 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 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.

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.

[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 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

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.

[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]

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

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 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 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

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.

[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 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.

[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 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]

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.

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 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 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

wrote to secretariat to remind them that we have asked for the deep drives 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.

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 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,

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.

[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]

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,

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 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 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

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]

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 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

[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 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 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.

[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 place.

[55:44]

DR NGUBANE: Is in place, ja.

[55:45]

FEMALE VOICE: Thank you very much. CEO?

[55:47]

CHIEF EXECUTIVE: No, Matshela 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 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

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

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 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 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

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 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 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.

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 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 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

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. 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 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

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 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 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.

[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.

[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 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.

[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 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.

[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.

[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 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]

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

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, 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?

[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.

[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 [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 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

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 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 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

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]

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 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]

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 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.

[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.

[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 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]

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.

[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]

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.

[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.

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]

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]

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

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 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 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

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 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 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]

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 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 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

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 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 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

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?

[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 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

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 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 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]

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 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 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].

[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.

[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 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 CHWAWE): 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

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

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 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.

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 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 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

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 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 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.

[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 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 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

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 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 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

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

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 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 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

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, 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 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

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]

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]

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?

[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.

[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 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

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]

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 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

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 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]

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

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 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 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,

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]

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]

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]

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]

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]

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 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 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

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 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 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

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 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 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

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]

[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.

[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

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 rand 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]

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 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]

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

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]

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 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

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 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 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 –

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 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]

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.

[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]

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.

[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]

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 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.

[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,

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]

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 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

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]

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 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]

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 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.

[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.

[

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.

[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.

[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.

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.

[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....

ESKOM

PEOPLE AND GOVERNANCE

IN-COMMITTEE MEETING

11 MARCH 2015

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PEOPLE AND GOVERNANCE

IN-COMMITTEE MEETING

11 MARCH 2015

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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].

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 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

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?

[

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 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

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

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]

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.

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

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 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 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

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 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 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

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 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, 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]

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 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 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

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.

[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

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 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.

[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]

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 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

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 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 facts will speak for themselves, so I thank you for raising that an 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]

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]

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.

[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]

[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 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 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

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 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, 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

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 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 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]

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 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 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

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?

[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 understand, so although you have teams the coordination 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

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 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.

[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

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 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.

[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

future?

[29:29]

MR LINNELL: Well I suppose it is both, I would think n 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 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 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

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 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 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

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.

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 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

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 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 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]

[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 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 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

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, 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 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

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 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 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

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 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 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]

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 o 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 successes. The Board is always

...[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 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.

[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

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 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 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.

[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 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.

[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]

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 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 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,

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 ...[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 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]

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]

[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]

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]

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]

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]

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

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 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 ...[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

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 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]

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]

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]

[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 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.

[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 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 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

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]

[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

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, 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]

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

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 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 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]

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 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 way can we minimise that risk. You ask them the question 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]

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 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 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,

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.

[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 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

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:

"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 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

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.

[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 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.

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 or the Director General his now being paid out here and there has been something improper about that solution.

[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 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

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 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 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

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]

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]

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

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]

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 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

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 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]

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]

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 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 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

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.

[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.

[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]

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

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 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]

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

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 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 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]

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]

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]

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.

[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]

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.

[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

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]

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.

[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]

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 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]

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...

[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]

[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]

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.

[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.

[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]

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]

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]

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.

[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.

[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 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.

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.

[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.

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 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]

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]

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]

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

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.

[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]

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.

[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.

[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 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

.**[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]

[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]

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

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 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]

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

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]

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]

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.

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]

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.

[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.

[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]

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 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

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]

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]

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

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]

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 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

exclude them at all.

[01:29:13]

MALE VOICE: That is important.

[01:29:14]

MR LINNELL: It I 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 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 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?

[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 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]

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

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]

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 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.

[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]

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 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 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

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 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, 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

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 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.

[

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

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 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 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

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 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 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

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]

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]

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]

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]

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.

[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]

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]

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

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.

[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.

[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]

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...

[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]

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.

[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 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 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

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 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]

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]

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.

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]

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

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 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 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.

[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]

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]

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

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]

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.

[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.

[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.

[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 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

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.

[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]

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

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]

[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]

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

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]

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]

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]

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]

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]

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]

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 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]

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

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 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 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

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 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]

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

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 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 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

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 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 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.

[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.

[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.

[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.

[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.

[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.

[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]

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]

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]

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]

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.

[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]

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.

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]

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]

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

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.

[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]

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...

[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 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 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

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]

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.

[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]

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]

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

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.

[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.

[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

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

(HELD IN JOHANNESBURG)

BRIAN MOLEFE'S AFFIDAVIT RELATING TO VARIOUS ESKOM MATTERS

I, the undersigned,

BRIAN MOLEFE

do hereby make oath and say that:

1. I was the Acting Chief Executive Officer of Eskom from April 2015 to September 2015. I was the Chief Executive Officer from October 2015 to December 2016. The facts set out in this affidavit are within my personal knowledge unless otherwise stated, and are to the best of my belief true and correct.

2. This affidavit is in response to an e mail from the commission's[1] Mr Pather dated 24 December 2019. In it, Mr Pather listed a number of issues where the commission required clarification from myself.

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[1] The Judicial Commission of Enquiry Into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State (hereafter the Commission)

3. Subsequent to Mr Pather's request, I asked the commission to facilitate my access to a number of documents which would assist me, (and the commission), in answering most of the questions that were being asked.[2]

4. Initially, most of the documents could not be made available.[3] There are three broad reasons that were furnished by the commission, namely;

4.1 Document not with the commission;

4.2 Document requested but not yet provided at the time; and

4.3 Document irrelevant, (or relevance not apparent)

5. Of the 39 documents initially requested, 30 could not be made available, 5 were made available and the rest were considered to not exist. Four documents which were not requested were also made available.

6. Subsequently, *"on further reflection"*, the commission's legal team indicated that the documentation that I have requested will be made available.[4] More documents were made available on the 15th of April 2020.[5]

[2] Letter to Mr Pather dated 28.12.2019 (Annexure BM1)
[3] E-mail from Mr Pather dated 24.01.2020 (Annexure BM2)
[4] E-mail from Mr Pather dated 06.03.2020 (Annexure BM28)
[5] E-Mail from Mr Pather dated 15.04.2020 (Annexure BM29)

Background

7. My highest qualification is the Master of Business Leadership degree from the University of South Africa (Unisa). This is in addition to the B. Com degree from Unisa as well as a Post Graduate Diploma in Economics from the University of London's School of Oriental and African Studies (SOAS). I have also completed several short advanced finance and management courses at Universities outside South Africa. In Addition I have completed the Nuclear Reactor for Executives course at the Massachusetts Institute of Technology (MIT).

8. I have had a career in the civil service spanning a period of over twenty one years. Notably, I have worked as a Deputy Director General in the National Treasury, Chief Executive of The Public Investment Corporation, Chief Executive of Transnet and Chief Executive of Eskom.[6]

9. I was seconded from Transnet to Eskom and later appointed as Eskom Chief Executive in 2015. At the time of my secondment, Eskom was experiencing unprecedented load-shedding and could not meet South Africa's electricity requirements. This was considered to be the single most important factor that was hampering the growth of the South African Economy.[7]

[6] Curriculum Vitae attached as Annexure BM3.
[7] Annexure BM4

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10. In addition, Eskom had major liquidity problems. In 2015, Eskom's auditors were considering to qualify Eskom's financial results to the effect that Eskom was no longer a going concern.

11. By the time I left Eskom in December 2016, the following had been achieved;[8]

10.1 South Africa had not experienced load-shedding from the 8th of August of 2015. This represented in excess of 540 days without load-shedding. The absence of load-shedding continued for a further two years after I had left. Load shedding was defeated by a rigorous strategy and implementation of maintenance without load-shedding.[9]

10.2 Profit, (Ebitda), was R31.5bn for the period ending 30 September 2016.

10.3 Cash generated from operations was R31.9bn. Liquid assets were R43.8 Eskom did not have a liquidity, nor a going concern problem

10.4 Plant performance, measured by the Energy Availability Factor, was 78.49%, hovering close to the 80% benchmark. This had improved from about 68% in just over a year and was confirmation of our rigorous maintenance regime.

[8] www.eskom.co.za/IR2016/interim Annexure BM5
[9] Annexure BM6

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10.5 99 869 households were connected to the grid for the first time during the one year period ending 30 September 2016.

11. All these were achieved by implementing a turn-around plan that was supported by the board, implementing a generation maintenance strategy, improving staff morale and positively impacting on Eskom's reputation and brand, amongst others.[10]

Secondment/Appointment to Eskom

12. While I was the Group Chief Executive of Transnet in early 2015, I was asked by the Minister of Public Enterprises, Ms Lynn Brown if I would agree to being seconded to Eskom to assist with the debilitating load-shedding which South Africa was suffering at the hands of Eskom. I indicated my willingness to do so.

13. She communicated this desire by government to have me seconded to Eskom, to the boards of Transnet and Eskom.[11]

14. The board of Transnet approved my secondment,[12] and so did the board of Eskom.[13] A secondment agreement was concluded between the two State Owned Entities.[14]

15. While I was seconded to Eskom, my employment contract at Transnet was renewed for another five years.

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[10] Chairman's letter to the Minister of Public Enterprises (Annexure BM30).
[11] The Commission was unable to obtain this correspondence from either Transnet or Eskom (Annexure BM2 at 3.1).
[12] Transnet Board minutes of 20.04.2015 (Annexure BM31 at para 4.1.5)
[13] Eskom Board minutes of 23.04.2015 (Annexure BM7 at para 7.1)
[14] Secondment Agreement (Annexure BM32)

16. I deny any other alleged motive relating to my secondment. I believe that the commission has the power to obtain these documents from these entities for further clarification relating to this matter.

Pension Payment

17. In April 2015 I was seconded from Transnet to Eskom as Group Chief Executive Officer in an acting capacity.[15]

18. In or around September 2015, the Chairperson of Eskom wrote a letter to the Minister of Public Enterprises recommending that I be appointed as the Group Chief Executive Officer of Eskom as a permanent employee.[16]

19. On the 2nd of October 2015, the Minister of Public Enterprises wrote a letter to the Chairperson of the board of Eskom indicating that she had received cabinet's endorsement for my appointment as Group Chief Executive Officer and ex-officio member of the Eskom board. The letter did not have a limitation on the period of employment.[17]

20. On the 2nd of October 20015, I received a letter from the Minister of Public Enterprises appointing me as Chief Executive Officer of Eskom and ex officio

[15] Secondment Agreement (Annexure BM32)
[16] Chairman's letter to the Minister of Public Enterprises (Annexure BM30 para 3)
[17] Minister's letter to the Chairman dated 02.10.2015 (Annexure BM33)

member of the Eskom board. The letter did not have a limitation on the period of employment.[18]

21. In October 2015 I also received a letter from the Chairman of Eskom, Dr Ben Ngubane confirming my appointment as Group Chief Executive Officer. There was no limitation on the period of employment.

22. In early October 2015 I received (and signed) the Executive Employment Contract from Eskom which specified the commencement date as 01 October 2015 (clause 1.2.7). The contract specified that employment was to continue for an indefinite period (clause 3.1).

23. In late October 2015 my membership of the Eskom Pension Fund was finalised. On the 26th of October 2015 I transferred R4 264 575.34 *(Four Million Two Hundred and Sixty Four Thousand and Five Hundred and Seventy Five Rand and Thirty Four Cents*), being proceeds from my Transnet Pension Fund, to the Eskom Pension Fund.[19] The Eskom Pension Fund accepted my membership of the fund and loaded my membership in their system as "PPX" meaning that I was a permanent employee.

[18] Minister's letter to Mr B Molefe dated 02.10.2015 (Annexure BM34)
[19] Eskom Pension and Providend Fund Receipt (Annexure BM27)

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24. Receipt of the funds was also acknowledged by a letter from Joey Sankar dated 04.11.2015 which letter quoted my unique number as 4610263.[20]

25. On the 1st of November 2015, the Minister wrote a letter to Dr Ngubane informing him of a cabinet decision to employ all Parastatal Executives on five year contracts. This meant that my contract of employment would be changed to a five year contract.

26. On the 9th of November 2015 I received a letter from Dr Ngubane advising me that I will be required to enter into a fixed term contract of employment. At that point, I was only required to acknowledge receipt of the Chairman's ***"Offer of Employment"***. [21] I duly acknowledged receipt of the offer on the 11th of November 2015.

27. I resisted this change to my employment contract. This caused the Chairperson of the board to write a letter to Minister Brown on the 25th of November 2015 requesting her approval that;

27.1. At the end of the five year contract, I be allowed to retire from service as if I am 63 years old;

[20] Letter from Joey Sankar (Annexure BM27)
[21] Chairperson's ***"offer of employment"*** dated 09.11.2015 (Annexure BM37).

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27.2. Penalties prescribed by the EPPF be waived and Eskom would carry the cost of the penalties.

28. The letter of 25 November 2015 from Dr Ngubane to the Minister was sent by the Eskom Company secretary, Ms S Daniels, to Ms K Davids (Minister's PA), O Ruthman and Z Mbilase at the Department of Public Enterprises. The letter was e mailed at 20h33 on the 25/11/2015 by Ms Daniels.

29. At 21h05 on the 25/11/2015, Ms K Davids acknowledged receipt of the letter and undertook to bring the letter to the Minister's attention.

30. On the 26/11/2015, K Mhlongo sent an e mail to Ms S Daniels confirming that the letter will be brought to the Minister's attention.

31. To the best of my knowledge, the Minister never responded to the Chairperson's letter.

32. On the 09/02/16, the People and Governance sub-Committee of the Eskom board (P&G) received a presentation from Mr A Minnaar where he;

32.1. reported that a five year contract for the Group Chief Executive of Eskom is a first for Eskom;

32.2. referred to previous precedents at Eskom where additional pensionable service was granted to executives and penalties were waived;

32.3. explained that the EPPF rule that employees may proceed on retirement from age 50 with ten years' service remains applicable;[22]

33. Furthermore, he recommended that the P&G Committee should adopt a resolution to the effect that;

33.1. Where executive directors (not specifically the GCE) on fixed term contracts take early retirement and there is a shortfall regarding the ten years, Eskom will bridge the gap, waive penalties and refund EPPF cost.

34. At this meeting, the P&G sub-committee made a resolution that;[23]

"In cases where Executive Directors (appointed on fixed term contracts) 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 10years

[22] This was wrong and was the source of the entire "mistake". It had been inferred from the EPPF Member's guide para 3.3(c) (Annexure BM24)
[23] Annexure BM23

ii. ***Waive penalties to early retirement***

iii. ***Refund the EPPF actual costs for additional service added, plus penalties applicable to early retirement.***"[24]

35. On the basis of this resolution by the P&G Committee, I agreed to sign a five year contract on condition that the board will finalise all the administrative arrangements that would empower them to contract with me on the basis of their resolution. The contract was signed on the 7th of March 2016.[25] It specifically provided that I would *"continue"* to be a member of the EPPF.[26]

36. I note that former Eskom CEO, Mr Brian Dames testified before the parliamentary committee enquiry into state capture that there was a practise at Eskom to permit executives to take early retirement from Eskom. Mr Sibusiso Luthuli, Principal Officer of the EPPF said that Pension Fund Rule 28 permitted normal retirement from the Fund at age 50, with the permission of the employer. I further refer to the Guide to Benefits of the EPPF which refers to early retirement from the Fund being possible from the age of 50.[27] The Guide informed my understanding of the EPPF Rules and was referred to by Mr Minaar in the P & G sub-committee, referred to above.

[24] Resolution of the P & G Committee (Annexure 36)
[25] Contract of Employment (Annexure BM25)
[26] Annexure BM25 para 10.1 and 10.2
[27] Annexure BM24

37. On the 11/11/2016, I wrote a letter to Dr Ngubane requesting early retirement in terms of the rules of the EPPF and the resolution of the P&G meeting of 09/02/16.

38. On 24/11/2016, I received a letter from Dr Ngubane communicating the Eskom Board's acceptance of my early retirement.

39. On the 18/02/2017, I received a letter from the EPPF welcoming me as a pensioner and providing details of my pension.

40. I received a lump sum of some R7.7m from the EPPF on being admitted to the Fund. Of this, some R4.3m had been transferred by me from the Transnet Pension Fund to the EPPF.[28]

41. In April 2017, after I had accepted appointment as a Member of the National Assembly by the North West Province of the ANC, Members of the Eskom board and Company Secretary met with me and intimated that the acceptance of my early retirement application was a mistake. I asked them to make a proposal on a way forward that would get the Minister of Public Enterprises' approval.

[28] Annexure BM27

42. On the 11/05/2017 I received a letter from Dr Ngubane requesting me to resume duties as Eskom Group Chief Executive. Because of the common error of implementing the early retirement, the legal position was that the situation had to be restored to *status quo ante.* I obtained legal advice from senior counsel who confirmed that that was indeed the legal position. I signed a Reinstatement Agreement which regulated my return to duties, as did Eskom. Eskom also assured me that the Minister was comfortable and had approved this arrangement. Ms Daniels, in her testimony to the parliamentary committee, indicated that such approval from the Minister had been obtained.

43. On the 15/05/2017 I resumed duties as Eskom Group Chief Executive.

44. On the 17/05/2017 the Eskom Group Company Secretary wrote a letter to the Principal Officer of the EPPF advising him of my resumption of duties at Eskom with effect from 15/05/2017 and further advising that my membership of the Pension Fund must be reinstated.

45. On 15 May 2017 the DA launched an urgent High Court application to challenge my resumption of duties. This was followed by an application by the EFF. The matter was originally set down to be heard on the 02/06/2017.

46. On the 31/5/2017 Minister Brown sent a letter to Dr Ngubane instructing the board to rescind the decision to reinstate me as Group Chief Executive.[29]

47. On 24 May 2017 Solidarity launched an urgent High Court application seeking to review various decisions concerning my resumption of duties and related relief.

48. On the 02/06/2017 after a brief Eskom board meeting I received a letter from Dr Ngubane advising me of the Minister's instruction to rescind my reinstatement.

49. On 05/06/2017 I launched a Labour Court Application to set the summary dismissal aside.

50. On 06 June 2017 the High Court application was postponed pending the outcome of my Labour Court application

51. On the 04/07/2017 the Labour court issued an order postponing hearing my application until after judgement in the High Court applications brought by the DA and the EFF.

[29] Annexure BM26

52. The High Court ruled on the matter in January 2018 and granted judgement in favour of the Democratic Alliance and Solidarity Trade Union.

53. I requested leave to appeal the judgement which was denied by the High Court, the SCA and the Constitutional Court.

54. In December 2018, the Eskom Pension and Provident Fund brought an application the Gauteng Division of the High Court for an order that would deal with matters relating to my pension. The matter is pending.

Guarantee to Tegeta

55. On the 1st of December 2015, I underwent a surgical procedure to repair my right shoulder at Morningside clinic in Sandton. During the procedure, I had respiratory failure which was caused by what the doctors believe to be pulmonary oedima. I was under an induced coma for approximately 30 hours after the operation while the doctors recovered the functioning of my lungs.

56. The result was that I was on sick leave for the whole of December 2015 and for two weeks in January 2016.

57. I was therefore not at Eskom when the guarantee was negotiated and approved and do not have first hand knowledge of what transpired. The roll call for the board resolution of the 8th of December 2015 correctly records my apology as ***"off sick"***.[30]

[30] Resolution of the board of Directors 08.12.2015 (Annexure BM35).

58. However, I have been able to gather that on the 06th of December 2015, Mr Matshela Koko wrote a letter to Mr Joel Raphela and Dr Thibedi Ramontja of the Department of Minerals and Energy which was sent by email.[31] In the letter, he expressed concern about the security of the supply of coal relating to several power stations –especially Hendrina power station. He requested for intervention from the Department of Mineral resources "*to assist in assuring resolution to the coal supply situation and certainty going forward.*"[32]

59. Dr Ramontja responded to Mr Koko's letter shortly thereafter through an undated letter.[33] In this letter Dr Ramontja advised that Eskom should consider "*some prepayment to be made for up to one (1) year of coal supply… thereby averting any national crisis that we as South Africans can ill afford.*" This letter, in my opinion, planted the seed that would result in the December 2015 guarantee as well as the prepayment April 2016.

60. On the 8th of December 2015, Mr Koko and Mr Singh signed a submission to the Eskom Board of Directors[34] and attached the letter from DMR. In the submission, they recommended a pre payment of coal, ("*advance purchase*") to the value of R1.68bn to "*secure a future supply of coal to Eskom*".[35] This was clearly in line with the advise from the DMR.

61. The draft resolution was circulated by the company secretary and it sought to authorise the "(acting) *Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, …, to negotiate and conclude*

[31] Letter from Koko to Ramontja 06.12.2015 Annexure BM8
[32] Letter from Koko to Ramontja 06.12.2015 Annexure BM8 pg 2
[33] Letter from Ramontja to Koko udated Annexure BM9
[34] Round Robin Submission to Board of Directors Annexure BM10
[35] Round Robin Submission to Board of Directors Annexure BM10 para 3.4.1

prepurchase of coal agreement with the proposed owners of OCM (coal supplier)."[36]

62. It appears that while a pre-payment was approved by the board on recommendation by DMR, what was subsequently implemented was a guarantee and not a prepayment. I am not sure as to how and why this was done, but it was better because there were no immediate cash flow implications.

63. In the end, the guarantee was never called.

Prepayment to Tegeta

64. The prepayment for coal was approved at a Board Tender Committee, (BTC), that was held by tele-conference on the 11th of April 2016.[37] This meeting was followed by a BTC meeting on the 13th of April 2016 where the securities from Tegeta Resources were discussed.[38] I was not present at, nor was I required to be part of, these meetings.

65. The prepayment for the delivery of coal by Tegeta over the winter period of 2016. The delivery of coal would be in terms of an existing agreement between tegeta and Eskom. Umsimbithi also had a similar agreement for the delivery of coal , (without prepayment), which also continued over the winter period.

66. A prepayment agreement was the second addendum to the original coal supply agreement between Eskom and Tegeta.[39]

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[36] Resolution of the Board of Directors Re: Urgent request to approve the pre-purchase of coal from Optimum Coal (Pty) Ltd Annexure BM11 para 2.1.2

[37] Minutes of the special Eskom Board Tender committee Meeting of 11.04.2016 Annexure BM12.

[38] Minutes of the Eskom Board Tender committee Meeting of 13.04.2016 Annexure BM13.

[39] Second Addendum to the Coal Supply Agreement (Annexure 36).

67. The second amendment to the coal supply agreement, (prepayment agreement), was reviewed by Eskom's Assurance and Forensics Department.[40] The recovery of the advance payment was found to be in line with the contract terms both in terms of quantity and quality,[41] (in other words, the coal, in terms of quantity and quality, that was contracted for in terms of the prepayment, was delivered).

68. The email to Albert Scholz which is purported to come from me,[42] was not sent by myself. There were several emails like it which requested payment from one person or another at Eskom which were fraudulent. I believe that this was one of them.

69. The matter of these false e-mails was investigated internally by Mr Shaun Maritz and Mr Dika Modise. An outside service provider, Sithabile Technology Services was also engaged to assist with the investigation. Their conclusion was that these were fake emails and a criminal case was opened with the South African Police Services.

Glencore OECM Penalties

70. When I arrived at Eskom, I discovered that Glencore was owing Eskom an amount in excess of R2bn in penalties in terms of the coal supply agreement. Furthermore, Eskom was not taking adequate steps to recover the money. It is

[40] Advance payment review (Annexure BM39).
[41] Annexure BM39 para 4.3
[42] E-mail to Albert Scholz Annexure BM14

not clear to me why there was a reluctance from Eskom to recover this money that was legitimately due to Eskom.[43]

71. Mr Effron acknowledges in his submission to the commission that; *"... we had been discussing these penalties with Eskom for a number of years..."*[44]

72. The penalties were not a figment of my imagination, as alleged. They were a legitimate claim that Eskom had against OCM.

73. I put in place measures to recover the money. Attorneys Cliffe Dekker Hofmeyr were instructed to write a letter of demand to Optimum as well as to issue summons with a view to obtaining a judgement.[45] This caused visible irritation, (understandably), with myself on the part of Glencore.

74. The Public Finance Management Act requires accounting authorities of public entities to take effective and appropriate steps to collect all revenue due to the public entity concerned.[46]

[43] Nagar S "Affidavit and Annexures" https://sastatecapture.org.za/site/files/documents/71/U2._Snehal_Nagar_-_Affidavit_&_Annexure.pdf para 7.3 Date of use 27.02.2020.
[44] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 41.
[45] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 41.
[46] Public Finance Management Act 1 of 1999 s 51(b)(i).

75. I found it difficult to reconcile Eskom's inaction on this matter with our demand that the residents of Soweto should pay their debts to Eskom.

Glencore Coal Supply Negotiations

76. Eskom and Optimum Coal Mine, (OCM), Proprietary were parties to a coal supply agreement relating to Hendrina Power Station which agreement was to expire in 2018. This coal supply agreement was entered into in 1993.

77. In terms of the agreement, OCM was obligated to supply coal with a CV of 23.5MJ/.kg to the Hendrina Power station at a price of R154 per tonne.

78. In July 2013, OCM issued a hardship notice and initiated a hardship claim against Eskom in February 2013. This was despite the fact that at the time, Eskom was going through its own hardships and was experiencing load-shedding.

79. At the time of the request to increase the price at which OCM was supplying coal to Hendrina power station from R154 to R442 per tonne, the shareholders of OCM were, amongst others, Purito BV, (owned by Glencore group), with a

shareholding of 67.58%, and Lexshell 849 (Pty) Ltd (owned by Mr Cyril Ramaphosa), with a shareholding of 9.64%.[47]

80. Mr Ramaphosa was Chairman of Optimum at the time of the initiation of the hardship claim.[48]

81. The competition Commission approved the sale of Lexshell 849 (Pty) Ltd by Mr Ramaphosa's Shanduka Group (Pty) Ltd to Pembani Group (Pty) Ltd on the 19th of August 2015.[49]

82. This notice and hardship claim were preceded by another amendment to the contract in April 2011 following arbitration.

83. In his submission to the commission, Mr Ephron claims that; "*Glencore was not able to undertake a comprehensive due diligence exercise*" at the time of acquiring Optimum.[50] Furthermore, he states that *"Glencore did not, for example, know how any price-adjustment mechanisms in the CSA worked."*

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[47] Lourens C *"Shanduka raises stake in Glencore coal project"* 15.12.2011 https://www.iol.co.za/business-report/economy/shanduka-raises-stake-in-glencore-coal-project-1199008 Date of use 20.02.2020.

[48] Imaralu D *"Glencore, Ramaphosa acquire 70% stake of optimum coal"* 25.06.2012 http://venturesafrica.com/glencore-ramaphosa-acquire-70-stake-of-optimum-coal/ Date of use 20.02.2020.

[49] *Pembani Group Proprietary v Shanduka Group Proprietary Limited* (LM041Jun15) [2015] ZACT 126 (18 September 2015) (Annexure BM17).

[50] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 13.

Glencore discovered that they are unhappy about the price of coal after conducting a "*post acquisition review*" in July 2013.[51]

84. OCM had also taken a gamble on the export price of coal. It is when this bet went sour, when the price of coal collapsed in 2012, that the hardship was concretised.[52] It is worth noting that Eskom would not have participated in their good fortune had the export price of coal gone the other way.

85. On the 4th of May 2015, Mr Bester (of Eskom), wrote a memo[53] to his superior, Mr Mboweni, recommending that Eskom should agree to the proposed price increase from R154 to R442 per tonne.[54] In his memo, Mr Bester intimates that;

"As a result of continued low international coal prices Optimum, without the prospect of a recovery in the next two years, at the end of January 2015 Optimum made the decision to close their export operations and began a section 189 for the opencast section of the mine"

86. It is therefore apparent that their *"hardship claim"* was a result of their own negligence and failure to conduct proper due diligence at acquisition for which they now wanted Eskom to pay.[55] Furthermore, they had gambled in the

[51] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 15.
[52] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 21.
[53] Memo from Bester to Mboweni dated 04 May 2015 Annexure BM15.
[54] Annexure BM15 para 3.
[55] Annexure BM18 para 17.

international coal market and had failed to protect themselves by putting in place adequate measures to protect themselves against international coal price volatility. It was, in my opinion, unreasonable for Eskom to be expected to pay for these management failures, (perhaps even incompetence).

87. In exchange for the price increase, Mr Bester recommended that the contract should be extended to 2023 and that Eskom should take up 15% of shares in Optimum,[56] a company that was in financial distress.

88. I was suspicious of these recommendations from Mr Bester and the analysis that preceded them. They completely ignored Eskom's financial and operational position. Not once did Mr Bester refer to the fact that Eskom was itself going through hardship. Mr Bester's recommendation heavily favoured OCM and Glencore.[57] I felt that it was not an honest appraisal and an appropriate negotiation position with a hostile supplier.

89. Firstly, the recommendation that the supply agreement be extended to 2023 without going through a competitive process, (or at least hard bargaining on Eskom's part), was a problem to me. Secondly, Eskom's proposed 15%

[56] Annexure OBM15 para 3.

[57] This is also confirmed in Bester's submission to the Commission Annexure BM16 at para 38, 40, 44, 46

shareholding in Optimum would be meaningless as it would be a minority stake where we would have no say in the cost structure of the company.

90. I did not believe that OCM's threat to shut down the mine was credible. On the contrary, my interpretation of it was that it was designed to instil fear in us, threaten us with more load-shedding and extort a higher price and extend the contract by a further five years.

91. I am not aware that we were under obligation to agree with their position at all costs. Mr Ephron's submission to the commission seems to imply a certain "*entitlement*" to the price increase.[58]

92. My suspicions about Mr Bester's incompetence at handling such complex negotiations in the interests of an employer, such as Eskom, are confirmed in his submission to the Commission at paragraph 47 where, after referring to my negotiation tactics, he says; "*Optimum countered, offering to continue supply until the end of the contract at R300 per tonne, thus Glencore would subsidise the coal price from the Optimum Colliery to Hendrina Power Station until the end of 2018, see annexure JAB/Z16.*"

[58] Annexure BM18 para 31.

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93. Even at this early stage of the negotiations, Mr Bester, by his admission, would have cost Eskom R112 per tonne for three years. Money that Eskom did not have.

94. The stalemate as a result of no agreement, (correctly) led to the Hardship Arbitration being embarked on. A hearing was scheduled for the period 16-27 May 2016.[59] I was happy with this outcome because it was in the interests of Eskom.

95. On the 21st of July 2015, the directors of OCH and OCM took a resolution to commence business rescue (BR) proceedings in respect of OCM and OCH.

96. On the 5th of August 2015, the Department of Minerals announced that Glencore's mining licences have been suspended.[60] The reason for the suspension was that Glencore had not followed due process in the proposed retrenchments of their workers.[61] The effect of the suspension of the mining licenses would be to guarantee the suspension of coal supplies by Optimum to Hendrina.

97. Dr Ngubane and I had a meeting with Minister Ramatlhodi where Dr Ngubane asked him to reconsider the decision to suspend the licenses of Glencore

[59] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 38.
[60] BD Live *"Ramatlhodi suspends Glencore license"* 05.08.2015 http://thegremlin.co.za/business-news/wordpress/2015/08/05/ramatlhodi-suspends-glencore-licence/ Date of use 27.02.2020
[61] Wittles G *"Ramatlhodi Glencore urgently trying to resolve licence issue"* 05.08.2015 https://ewn.co.za/2015/08/05/Ramatlhodi-Glencore-urgently-trying-to-resolve-its-licence-issue Date of use 27.02.2020

because of our concern about the negative impact on the security of supply of coal to Hendrina power station and the possible impact on load shedding

98. We were relieved, when a few days later, the suspension of the licenses was withdrawn.[62]

99. I was dumbfounded when, in May 2017, former Minister Ramatlhodi claimed that the Eskom Chairman, (Dr Ngubane), and I met with him to ask him to suspend Glencore's license, and that he refused because it would result in more load shedding. He seemed to have forgotten that **he had in fact suspended the license at the time**.

100. On 20 August 2015, the business rescue practitioners, (BRP's), suspended the supply of coal by OCM to Eskom. Eskom had stopped load-shedding on the 8th of August 2015. This move by the BRP's put us at the risk of returning to load-shedding.

101. We had anticipated that this stoppage of supply from the Business Rescue process was a possibility and had put in place contingency measures to ensure that Hendrina continues to supply power to the grid. Mr Bester's fears of an inability to keep Hendrina functioning when OCM stops coal supply to Hendrina did not materialise, nor did the heavens fall from the skies.

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[62] Reuters "Ramatlhodi withdraws Glencore mine suspension" 07.08.2015. https://www.fin24.com/Companies/Mining/Ramatlhodi-withdraws-Glencore-mine-suspension-20150807 Date of use 27.02.2020.

102. We were able to keep Hendrina functioning and did not have one day of load-shedding during the period that OCM was not supplying Hendrina with coal.

103. In October 2015, at the request of Mr Phuthuma Nhleko of Pembani Group, I held a meeting with him and Mr Kennedy Bungane. At this meeting, they expressed Pembani's desire to buy OCM. They indicated that this was, however, conditional on Eskom agreeing to a higher price for the coal, an extension of the coal supply agreement and a waiver of the penalty due to Eskom. I indicated to them that we have already turned down Glencore on all of these requests and could not see how we would justify acceding to their request. I indicated that doing so would suggest that we were giving them special treatment and that we could potentially even be accused of possible corruption.

104. Mr Nhleko subsequently wrote a letter to me confirming our discussion.[63]

105. I subsequently learnt in November 2015 that the BRP's were in negotiations with Oakbay for the sale of OCM. A transaction was subsequently concluded between the parties. It was approved by OCM creditors as well as the competition commission.

[63] Letter from Mr Nhleko to B Molefe dated 16.10.2015 Annexure BM19.

McKinsey MSA

106. A cursory look at Eskom's financials will reveal the high costs relating to consultants –especially for the new build programme.

107. In July 2015 there was a proposal for the development of an internal consulting capacity. These consulting engineers would be trained from Eskom's (young) engineers from the TOP programme by Mc Kinsey consulting.

108. McKinsey would not be paid from the consulting but would share in the cost savings that Eskom would realise from using its own internal capacity for engineering consulting. There would therefore not be any upfront cash outlay for the training, young engineers would be trained and costs would be saved.

109. In May 2015 I approved the proposal.[64]

110. In August 2016, the Group Capital Integration and Assurance wrote a memo to the board tender committee indicating that the organisation had made savings of R18.6bn through the programme. R2.84bn was payable to McKinsey as a success fee and Group Capital had negotiated this fee down to R1.8bn.[65]

[64] Strategy to develop current TOP engineers to an internal consulting unit Annexure BM20
[65] Submission to BTC 08.08.2016 (Annexure BM40)

111. On 13December 2016 another submission was made to Board Tender Committee for a mandate to negotiate to further reduce the fee payable to McKinsey to R849m.[66]

Nuclear 100 Project

112. Eskom operates two nuclear reactors at Koeberg for purposes of generating electricity. These reactors were commissioned in the 1980's. Since commissioning, these reactors have been operated safely and there have not been any major nuclear incidents in South Africa.[67] They are currently the cheapest source of electricity for Eskom.

113. Eskom is a member of the World Association of Nuclear Operators (WANO) which uses peer reviews and inspections to advise member nuclear operators of possible risks in operations as well as to recommend improvements.

114. In 2015, WANO wrote a report to me as the Chief Executive of Eskom warning about the risk that Eskom is facing because of the future unavailability of nuclear reactor operators to the utility. Eskom was losing its operators to new nuclear

[66] Submission to BTC 13.12.2016 (Annexure BM

[67] Potgieter P and Yelland C *"Discussing nuclear energy operations with Peter Pozesky CEO of WANO"* https://www.ee.co.za/article/discussing-nuclear-energy-operations-peter-prozesky-ceo-wano.html Date of use 24.02.2020

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reactors that were being commissioned elsewhere in the world –especially the Middle East.

115. In addition, we did not have a full complement of nuclear operators at Koeberg, (which was a risk on its own).

116. Furthermore, the remaining nuclear operators at Koeberg were making demands for remuneration benefits which were above Eskom's policies and affordability. Failure to meet these would see us losing them to the Middle East operators. Some already had offers of employment and were threatening to leave Koeberg at short notice.

117. What was odd, however, was that Eskom is the only nuclear power station outside the United States of America whose training programme is accredited by the National Academy for Nuclear Training[68] to train nuclear operators, (both for ourselves and for other new operators).[69] Eskom had not trained operators in a very long time.

[68] Nationa Academy of Nuclear Training Accreditation Certificate (Annexure BM

[69] Njobeni S *"Esskom's new recruits to get nuclear know how"* 10.06.2016 https://www.iol.co.za/business-report/companies/eskoms-new-recruits-to-get-nuclear-know-how-2032911 Date of use 24.02.2020.

118. I authorised the recruitment and training of 100 electrical engineering artisans to be trained as nuclear operators. The programme was also authorised by the Koeberg Nuclear Power Station Manager.[70]

119. I was not involved in their recruitment. Any CV's received directly by myself relating this programme were forwarded to Eskom's HR Department. The recruitment of these artisans was not a secret and was communicated to the public. The project was launched by the Minister of Public Enterprises.[71]

Public Protector's Report Relating to Cell Phone Records

120. The Public Protector released a report titled "State of Capture Report" dated 14 October 2016. The report contained a series of "observations" and did not make any findings.

121. Paragraphs 5.96 to paragraph 5.101 deal with my phone records and makes some "notes".

122. Although the Public Protector makes the "notes", she did not ask me for my side of the story as regards the phone calls, nor did she bring the phone records in her possession to my attention before she finalised the report as is required by the Public Protector's Act[72] and natural justice.

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[70] Approval of the Artisan Nuclear Operating Pipeline 12.04.2016 (Aneexure BM

[71] Njobeni S *"Esskom's new recruits to get nuclear know how"* 10.06.2016 https://www.iol.co.za/business-report/companies/eskoms-new-recruits-to-get-nuclear-know-how-2032911 Date of use 24.02.2020

[72] Public Protector's Act 23 of 1994 s 7(9)

123. Significantly, the Public Protector's report did not make any findings as regards her "notes" relating to my phone records. She has also not indicated any wrongdoing on my part.

124. Nevertheless, paragraph 5.97 refers to contact between myself and Mr Ajay Gupta on a number of occasions. The Public protector fails to provide any other details about the phone calls. She does not provide the phone numbers, confirmation that the numbers belonged to Mr Ajay Gupta, nor the dates and times when the phone calls were made. It is therefore difficult for me to determine the veracity of her claim in paragraph 5.97 of the report.

125. Similarly in paragraph 5.98, there are no details of the phone numbers or the dates and times of the phone calls. I can therefore not confirm or deny the veracity of the claims.

126. In paragraph 5.100 the Public Protector says that I can be placed in the Saxonwold area 19 times. That is all that is said. She does not provide context or even suggest what I may have been doing there. What I understand from enquiries made to a communication expert is that any user of a cell phone within the area of coverage of a cell phone tower (e.g. Lynnwood) will be recorded as being in the "area" of, say, Lynnwood. This includes a user who is in transit through the coverage area of that tower.

127. But more importantly, paragraph 5.99, which suggests the number of instances that I was purportedly in the Saxonwold area, only shows that I was there five times and not 19 times.

127.1. **05 August** when, according to the cell phone service provider's records, I was in the area between 09h17 and 09h41 and made one phone call and received nine others.

127.2. **17 August** when, according to the cell phone service provider's records, I made two phone calls while I was in transit in the area

127.3. **18 August** when, according to the cell phone service provider's records, I made one phone call while I was in transit in the area

127.4. **23 August** when, according to the cell phone service provider's records, I listened to my voice messages while in transit in the area.

127.5. **28 August** when, according to the cell phone service provider's records, I received two calls, listened to my voice messages and received one call while in transit in the area.

128. Paragraph 5.101 says that I had contact with Mr Atul Gupta. This is not true because the phone call from Mr Atul Gupta to myself was forwarded to my message box. There is no other record in my phone records that shows that I returned Mr Atul Gupta's call or that he ever tried to contact me again.

129. This is according to my cellular phone records which I have had thoroughly examined since the release of her report. An affidavit from an expert cellular phone analyst confirms the existence of these discrepancies.[73]

130. I would have raised these and other discrepancies had Ms Madonsela afforded me an opportunity to be heard.

[73] Affidavit by Mr Nico Smith (Annexure BM22).

E mail from Sahara Loans

131. The commission has forwarded to me an email from Sahara loans dated 27 June 2017. Apparently the email was sent to my Eskom email address. I was no longer at Eskom on the 27th of June 2017. I therefore did not receive the email.

132. Until it was sent to me by the commission, I was not aware of the existence of this email.

133. I have no idea as to who Sahara Loans is.

BRIAN MOLEFE 13.05.20

I certify that the deponent knows and understands the contents of the aforegoing Affidavit which was signed and attested to at the undermentioned address on this day of **FEBRUARY 2020**.

SUID-AFRIKAANSE POLISIEDIENS
SAPS LYTTELTON
2020 -05- 13
COMMUNITY SERVICES CENTRE
SOUTH AFRICAN POLICE SERVICE

7232711 - 1
CST

COMMISSIONER OF OATHS

SUBMISSION BY BOARD OF ESKOM HOLDINGS SOC LIMITED

(REGISTATION 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 (Escom) 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 mayquestion 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 (**t**en) 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 simil.ar 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 ran**d**) 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 mInisater ont eh 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 Eskoms 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 biliion 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 ciris 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 ompany 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 our press statements about the enquiry without the Boards approval.

7.28. In a meeting held on 19 March 2015 Mr Tsotsi acknowledged that he had appointed Mr Nick Linnel without proper processors 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 memebers were very unhappy about the fact he had a report purportedly drafted outside Eskom but had not produced such report. There were othr

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 Umsimbiihi 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 is 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 fudiciary 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 Pubic 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.

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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 inline 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

appointments. I would not have deviated from the usual process.

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.

MY RESPONSE TO THE TESTIMONY OF MR. ZOLA TSOTSI REGARDING THE APPOINTMENT OF ESKOM 2014 BOARD COMMITTEES

My Stance on Mr. Tsotsi's Testimony

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 There are a few things that are strange to me on this issue. It is for me curious that:

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

66 Above, I have discussed the country's load-shedding woes during late 2014. These woes spilled over to 2015 and I remember distinctly that we had load shedding even on the day of the opening of Parliament in January that year.

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.

<u>On Whether I know Mr. Salim Essa</u>

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.

ESKOM'S SPECIAL BOARD MEETING OF 9 MARCH 2015

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

the War Room distress.

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.

<u>As to Why I Did Not Keep Matona as the CEO for Eskom And Tsholofelo Molefe as the FD</u>

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.

<u>On the Denton's Report</u>

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**

Board was dealing with the suspended executives in accordance with a separate methodology."

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. Tsosti, 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

were unjustified excesses.

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 is 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. Tsosti 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"** a 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

<u>The Decision to Second Brian Molefe and Anoj Singh to The Eskom</u>

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

declaration at STELLENBOSCH on this the 19/08/2020.

COMMISSIONER OF OATHS

Full Names: M F SMITH
Designation: CAPT.
Business address:

SUID-AFRIKAANSE POLISIEDIENS
STASIE BEVELVOERDER
STELLENBOSCH
2020 -08- 19
STATION COMMANDER
STELLENBOSCH
SOUTH AFRICAN POLICE SERVICE

COMMISSION OF INQUIRY INTO STATE CAPTURE

LBSA1

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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[redacted]leb[redacted]law.co.za ; lebalasec[redacted]law.co.za ,

lchowe@justice.gov.za ; Pseleka[redacted]ustice.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:

LBSA 1.1

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

LBSA 2

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?

LBSA 2.4

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

LBSA 3

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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

LSSA 3.1

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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

LISH 3.2

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- 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.

LBSA 3.3

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

LBSA 3.4

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.

LISSA 3.5

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

LBSA 3.6

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.

LBSA 3.7

The challenge for the Board and Management is: How are you going to respond?

Your 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 your rise to these challenges.

Thank you for your attention.

COMMISSION OF INQUIRY INTO STATE CAPTURE

LBSA 3.8

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.

LBSA 3.9

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

LBSA 3.10

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

LBSA 4

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

LBSA 4.1

5.2. not being furnished with relevant annexures referred to in the portions of Mr. Thlakudi's statement that were made available to me.

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 **"LB 2"**.

11. I have, in my Rule 3 application, regarding the statements of Ms. Marie 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 **"LB 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 **W8**, 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.

LSSA 4.2

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 2016 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**

LBSA 43

Denel Board decision and they were jointly looking for ways to get the Minister of Finance and National Treasury to come around to the DPE and Denel position."

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 Me

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 stafied 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 ox [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 BOARD

Rotation of the Board Members

LBSM 4.4

31. I am guided by the notion that inasfar 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 MJVR 8A of Ms. van Rensburg' 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

LBSA 4.5

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

LBSA 4.6

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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LISSA 4.7

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

LBSA 4.8

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.

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LBSA 4.9

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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LBSA 4.10

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 Inveigling 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

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July 2016. I attach a copy of this letter as annexure "LB 8".

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

LBSA 4.1

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.

Ad 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 3 3 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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LBSA 4.13

2015 Board appointment process.

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

LBSA 4.1

LYNETTE BROWN

CAPE TOWN

3 MAY 2019

SUID-AFRIKAANSE POLISIEDIENS
STASIEKOMMISSARIS
STELLENBOSCH
GEMEENSKAPDIENSSENTRUM
2019 -05- 03
COMMUNITY SERVICE CENTRE
STELLENBOSCH
STATION COMMISSIONER
SOUTH AFRICAN POLICE SERVICE

COMMISSION OF INQUIRY INTO STATE CAPTURE

25.5.

U19-BSN-0662

LBSA 5

Department of Public Enterprises

Final Report

Forensic Investigation into various allegations at DPE

Tender Number NT 022-2016

RFQ 026-2017

July 2019

COMMISSION OF INQUIRY INTO STATE CAPTURE

FUNDUDZI

U19-BSN-0663

LBSA 5.1

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*

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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;

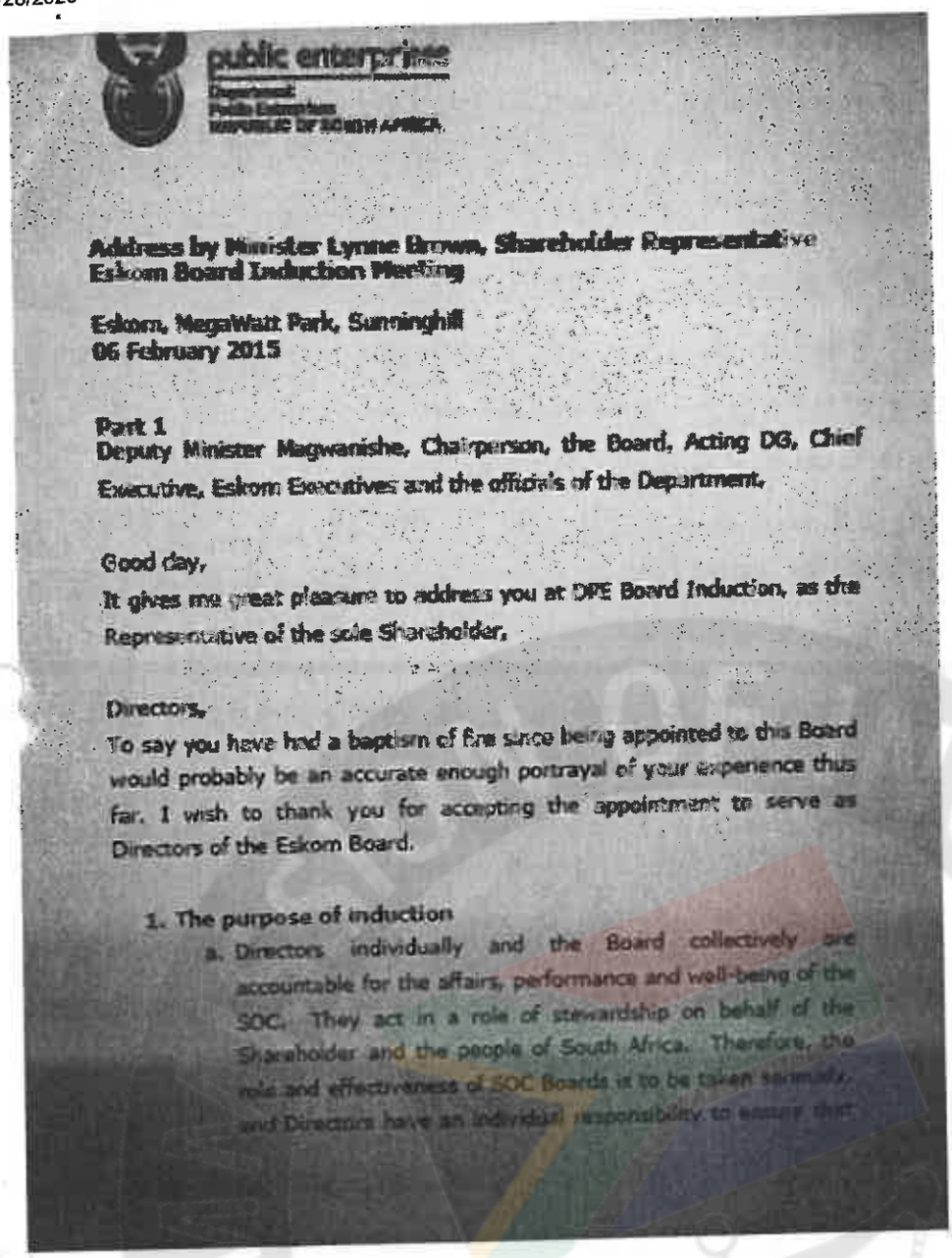
14.8.28.5. Who provided her with the email address infoportal1@zoho.com.

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

LBSA 6



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

SOC INQUIRY INTO STATE CAPTURE

LBSA 6.1

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

CONSTITUTIONAL INQUIRY INTO STATE CAPTURE

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 MYPD3 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.

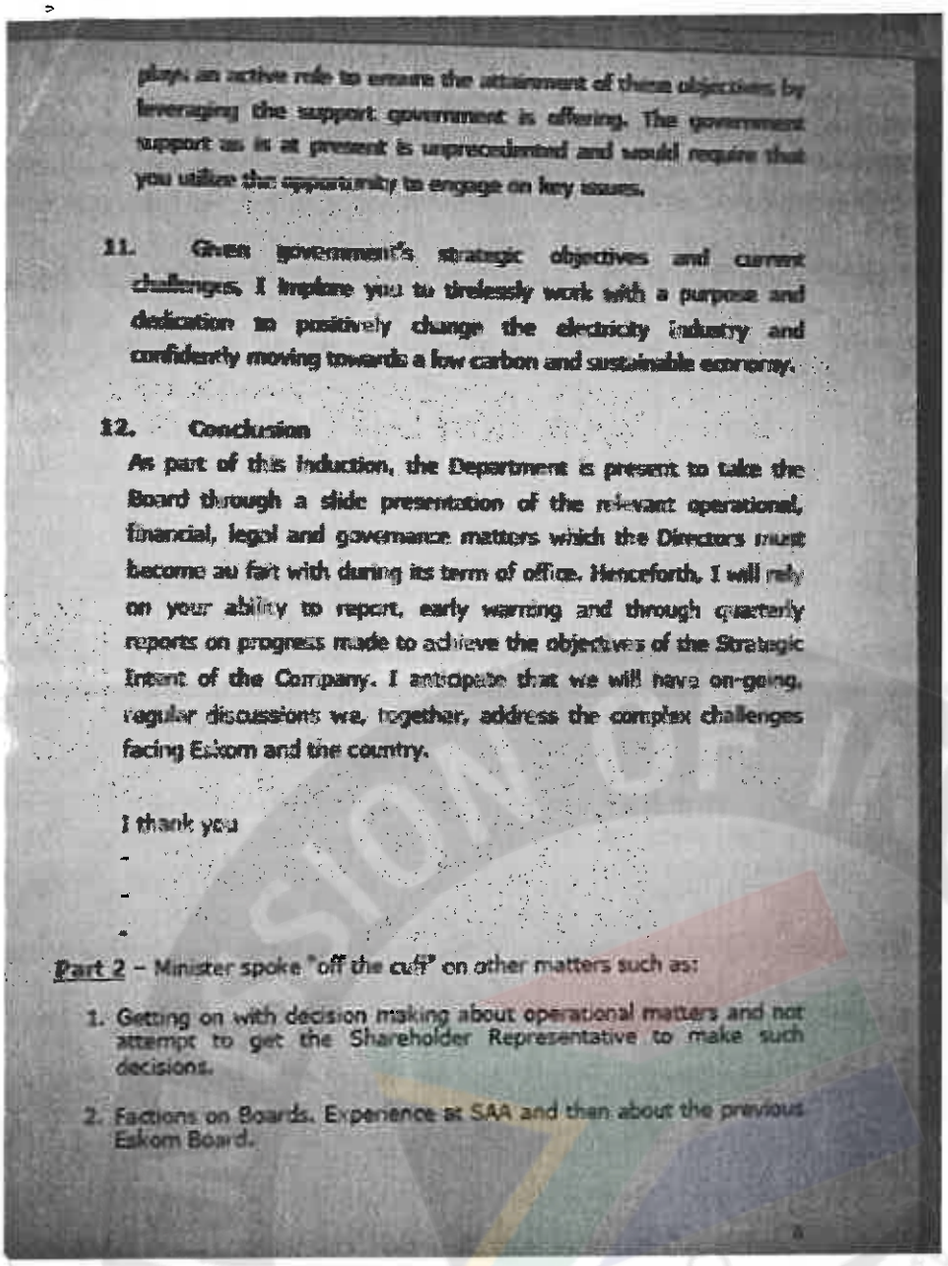
6. Consider the establishment of a robust Centre of Excellence to drive innovation, research and the deployment of new and cutting-edge technologies to address issues of competitiveness, growing demand and cost savings.

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



plays 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 utilise 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.

LBSA 6.6

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/

COMMISSION OF INQUIRY INTO STATE CAPTURE

LBSA 7

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 Westerford
240 Main Road Rondebosch
7701, Cape Town
South Africa

COMMISSION OF INQUIRY INTO STATE CAPTURE

LBSA 7.1

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.

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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:

LBSA 7.3

- 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

LBSA 7.4

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**

LB SA 8

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

DECISION MEMORANDUM

TO : MS. LYNNE BROWN, MP

MINISTER

FROM : MR. MELANCHTON MAKOBE

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"**.

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10:20

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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 Ziphozethu 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"**.

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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 Leonardi 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.

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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.

LBSA 8.5

CABINET MEMORANDA NOS 3, 4 AND 5 OF 2016: THE APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO THE BOARDS OF SA EXPRESS, DENEL AND ESKOM, RESPECTIVELY

Memorandum prepared by:

LAWRENCE NEVONDO
ASD: GOVERNANCE
DATE: 11/05/2015

REVIEWED AND SUPPORTED:

ORCILLA RUTHNAM
CD: GOVERNANCE
DATE: 11/05/2015

MELANCHTON MAKOBE
ADDG: LGR
DATE: 11/05/2015

MS. MATSIETSI MONTOLO
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 MAGWANISHE, MP
DATE: 11/05/2015

NOTED / COMMENTS

ORIGINAL

COMBINED SUMMONS

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 35689/20

In the matter between:

REGISTRAR OF THE HIGH COURT OF
SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2020 -08- 03
JUDGE'S SECRETARY
REGTERS KLERK
GRIFFIER VAN DIE HOË HOF VAN
SUID AFRIKA GAUTENG AFDELING, PRETORIA

ESKOM HOLDINGS SOC LIMITED	*First Plaintiff*
SPECIAL INVESTIGATING UNIT	*Second Plaintiff*

and

BRIAN MOLEFE	*First Defendant*
ANOJ SINGH	*Second Defendant*
MATSHELA MOSES KOKO	*Third Defendant*
SUZANNE MARGARET DANIELS	*Fourth Defendant*
MOSEBENZI ZWANE	*Fifth Defendant*
BALDWIN "BEN" NGUBANE	*Sixth Defendant*
CHWAYITA MABUDE	*Seventh Defendant*
MARK VIVIAN PAMENSKY	*Eighth Defendant*

RAJESH "TONY" GUPTA *Ninth Defendant*

ATUL GUPTA *Tenth Defendant*

AJAY GUPTA *Eleventh Defendant*

SALIM AZIZ ESSA *Twelfth Defendant*

To the Sheriff or his/her Deputy:

INFORM:

BRIAN MOLEFE, an adult male and former Eskom Group Chief Executive currently residing at 759 Camelford Road, Cornwall Hill Estate, Irene.

(hereinafter referred to as the **FIRST DEFENDANT**)

ANOJ SINGH, an adult male and former Eskom Chief Financial Officer currently residing at 21 Silversands Avenue, Wendywood, Sandton.

(hereinafter referred to as the **SECOND DEFENDANT**)

MATSHELA MOSES KOKO, an adult male and former Eskom Interim Chief Executive and Group Executive: Generation currently residing at 683 Saranton Estate, Cedar Avenue West, Fourways.

(hereinafter referred to as the **THIRD DEFENDANT**)

SUZANNE MARGARET DANIELS, an adult female and former Eskom Senior

General Manager: Legal and Compliance currently residing at 467 Nicholson Street, Brooklyn, Pretoria.

(hereinafter referred to as the **FOURTH DEFENDANT**)

MOSEBENZI ZWANE, an adult male politician with his principal place of business at the National Assembly, Parliament Street, Cape Town.

(hereinafter referred to as the **FIFTH DEFENDANT**)

BALDWIN "BEN" NGUBANE, an adult male and former Eskom Board Chairperson currently residing at 32 Bond Place, Midstream Estate, Midrand.

(hereinafter referred to as the **SIXTH DEFENDANT**)

CHWAYITA MABUDE, an adult businessperson and former Eskom Board member currently residing at 304 Jubilee Drive, Blackheath, Johannesburg.

(hereinafter referred to as the **SEVENTH DEFENDANT**)

MARK VIVIAN PAMENSKY, an adult male businessman and former Eskom Board member currently residing at Unit 42, the Regency, Daisy Street, Sandton.

(hereinafter referred to as the **EIGHTH DEFENDANT**)

RAJESH "TONY" GUPTA, an adult male fugitive from justice in South Africa who is presently residing in Dubai.

(hereinafter referred to as the **NINTH DEFENDANT**)

ATUL GUPTA, an adult male fugitive from justice in South Africa who is presently

residing in Dubai.

(hereinafter referred to as the **TENTH DEFENDANT**)

AJAY GUPTA, an adult male fugitive from justice in South Africa who is presently residing in Dubai.

(hereinafter referred to as the **ELEVENTH DEFENDANT**)

SALIM AZIZ ESSA, an adult male fugitive from justice in South Africa who is presently residing in Dubai.

(hereinafter referred to as the **TWELFTH DEFENDANT**)

THAT -

ESKOM HOLDINGS SOC LIMITED, a state-owned company incorporated in accordance with the laws of South Africa and having its principal place of business at Megawatt Park, 1 Maxwell Drive, Sunninghill, Johannesburg; and

SPECIAL INVESTIGATING UNIT, an independent statutory body established in terms of section 2 of the Special Investigating Units and Special Tribunals Act 74 of 1996 by Proclamation No. R 118 of July 2001, with its principal place of business at Rentmeester Building, 74 Watermeyer Street, Meyerspark, Pretoria.

hereby institute action against the First to Twelfth Defendants **("the Defendants")** in which action the Plaintiff claims the relief and, on the grounds set out in the Particulars of Claim annexed hereto.

INFORM the Defendants further that if the Defendants dispute the claim and wish

to defend the action, the Defendants shall -

1. Within **TEN (10)** days of the service upon the Defendants of this summons, file with the Registrar of this Court at Paul Kruger & Madiba St, Pretoria Central, Pretoria, notice of the Defendants' intention to defend, and serve a copy thereof on the Plaintiffs' attorneys in which notice shall be given of Defendants' full residential and business address and an address (not being a post office box or *poste restante*) referred to in Rule 19 (3) for the service upon Defendants of all the notices and documents in the action;

2. Thereafter, and within **TWENTY (20)** days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon Plaintiffs' attorneys a Plea, Exception or Notice to Strike Out, with or without a counterclaim.

INFORM the Defendants further that if the Defendants fail to file and service notice as aforesaid, Judgment as claimed may be given against the Defendants without further notice to the Defendants, or if, having filed and served such notice the Defendants fail to plead, except, make application to strike out or counterclaim, Judgment may be given against the Defendants.

AND immediately thereafter serve on the Defendants a copy of this summons and thereafter return the same to the Registrar with whatsoever you have done thereupon.

DATED at **WENDYWOOD** on this **2ND** day of **AUGUST 2020**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001
2020 -08- 03
JUDGE'S SECRETARY
REGTERS KLERK
GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

REGISTRAR OF THE ABOVE COURT, PRETORIA

MICHAEL MOTSOENENG BILL

Plaintiffs' Attorney with right of appearance

in terms of section 4 (2) of the Right of

Appearance Act, 1995.

MOTSOENENG BILL ATTORNEYS INC

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C/O MANAMELA MAROBELA AND ASSOCIATES INC

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Tel: 012 432 0060

Fax: 012 342 2509

ANNEXURE

PARTICULARS OF CLAIM

THE PARTIES

1. The first plaintiff is Eskom SOC Limited ("Eskom"), a state-owned company incorporated in accordance with the laws of South Africa and having its principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg.

2. The second plaintiff is the Special Investigating Unit ("SIU"), an independent statutory body established in terms of section 2 of the Special Investigating Units and Special Tribunals Act 74 of 1996 by Proclamation No. R. 118 of 31 July 2001, with its principal place of business at Rentmeester Building, 74 Watermeyer Street, Meyerspark, Pretoria.

   2.1. The SIU is a juristic person that was established for the purpose of *inter alia* investigating serious malpractices or maladministration of State Institutions, State assets and public money and any conduct which may seriously harm the interests of the public as well as instituting and conducting civil proceedings in any court of law or a Special Tribunal in its own name or on behalf of State institutions.

   2.2. The SIU institutes the present action pursuant to the investigation conducted by it under Proclamation R11 of 6 April 2018, read with Proclamation R3 of 31 January 2020.

3. The first defendant is Brian Molefe ("Molefe"), an adult male and former Eskom Group Chief Executive currently residing at 759 Camelford Road, Cornwall Hill Estate, Irene.

   3.1. Molefe was seconded from Transnet to Eskom on 20 April 2015 and held the position of Acting Group Chief Executive from this date until he was appointed

Group Chief Executive on 25 September 2015. Molefe resigned from Eskom on 31 December 2016.

3.2. Molefe was previously the Group Chief Executive for Transnet SOC Limited ("Transnet") from 17 February 2011 until April 2015.

4. The second defendant is Anoj Singh ("Singh"), an adult male and former Eskom Chief Financial Officer ("CFO") currently residing at 21 Silversands Avenue, Wendywood, Sandton.

4.1. Singh was seconded to Eskom from Transnet on 1 August 2015 where he became Eskom's Acting CFO. He was officially appointed to the position of Eskom CFO on 15 September 2015 and remained in the position until his resignation on 22 January 2018.

4.2. Prior to joining Eskom, Singh was the Group CFO for Transnet, which position he held from 6 March 2009 until 31 July 2015.

5. The third defendant is Matshela Moses Koko ("Koko"), an adult male former Eskom Interim Chief Executive and Group Executive: Generation currently residing at 683 Saranton Estate, Cedar Avenue West, Fourways. Koko held the following positions at Eskom:

5.1. Acting Group Executive: Technology and Commercial – April 2014 to November 2014;

5.2. Group Executive: Technology and Commercial – 1 December 2014 to 31 October 2015;

5.3. Group Executive: Generation – 1 November 2015 to 15 January 2018; and

5.4. Interim Group Chief Executive – 1 December 2016 to 14 May 2017.

6. The fourth defendant is Suzanne Margaret Daniels ("Daniels"), an adult female and former Eskom Senior General Manager: Legal and Compliance currently residing at 467 Nicholson Street, Brooklyn, Pretoria.

6.1. Daniels held the position of Senior General Manager: Company Secretariat at Eskom from 2016 to 31 July 2017.

6.2. She was thereafter appointed to the position of Senior General Manager: Legal and Compliance which position she held from 1 August 2017 until her summary dismissal on 20 July 2018 following a disciplinary process.

7. The fifth defendant is Mosebenzi Zwane ("Zwane") an adult male politician.

7.1. Zwane is currently a Member of Parliament with his principal place of business at the National Assembly, Parliament Street, Cape Town.

7.2. Zwane was Minister of Mineral Resources from 23 September 2015 until 26 February 2018

7.3. Prior to 23 September 2015, Zwane was a Member of the Executive Council ("MEC") of the Free State Provincial Government and held the following portfolios:

7.3.1. Member of the Free State Provincial Legislature;

7.3.2. MEC for Agriculture and Rural Development; and

7.3.3. MEC for Economic Development, Tourism and Environmental.

8. The sixth defendant is Baldwin "Ben" Ngubane ("Ngubane"), an adult businessperson and former chairperson of the Eskom Board of Directors ("Eskom Board") currently residing at 32 Bond Place, Midstream Estate, Midrand.

8.1. Ngubane was appointed to the Eskom Board on 11 December 2014 and became acting chairperson of the Eskom Board on 30 March 2015.

8.2. On 1 October 2015, Ngubane was appointed chairperson of the Eskom Board and resigned from the position in June 2017.

9. The seventh defendant is Chwayita Mabude ("Mabude"), an adult businessperson and former member of the Eskom Board currently residing at 304 Jubilee Drive, Blackheath, Johannesburg.

9.1. Mabude served on the Eskom Board from 28 June 2011 until 23 June 2017.

10. The eighth defendant is Mark Vivian Pamensky ("Pamensky") an adult male businessman and former Eskom Board member currently residing at Unit 42, the Regency, Daisy Street, Sandton.

10.1. For the period 11 December 2014 to 16 November 2016, Pamensky served on the Eskom Board as a non-executive Director.

10.2. Whilst on the Eskom Board, Pamensky sat on the Investment and Risk Committee from December 2014 to July 2016.

10.3. He also sat on the Audit and Risk Committee from July 2016 to November 2016.

10.4. During Pamensky's tenure on the Eskom Board, he also served as a director on the boards of, or had business interests in, the following entities:

10.4.1. Oakbay Resources and Energy Ltd ("Oakbay") (for the period September 2014 to May 2017);

10.4.2. Shiva Uranium (Pty) Ltd (for the period 27 November 2015 to 7 July 2016); and

10.4.3. On or more of the Trillian group of companies ("Trillian"), namely Trillian Capital Partners (Pty) Ltd, Trillian Asset Management (Pty) Ltd, Trillian Financial Advisory (Pty) Ltd, Trillian Management Consulting (Pty) Ltd, Trillian Securities Ltd and Trillian Properties (Pty) Ltd (later renamed Trillian Shared Services (Pty) Ltd).

11. The ninth defendant is Rajesh "Tony" Gupta ("Tony Gupta").

11.1. Tony Gupta is an adult male fugitive from justice in South Africa who is presently residing in Dubai.

11.2. An application will be made to attach assets of Tony Gupta to confirm the jurisdiction of this Court over him and to authorise service of this summons on him by edictal citation.

12. The tenth defendant is Atul Gupta ("Atul Gupta").

12.1. Atul Gupta is an adult male fugitive from justice in South Africa who is presently residing in Dubai.

12.2. An application will be made to attach assets of Atul Gupta to confirm the jurisdiction of this Court over him and to authorise service of this summons on him by edictal citation.

13. The eleventh defendant is Ajay Gupta ("Ajay Gupta")

13.1. Ajay Gupta is an adult male fugitive from justice in South Africa who is presently residing in Dubai.

13.2. An application will be made to attach assets of Ajay Gupta to confirm the jurisdiction of this Court over him and to authorise service of this summons on him by edictal citation.

14. Tony, Atul and Ajay Gupta are collectively referred to as the Gupta Brothers in these particulars of claim.

15. The twelfth defendant is Salim Aziz Essa ("Essa").

15.1. Essa is an adult male fugitive from justice in South Africa who is presently residing in Dubai.

15.2. An application will be made to attach assets of Essa to confirm the jurisdiction of this Court over him and to authorise service of this summons on him by edictal citation.

THE CONSPIRACY

Introduction and Background

16. Over the period 2012 to 2018, the defendants conspired together with other persons, being Ashok Narayan ("Narayan"), Ashu Chawla ("Chawla"), Sanjay Grover ("Grover"), Iqbal Meer Sharma ("Sharma"), Eric Wood ("Wood"), Niven Pillay ("Pillay"), Kuben Moodley

("Moodley"), Malcolm Mabaso ("Mabaso"), Joel Raphela ("Raphela"), Clive Angel ("Angel"), Regiments Capital (Pty) Ltd ("Regiments"), Trillian and Albatime (Pty) Ltd ("Albatime").

17. The object of the conspiracy was the corrupt, alternatively irregular, diversion of resources from organs of state in South Africa, and, in particular, South African state-owned enterprises, improperly to benefit the Gupta brothers, their family ("the Gupta family") and entities controlled by the Gupta brothers and/or Essa ("Gupta entities").

18. Pursuant to the conspiracy, the following acts were performed by the defendants and other conspirators unknown to Eskom:

The Diversion of Public Funds of the Free State Government to Gupta entities

Zwane, Mabude, Essa, Narayan and Innova

18.1. In the first half of 2014, Essa, Narayan and Zwane procured that Mabude's company, Innova Management Services (Pty) Ltd ("Innova") was awarded a contract by the Free State Government so that she could use it as a vehicle to launder Free State public funds for the benefit of the Gupta family.

18.2. From amounts paid to Innova out of Free State public funds, Mabude used Innova as a vehicle to launder the following amounts on to the Gupta entity, Homix (Pty) Ltd ("Homix"):

18.2.1. On or about 28 March 2014, Innova transferred R2 679 000.00 to Homix;

18.2.2. On or about 16 May 2014, Innova transferred R1 881 000.00 to Homix; and

18.2.3. On or about 27 June 2014, Innova transferred R1 824 000.00 to Homix.

18.3. On or about 12 September 2012, Zwane, in his capacity as Member of the Executive Council for Agriculture, authorised the conclusion of a 99-year lease agreement between the Free State Department of Agriculture and the Gupta entity, Estina (Pty) Ltd ("Estina"), a company that had ostensibly been engaged by the Free State Department of Agriculture to conduct a dairy farm near Vrede, but which served to channel public funds from the Free State Government to entities controlled by the Gupta family.

Zwane, Tony Gupta, Narayan, Chawla and Estina

18.4. In or about October 2012, Tony Gupta, Narayan and Chawla arranged for Zwane and 24 members of his church choir to be taken on a week-long tour of India at the expense of the Gupta brothers.

18.5. Over the period June 2012 to May 2016, Estina received R280 202 700 in public funds of the Free State Government from which it laundered US$ 14 471 360.98 to the Dubai based Gupta entity, Gateway Limited ("Gateway") as follows:

18.5.1. On 12 June 2012, the Free State Department of Agriculture paid Estina R30 million;

18.5.2. On 18 April 2013, the Free State Department of Agriculture paid Estina R34.95 million;

18.5.3. On 26 April 2013, the Free State Department of Agriculture paid Estina R30 million;

18.5.4. On 3 May 2013, the Free State Department of Agriculture paid Estina R19.05 million;

18.5.5. On 7 August 2013, Estina paid Gateway US$2 million;

18.5.6. On 4 September 2013, Estina paid Gateway limited US$3 million;

18.5.7. On 23 September 2013, Estina paid Gateway US$3348 800;

18.5.8. On 20 December 2013, the Free State Department of Agriculture paid Estina R29 950 000;

18.5.9. On 25 July 2014, the Free State Government paid Estina R30m;

18.5.10. On 8 May 2015, the Free State Government paid Estina R60m;

18.5.11. On 7 August 2015, Estina paid Gateway US$702 560.98;

18.5.12. On 14 August 2015, Estina paid Gateway US$2.8m;

18.5.13. On 5 May 2016, the Free State Government paid Estina R46 252 652;

18.5.14. On 9 May 2016, Estina paid Gateway US$300 000;

18.5.15. On 11 May 2016, Estina paid Gateway US$300 000;

18.5.16. On 17 May 2016, Estina paid Gateway US$1.9m; and

18.5.17. On 18 May 2016, Estina paid Gateway US$120 000.

Molefe, Singh, Essa, Regiments and the China South Rail, China North Rail kickbacks

18.6. On dates unknown to Eskom, the Gupta brothers arranged that the Chinese locomotive manufacturers, China South Rail ("CSR") and China North Rail

("CNR"), would pay Gupta entities kickbacks of 21% on the purchase price paid by Transnet in respect of locomotives procured from CSR or CNR.

18.7. CSR and CNR now form part of the same group under the Chinese registered holding company CRRC Corporation Limited ("CRRC").

18.8. Annexure **"1"** is a schedule of payments aggregating to over $145 million made by CSR, CNR, CRRC and related companies to two Gupta entities registered in Hong Kong, being Tequesta Group Limited ("Tequesta") and Regiments Asia Limited ("Regiments Asia"). The payments in question were made into HSBC Hong Kong accounts of Tequesta and Regiments Asia, which bank accounts were opened by Essa.

18.9. In or around August 2012, Essa, Moodley, Pillay and Wood agreed that –

18.9.1. Essa would procure the appointment of Regiments

(a) as supplier development partner to McKinsey and Company ("McKinsey") in its contracts with Transnet, and

(b) as primary contractor appointed by Denel SOC Limited ("Denel") to raise capital for it, and

18.9.2. Regiments would pay

(a) Essa, or a company nominated by him, 50% of all amounts paid to Regiments by Transnet or Denel in return for procuring the appointments of Regiments that gave rise to these payments, and

(b) Albatime, which was wholly owned by Moodley, 5% of all amounts paid to Regiments by Transnet or Denel in return for introducing Regiments to Denel.

18.10. Vikas Sagar ("Sagar") of McKinsey colluded with Essa to procure McKinsey's consent to the inclusion of Regiments as a supplier development partner to McKinsey in its contracts with Transnet.

18.11. In or about October 2012, Singh recommended to Molefe the appointment of a consortium led by McKinsey, and in which a 14% interest was held by Regiments, to advise Transnet in relation to the procurement of 1064 locomotives by Transnet.

18.12. Molefe approved Singh's recommendation in or about November 2012.

18.13. Over the period July to October 2013, Tony Gupta and Essa facilitated an attempt by Sharma (who was then Chair of the Transnet Board Acquisition and Disposals Committee) and Ngubane to bribe officials in the Central African Republic to award oil rights to Gade Oil and Gas, a company in which Ngubane and Sharma had an interest.

18.14. In or about October 2013, Sharma prevented Transnet from procuring 100 electric locomotives from the Japanese Mitsui Corporation, with the intention that by so doing, they would facilitate the award of the contract for these 100 electric locomotives to CSR.

18.15. On or about 24 January 2014, Sharma, Singh and Molefe persuaded the Transnet Board to approve the award of the 100 electric locomotives to CSR on a confinement basis without any competitive bidding.

18.16. In or about January 2014, with a view to providing for an award of contracts to CSR and CNR, Molefe, Singh and Sharma persuaded the Transnet Board –

18.16.1. to split the award of the electric locomotives to two bidders and to split the award of the diesel locomotives to two bidders, and

18.16.2. to authorise negotiations with four shortlisted bidders on the 1064 locomotives tender, two of which were CSR (an electric locomotive manufacturer) and CNR (a diesel locomotive manufacturer).

18.17. In February 2014, Regiments replaced McKinsey as transaction advisor to Transnet in relation to the procurement of 1064 locomotives by Transnet.

18.18. In the course of February and March 2014, under the advice of Regiments, the aggregate price for the 1064 locomotives increased from R38.6 billion in the approved business case which the Transnet Board had adopted in April 2013 to over R50 billion.

18.19. Regiments justified this increase on the basis that it was necessary to provide for inflation and hedging costs which had not been accommodated in the business case approved by the Transnet Board, but to the knowledge of Sharma, Molefe, Singh, Regiments, Wood and Pillay, this justification was false and calculated to inflate the purchase price paid by Transnet by at least R9 billion.

18.20. On or about 17 March 2014, Molefe, on behalf of Transnet signed contracts with CSR and CNR for the purchase of 359 electric locomotives and 232 diesel locomotives respectively.

Molefe, Singh, Regiments, Albatime, Wood, Narayan, Essa and Moodley and the Gupta Regiments Laundry Payments

18.21. In or about October 2013, Essa, Narayan, Singh and Molefe procured the appointment of the McKinsey Regiments consortium on a confinement basis without any competitive bidding to advise Transnet on capital optimization.

18.22. Over the period March to April 2014, Essa, Narayan, Singh and Molefe procured the appointment of the McKinsey Regiments consortium to four new Transnet advisory contracts on a confinement basis without any competitive bidding:

18.22.1. an advisory contract for services in relation to "maximization of the coal line", also called the "breakthrough" project;

18.22.2. an advisory contract for services in support of the Transnet Manganese execution programme director;

18.22.3. an advisory contract for services in relation to the Transnet NMPP pipeline programme; and

18.22.4. an advisory contract for services in relation to the renegotiation of the Kumba Iron Ore Contract.

18.23. In respect of the period March to December 2014,

18.23.1. Regiments invoiced Transnet for aggregate amounts of R206 617 357.10 in respect of these and other contracts awarded to it through the intervention of Essa and Narayan;

18.23.2. Essa and Narayan invoiced Regiments on behalf of the following Gupta entities for kickbacks in respect of these Transnet payments to Regiments:

(a) Homix invoiced Regiments an aggregate amount of R21 910 560; and

(b) Chivita Trading (Pty) Ltd ("Chivita") invoiced Regiments an aggregate amount of R96 125 481.90.

18.23.3. Moodley invoiced Regiments on behalf of Albatime in an aggregate amount of R7 114 302.21 for introducing Regiments to Essa and thus indirectly facilitating the Transnet payments to Regiments.

18.24. A spreadsheet identifying the individual kickbacks from Regiments to Homix, Chivita and Albatime and the relevant invoices from Regiments to Transnet to which these kickbacks related is attached as Annexure **"2"**.

18.25. Singh authorised payment by Transnet to Regiments of the invoices listed in Annexure **"2"**, despite the fact that he was aware of the kickbacks to Homix, Chivita and Albatime described in Annexure **"2"**.

18.26. Over the period May 2014 to July 2015,

18.26.1. Essa, Narayan, Singh and Molefe procured the extension of the appointments of Regiments by Transnet, which appointments have been described in paragraphs 18.17, 18.21 and 18.22 above;

18.26.2. Essa, Narayan, Singh and Molefe procured the appointment of Regiments by Transnet to additional contracts as reflected in Annexure **"3"** hereto; and

18.26.3. Essa, Narayan and executives of Denel unknown to the plaintiffs procured the appointment of Regiments to advise Denel on capital raising.

18.27. Over the period March 2015 to February 2016

18.27.1. Regiments Capital were paid an aggregate amount of R429 044 942.02 by Transnet and Denel as described in the column headed "Movement" in Annexure **"3"**,

18.27.2. From the aggregate amount of R429 044 942.02, Regiments Capital paid aggregate amounts of R274 154 718.11 to Albatime and Gupta entities identified by Essa or Narayan as described in the column headed "BD Partners" in Annexure **"3"**.

The Trip by Zwane with Essa and Tony Gupta in 2014 to India, Dubai and Zurich

18.28. On 13 September 2014, Zwane flew first class to Delhi, India where he stayed with Essa and Tony Gupta at the Oberoi Hotel from 14 to 16 September 2014.

18.29. On 16 September 2014, Zwane, Essa and Tony Gupta flew first class from Delhi to Dubai.

18.30. On 17 September 2014 Zwane, Essa and Tony Gupta flew first class from Dubai to Zurich where they stayed at the Baur au Lac Hotel until 19 September 2014.

18.31. On 19 September 2014, Zwane flew first class back from Zurich to Johannesburg via Dubai, arriving in Johannesburg on 20 September 2014.

18.32. Chawla, alternatively Chawla and Grover, arranged the flights and accommodation for Zwane on his trip to Delhi, Dubai and Zurich, and the Gupta entity, Sahara Systems (Pty) Ltd ("Sahara"), alternatively another Gupta entity or entities unknown to Eskom, paid for all of Zwane's flights and travel expenses on this trip.

The Travel by Singh and Koko to the Oberoi Hotel in Dubai

18.33. Sahara, alternatively another Gupta entity or entities unknown to Eskom, paid, in whole or in part, for the following trips of Singh and Koko to the Oberoi Hotel in Dubai:

18.33.1. a trip by Singh on or around 1 May 2014;

18.33.2. a trip by Singh on or around 6 to 9 June 2014;

18.33.3. a trip by Singh originally booked for 7 to 12 August 2014 and subsequently postponed to dates later in August 2014;

18.33.4. a trip by Singh from 7 to 9 November 2014;

18.33.5. a trip by Singh from 24 to 26 February 2015;

18.33.6. a trip by Singh from 12 to 15 June 2015;

18.33.7. a trip by Singh from 17 to 24 December 2015; and

18.33.8. a trip by Koko and his family from 4 to 5 January 2016.

18.34. Essa arranged United Arab Emirates visas for Koko and his family in respect of the trip to Dubai in January 2016.

18.35. The other trips described in paragraph 18.33 above, and payment therefor, were arranged by Chawla, alternatively Grover, alternatively Essa.

The Leaking of Confidential Eskom Documents to Essa by Koko, Daniels and Ngubane

18.36. Over the period July 2015 to June 2016, Ngubane, Daniels and Koko leaked confidential Eskom documents to Essa and allowed Essa secretly to influence Eskom Board decisions, more particularly:

18.36.1. On 20 July 2015, Koko leaked to Essa an Eskom document entitled "Internal Consulting Directive2.pdf" which was Eskom's internal directive of July 2014 on how it was to implement a National Treasury Instruction in relation to Cost Containment specifically with regards to the engagement of consultants;

18.36.2. On 20 July 2015, Koko leaked to Essa an Eskom document entitled "exco resolution.pdf" which was a round robin resolution adopted by the Eskom Board on 5 March 2014 relating to the engagement of McKinsey on the Top Engineers Programme;

18.36.3. On 20 July 2015, Koko leaked to Essa an Eskom document entitled "top-engineers-2.pdf" which contained a summary of approval conditions agreed to by Singh and Koko on 26 June 2015 in relation to the Eskom Top Engineers Development Program which was a program in which McKinsey had been involved at Eskom;

18.36.4. On 8 August 2015, Koko leaked to Essa an Eskom document with the title "On-line Vending.pdf" which was a submission in relation to on-line vending that was due to be placed before the Eskom Board on 18 August 2018. Koko's covering email to Essa stated: "*We did not finish our discussions about this transaction.*";

18.36.5. On 21 September 2015, Koko leaked to Essa an Eskom document entitled "Disciplinary Intention to suspend PED 31 08 2015 SNP.pdf". This document related to Koko's suspension of one of the Eskom employees responsible for coal tests that had revealed that the Gupta entity, Tegeta Resources and Exploration (Pty) Ltd ("Tegeta") was delivering to Eskom coal from the Brakfontein Colliery that failed to meet the specifications required in terms of Eskom's Coal Supply Agreement ("CSA") with Tegeta at Brakfontein;

18.36.6. On 28 September 2015, Essa emailed Ngubane a draft of an urgent request to be sent to Eskom Board members to adopt, by round robin, a resolution terminating Eskom's contact with the Mail and Guardian, City Press and Sunday Times;

18.36.7. Ngubane immediately forwarded to Daniels, Essa's email with the draft documents attached and Daniels returned a revised copy of the draft resolution less than an hour later;

18.36.8. On 30 September 2015, Koko leaked to Essa a photographic copy of a letter that Ngubane had written to the then Minister of Public Enterprises, Lynne Brown, relating to Eskom's suspension of contact with the Mail and Guardian, City Press and Sunday Times;

18.36.9. On 4 November 2015, Koko leaked to Essa a copy of a letter from Just Coal (Pty) Ltd ("Just Coal"), dated 30 October 2015, complaining of Eskom's termination of CSA 4600057172 with Just Coal. The significance of this email is addressed in paragraphs 42 to 43 below.

18.36.10. On 5 November 2015, Koko leaked to Essa a privileged legal opinion that Eskom had received on its inability to have the business rescue practitioners removed;

18.36.11. On 14 November 2015, Koko leaked to Essa an Eskom document entitled "d3.docx.pdf" which was a document reviewing Eskom's loadshedding position;

18.36.12. On 25 November 2015, Koko leaked to Eskom a spreadsheet with the self-explanatory title "Total Cost Plus Mine Investments by Eskom (Future fuel).xslx". Koko's covering email to Essa stated, "*give the boss please.*"; and

18.36.13. On 11 June 2016, Essa emailed Ngubane a draft statement to be issued by him as Chairperson of the Eskom Board, in response to a Carte Blanche television programme critical of Eskom's dealings in relation to the Tegeta Optimum Coal Holdings (Pty) Ltd ("OCH") transaction. Following receipt of Essa's draft,

(a) Ngubane arranged that Essa's draft was circulated to Eskom Board members through Daniels for their comments;

(b) Eskom Board members, including Mabude, sent through their comments and Daniels circulated a revised draft; and

(c) Essa then wrote to Daniels requiring a further change and stating, "*I am then happy that we issue asap*".

Pamensky's Conflicted Dealings with Gupta Entities while he was an Eskom Board Member

18.37. On or around 18 September 2015, Pamensky addressed an email to Atul Gupta and others recommending that Gupta entities involved in mining *"do a deal with Eskom on the coal plus mines"* and suggesting that he wanted to share *"some good thoughts on these assets"*.

18.38. On or around 22 November 2015, Pamensky addressed an email to Atul Gupta advising him that the Gupta entity purchasing Optimum Coal Mine (Pty) Ltd ("OCM") should insist that Eskom withdraws its R2 billion penalties claim against OCM.

18.39. On or around 25 November 2015, Pamensky addressed an email to Atul Gupta asking to discuss *"concept on the potential law suit from Eskom to target Co"*.

THE CONSPIRACY AND EVENTS DIRECTLY CAUSING LOSSES TO ESKOM

19. In the section that follows in paragraphs 20 to 128 below, we describe events that led to Eskom suffering losses. All acts performed by the defendants or co-conspirators as

described in these paragraphs were performed by the relevant defendants and co-conspirators pursuant to the conspiracy.

The Tegeta Purchase of the Optimum Mine

Tegeta

20. Tegeta was a Gupta entity in which a majority of shares were held by the Gupta entities, Oakbay Investments Limited and Fidelity Enterprises Limited, a Dubai based Gupta entity.

21. Minority stakes in Tegeta were held by Elgasolve (Pty) Ltd, a company controlled by Essa, and Mabengela Resources (Pty) Ltd, a company in which Duduzane Zuma held a 50% stake and the remaining shares were held by Tony Gupta, Chawla and various Gupta entities.

Tegeta and the Purchase of Optimum Coal Holdings

22. In 2014, Glencore Operations South Africa ("Glencore") owned OCH, which, in turn, owned OCM which operated the Optimum mine, which supplied Eskom's Hendrina Power Station in terms of a coal supply agreement with Eskom ("the Hendrina CSA") which, by 2014, included three addenda. A copy of the Hendrina CSA (including the addenda) is attached as Annexure **"4"**. Under the Hendrina CSA,

    22.1. the quantities of coal which OCM was obliged to provide to Eskom were specified in clauses 6 and 13 of the Hendrina CSA, read with clause 3.2. of the First Addendum, as well as clause 3.1.2. of the Second Addendum;

    22.2. the quality standards of the coal which OCM was obliged to provide to Eskom were specified in clause 9 read with Schedule 1 of the Hendrina CSA, as well as clauses

3.3., 3.4. and 3.5. of the First Addendum, and clause 3.4 of the Second Addendum ;

22.3. the price which Eskom was obliged to pay OCM for the coal it provided was specified in clause 7 read with Schedule 3 of the Hendrina CSA as well as clause 3.6. of the First Addendum and clause 3.5. of the Second Addendum;

22.4. the annual price escalation index was to be determined in accordance with the formula specified in Schedule 4 of the Hendrina CSA.

22.5. the penalties which OCM was liable to pay Eskom in the event that it failed to provide the contractually specified quantities of coal were specified in clause 15, read with Schedule 1 of the Hendrina CSA as well as clause 3.2.8. of the First Addendum, and clause 3.1.6. of the Second Addendum;

22.6. the penalties which OCM was liable to pay Eskom in the event that it failed to meet the contractually specified quality standards in respect of coal it delivered to Eskom were specified in clause 9 read with Schedule 1 of the Hendrina CSA as well as clause 3.3. of the Second Addendum.

23. On 23 May 2014, Eskom and OCM concluded a co-operation agreement ("the Co-operation Agreement") aimed at resolving issues concerning OCM's difficulties in providing coal to Hendrina Power Station at the cost specified in the Hendrina CSA and a separate dispute

between the parties relating to penalties which Eskom sought to impose on OCM under the Hendrina CSA. A copy of the Co-operation Agreement is attached as Annexure **"5"**.

24. On 26 February 2015, the Eskom Primary Energy Division issued a memorandum ("the PED memorandum") requesting a mandate to negotiate with OCM. The memorandum indicated that Eskom was willing -

24.1. to negotiate with OCM to ensure security of coal supply for the life of the Hendrina Power Station beyond the 2018 termination date of the Hendrina CSA, and possibly to supply power stations other than Hendrina;

24.2. to consider writing off penalties raised against OCM under the Hendrina CSA;

24.3. to engage with alternate suppliers to secure alternative coal supply options for Hendrina should the opportunity arise; and

24.4. to facilitate the purchase of OCM by Eskom or one of the state-owned mining companies.

25. At a meeting of the Eskom Board on 23 April 2015, chaired by Ngubane and attended by Mabude and Pamensky, the Eskom Board resolved to second Molefe from Transnet as Interim Chief Executive of Eskom and to refer the matter of the Hendrina CSA to Molefe.

26. Following the PED memorandum, Eskom and OCM had continued to engage with one another under the terms of the Co-operation Agreement until Molefe, at a meeting on 18 May 2015, indicated that Eskom would no longer engage with OCM in relation to its rights

under the Hendrina CSA, including its claim for penalties allegedly owed by OCM to Eskom under the Hendrina CSA.

27. On 22 June 2015, Eskom, at the instance of Molefe, terminated the Co-operation Agreement by delivering to OCM a letter of termination dated 10 June 2015.

28. At the time of Eskom's termination of the Co-operation Agreement, Eskom's penalties claim was for an amount of R2 176 530 611.99. When Eskom recalculated this claim in 2017 in the context of settlement negotiations over the penalties, it established that it was entitled to claim only R1.17 billion in respect of the relevant penalties.

29. On 10 June 2015, Molefe addressed a letter to Clinton Martin Ephron ("Ephron") of OCM indicating that Eskom was terminating all settlement processes with OCM and would henceforth hold OCM to the provisions of the Hendrina CSA.

30. On 16 July 2015, Eskom, at the instance of Molefe, imposed a penalty of R2 176 530 611.99 on OCM for non-compliances with the Hendrina CSA.

31. In or about July 2015, Molefe and Ngubane unsuccessfully attempted to persuade the then Minister of Mineral Resources, Ngoako Ramatlhodi, to commence proceedings to cancel Glencore's mining right at OCM in a bid to force Glencore to sell OCM.

32. After the boards of directors of OCM and OCH both resolved to institute business rescue proceedings in respect of OCM, business rescue of OCM commenced on 4 August 2015.

33. Piers Marsden ("Marsden") and Peter van den Steen were appointed business rescue practitioners for OCM.

34. On or about 1 August 2015, Zwane had forwarded his curriculum vitae by email to the Gmail address of Tony Gupta.

35. On or about 23 September 2015, Zwane was appointed Minister of Mineral Resources.

36. Shortly after his appointment as Minister of Mineral Resources, Zwane appointed Mabaso and Moodley as his advisors.

37. In the period between 2 August 2015 and 22 March 2016, there were 58 cellphone calls between Molefe and Ajay Gupta.

38. In the period 5 August 2015 to 17 November 2015, Molefe was present at, or in the immediate vicinity of, the Gupta family compound in Saxonwold, Johannesburg, on 19 occasions.

39. On or about 10 September 2015, Oakbay submitted a non-binding offer to the business rescue practitioners to purchase the assets and operations of OCM for R1. The offer was rejected by the business rescue practitioners.

40. On 30 September 2015, Eskom's attorneys, acting on instructions of Eskom emanating from Molefe, informed Marsden that the Eskom penalty claim of R2 176 530 611.99 was non-negotiable and should be settled in full.

41. On or about 1 October 2015, the business rescue practitioners signed a non-disclosure agreement with Joe Singh Group of Companies (Pty) Ltd ("Joe Singh") with a view to exploring the possibility of a sale of the OCM shares to Joe Singh.

42. In or about October 2015, with a view to putting financial pressure on Joe Singh, Koko orchestrated the termination of Eskom's CSA 4600057172 with another company in the Joe Singh group, Just Coal.

43. Later in October, Joe Singh indicated to the business rescue practitioners that they were not going to pursue any offer in respect of OCM.

44. On 4 November 2015, Koko emailed Essa attaching a copy of a letter from Just Coal dated 30 October 2015, complaining of Eskom's termination of CSA 4600057172.

44.1 Koko's email to Essa stated "*Please give the Boss. The fight begins*"

44.2 Essa forwarded Koko's email to Tony Gupta on the same day.

45. On or about 7 October 2015, OCH, with the consent of the business rescue practitioners agreed in principle to sell OCM to the black-owned company, Phembani Group Limited ("Phembani"), subject to the condition that Phembani could secure a new coal supply contract with Eskom for the Optimum Mine.

46. Oakbay and Tegeta were aware of the possible transaction between OCH and Phembani as on 7 October 2015, OCM sent Oakbay a letter indicating that OCM was now engaged in exclusive negotiations with a third party.

47. Molefe prevented the sale of OCM to Phembani by making clear to Phembani that Eskom would refuse to entertain any negotiation of a coal supply contract with Phembani until 2018, and preferred to let the OCM business rescue proceedings and possible liquidation proceedings run their course.

48. Following the frustration of the Phembani offer, the only entity that remained interested in purchasing OCM was Tegeta/Oakbay.

49. On 5 November 2015, Koko wrote to the business rescue practitioners -

49.1. threatening to seek the intervention of the Department of Mineral Resources ("DMR") in the matter;

49.2. threatening that Eskom would review its entire engagement with Glencore; and

49.3. urging the business rescue practitioners and OCH to engage with the offer that remained on the table, namely that of Tegeta/Oakbay.

50. On 5 November 2015, Koko forwarded to Essa confidential legal advice that Eskom had received on its inability to have the business rescue practitioners removed.

51. In or about November 2015, Raphela informed Ephron of Glencore that OCH should be selling all of its subsidiaries and not only OCM to resolve the Optimum dispute.

52. On 24 November 2015, an Eskom delegation headed by Koko met with Glencore, the business rescue practitioners and representatives of Tegeta/Oakbay. At the meeting, Koko indicated that Eskom was not convinced that OCM could survive as a going concern, so the sale should relate to OCH and all of its subsidiaries as opposed to only OCM.

53. On or around 22 November 2015, Pamensky had addressed the email to Atul Gupta described in paragraph 18.38 above, advising him that the Gupta entity purchasing OCM should insist that Eskom withdraws its R2 billion penalties claim against OCM.

54. On or around 25 November 2015, Pamensky addressed the email to Atul Gupta described in paragraph 18.39 above, asking to discuss *"concept on the potential law suit from Eskom to target Co"*.

55. On 25 November 2015, Ajay Gupta, on behalf of Oakbay, offered to purchase from Glencore the shares of OCH in OCM and all other subsidiaries for R1 billion.

56. On 26 November 2015, Glencore rejected the offer of Oakbay.

57. On 26 November 2015, at the instance of Zwane, Mabaso and Moodley, the DMR issued a notice under section 54 of the Mine Health and Safety Act 29 of 1996 ("section 54 notice")

on the Koornfontein mine owned by OCH, calling for operations to immediately be halted at the Blinkpan shaft.

58. On the weekend of 28 and 29 November 2015, at the instance of Zwane, Mabaso and Moodley, the DMR sent officials to all Glencore mines to conduct inspections. Flowing from these inspections, in the two weeks after Glencore rejected the Oakbay offer, at the instance of Zwane, Mabaso and Moodley, the DMR issued section 54 notices to the following Glencore mines halting operations at the relevant mines or shafts on the relevant dates:

58.1.	Tweefontein Opencast mine:	28 November 2015
58.2.	Wonderfontein Colliery:	28 November 2015
58.3.	Goedgevonden Colliery:	30 November 2015
58.4.	Koornfontein (Gloria Shaft):	1 December 2015
58.5.	Graspan Colliery (Shanduka Shaft):	8 December 2015
58.6.	Optimum Colliery (Boschmanspoort Shaft):	10 December 2015

59. On or about 30 November 2015, Glencore took a decision to continue to fund OCH and OCM at all costs and to take it out of business rescue.

60. On 1 December 2015,

60.1. Ephron conveyed Glencore's decision to take OCH and OCM out of business rescue to Koko at a meeting at Eskom; and

60.2. Koko conveyed the decision to Singh.

61. On 1 December 2015, Zwane, Raphela and Essa (posing as an advisor to Zwane) met with Ivan Glasenberg ("Glasenberg") of Glencore in Zurich.

62. At the meeting on 1 December 2015, Zwane informed Glasenberg that Tony Gupta wished to meet Glasenberg on 2 December 2015 in Zurich.

63. On 2 December 2015, Zwane, Essa, Tony Gupta, Glasenberg and Ephron met in Zurich. At the meeting of 2 December 2015, an agreement in principal was reached for Oakbay/Tegeta to purchase OCH for R2.15 billion.

64. On the evening of 2 December 2015, Zwane, Tony Gupta, Essa and Raphela flew in the Guptas' private jet, registration ZS-OAK, from Zurich to Delhi.

65. On 4 December 2015, Zwane, Tony Gupta, Essa and Raphela flew in the Guptas' private jet, registration ZS-OAK, from Delhi to Dubai.

66. Over the period 2 to 6 December 2015, Molefe and Koko sought a pretext formally to approach the DMR on behalf of Eskom to intervene in the matter to pressurize Glencore into selling to Tegeta/Oakbay. To this end, Koko addressed a letter to the DMR dated 6 December 2015 seeking the intervention of the DMR.

    66.1. As Koko and Molefe had no legitimate reason for knowing of the agreement that had been reached in Zurich, Koko's letter did not mention that agreement and was written on the basis that Glencore were still committed to taking OCM out of business rescue and honouring the terms of the Hendrina CSA until its conclusion.

    66.2. Prior to sending the letter to the DMR, Koko emailed Raphela on the morning of 7 December 2015 stating: *"Boss, I really want to keep this letter factual. Please advise."*

66.3. Raphela replied immediately on 7 December 2015 to Koko's email giving Koko consent to proceed as he had proposed.

66.4. After receiving Raphela's consent on the morning of 7 December 2015, Koko formally dispatched the letter dated 6 December 2015 to the DMR.

67. On or about 7 December 2015, Raphela who had been present in Zurich, framed a response to Koko's letter in the name of the Director-General of the DMR ("Director-General") which was written as though the events in Zurich had been the subject of Koko's letter. In the letter of the Director-General,

67.1. he committed that the DMR would fast track approvals for transfer of the mining right from OCM to Tegeta//Oakbay; and

67.2. invited Eskom to provide for a prepayment to Tegeta/Oakbay for up to a year's supply of coal from OCM to assist Tegeta/Oakbay with "*financial provision due to historical liabilities at OCH level… estimated at R1.7 billion*".

68. On 8 December 2015, Singh and Koko signed a submission for circulation to the Eskom Board, referring to the request in the 7 December 2015 letter from the Director-General and motivating Eskom Board approval for the pre-purchase of R1.68 billion of coal from OCM ostensibly to secure coal supply to the Hendrina Power Station.

68.1. The submission by Singh and Koko had been prepared by Wood, and had been forwarded from Regiments Capital to Singh on the afternoon of 8 December 2015, whereafter Singh forwarded it to Koko.

68.2. Prior to finalizing the submission, Wood had forwarded an earlier draft of the submission to Essa.

68.2.1. The earlier draft forwarded by Wood provided for a submission, not to the Eskom Board, but to the Investment and Finance Committee.

68.2.2. The earlier draft also stated that PFMA approval would be required from the National Treasury due to the length and value of the pre-payment contract.

68.2.3. At Essa's suggestion, Wood revised the earlier draft to provide that the submission went to the Eskom Board, not the Investment and Finance Committee, because the amount of the proposed prepayment contract exceeded R1.5 billion.

68.2.4. At Essa's insistence, Wood removed any reference to the requirement for PFMA approval from the final draft of the submission which Singh and Koko signed.

68.3. The submission by Singh and Koko falsely suggested that the proposal for the pre-payment had emanated from the business rescue practitioners.

68.4. The submission included a calculation showing an alleged benefit to Eskom of R238.9 million by proceeding with the prepayment.

68.5. The submission referred to Regiments Capital as having provided independent verification for the submission.

68.6. The resolution sought from the Eskom Board in the submission was one which would delegate authority to Molefe, Koko and Singh to finalise the terms of the pre-purchase with Tegeta.

68.7. As OCM was still in business rescue, no-one other than the business rescue practitioners were able to bind OCM to any agreements relating to coal delivery. Despite this fact, the resolution made no reference to any requirement to engage with the business rescue practitioners in relation to the proposed pre-purchase agreement.

69. On 9 December 2015, the Eskom Board, including Ngubane, Mabude and Singh approved the resolution by round robin. Molefe was recorded as being "off sick".

70. The approved resolution authorised Singh as CFO *"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."*

71. The board resolution had made no mention of any guarantees to Tegeta. Nevertheless, on 10 December 2015, Singh signed a memorandum committing to approve the issue of a guarantee in favour of Tegeta and to approach ABSA Bank as a counterparty to issue the guarantee.

72. On 10 December 2015, Singh signed an application to ABSA Bank on behalf of Eskom for the issuance of a local guarantee in favour of Tegeta.

73. In the early hours of the morning of 10 December 2015, Essa forwarded to Koko, who, in turn, forwarded to Daniels, an outline of a short agreement to be concluded between Eskom and Tegeta for the pre-purchase of coal for R1.68 billion.

74. In the afternoon of 10 December 2015, Daniels forwarded to Singh, who in turn forwarded to Wood, who in turn, forwarded to Essa, unsigned drafts of the following documents:

74.1. an ABSA Bank demand guarantee;

74.2. an ABSA Bank performance guarantee; and

74.3. a letter agreement between Eskom and Tegeta providing for Eskom to pre-purchase coal from Tegeta for R1.68 billion and to issue a bank guarantee to Tegeta in this regard for an amount of R1.68 billion.

75. On 10 December 2015, Singh signed the letter agreement between Eskom and Tegeta relating to the pre-purchase. A copy of the letter agreement is attached as Annexure **"6".**

76. The guarantee was issued by ABSA Bank on 11 December 2015. A copy of the guarantee is attached as Annexure **"7"**. As appears from Annexure **"7"**, the guarantee had an expiry date of 31 March 2016.

77. On 10 December 2015, OCH, Tegeta, Glencore and Oakbay concluded an agreement for the sale of shares in OCH to Tegeta for a purchase price of R2.15 billion plus interest until date of payment. A copy of the sale agreement is attached as Annexure **"8"**. The sale agreement was subject to three suspensive conditions which required the consent of Eskom. These were:

77.1. the consent of Eskom to the sale agreement;

77.2. the release by Eskom of OCH from the guarantee it had granted to Eskom; and

77.3. the release by Eskom of OCH and its affiliate companies from any liability relating to the Hendrina CSA.

78. Eskom's consent to the sale agreement was embodied in a the Fourth Addendum to the Hendrina CSA entered into between Eskom and OCM and Tegeta on 30 March 2016 and signed by Vusi Mboweni on behalf of Eskom, Marsden as business rescue practitioner on

behalf of OCM and Nazeem Howa as Director on behalf of Tegeta. A copy of the Fourth Addendum to the Hendrina CSA is attached as Annexure **"9"**.

79. On 10 December 2015, OCH, Tegeta, Glencore and Werksmans Attorneys (as the Escrow agent) signed an Escrow agreement ("the Escrow Agreement") which provided for Glencore and Tegeta to pay into escrow their respective portions of the outstanding balance on a facility agreement of R2.5 billion that had been made available to OCH by a consortium of lending banks.

79.1. Tegeta's payment under the Escrow Agreement was the purchase price which it was obliged to pay under the sale agreement.

79.2. Glencore's payment under the Escrow Agreement was the outstanding balance on the facility agreement after deduction of Tegeta's payment.

79.3. The Escrow Agreement originally provided for a payment date of three business days after 31 March 2016.

79.4. On 31 March 2016, the First Addendum to the Escrow Agreement was signed providing for the repayment date to be changed to three business days after 18 April 2016.

79.5. On 13 April 2016, the Escrow Agreement was novated and replaced by the "Amended and Restated Escrow Agreement" in terms of which the deadline for Tegeta to pay its portion into the Escrow Account was changed to 14 April 2016.

80. ABSA Bank refused to extend the guarantee beyond its termination date of 31 March 2016 and communicated its decision in this regard to Singh on 30 March 2016 by email.

81. For issuing the guarantee, ABSA Bank invoiced Eskom -

81.1. in the amount of R581 700.00 in December 2015; and

81.2. in the amount of R662 659.20 in March 2016.

82. The amounts of R581 700.00 and R662 659.20 invoiced by ABSA were paid by Eskom (debited from Eskom's ABSA Bank account) respectively on or about 11 December 2015 and 11 March 2016.

83. On 5 April 2016, Singh forwarded the ABSA Bank email of 30 March 2016 to Koko asking him to take note of the email and *"advise accordingly"*.

84. With the lapsing of the ABSA Bank guarantee, Koko fell back on an alternative plan to finance the Tegeta purchase of OCH out of a prepayment for OCM coal, not for the Hendrina Power Station, but for the Arnot Power Station ("Arnot").

85. On or before 10 February 2016, Koko arranged that the item relating to a mandate to negotiate coal supply to Arnot was removed from the agenda of the Eskom Board Tender Committee ("BTC") meeting of 10 February 2016. This was done to provide a later pretext for concluding a prepayment agreement with Tegeta in respect of coal supply to Arnot so as to facilitate Tegeta's payment of its purchase price to OCH prior to the deadline of 14 April 2016.

86. By the first week of April 2016, Tegeta was hundreds of millions of rands short of the purchase price amount of R2.15 billion that it had to pay by 14 April 2016.

87. On 8 April 2016, Tegeta offered to Eskom that it would provide an additional 1 250 000 tons of coal to Eskom from Optimum over a period of five months at R20.41 per gigajoule if Eskom prepaid Tegeta for that coal.

88. On 11 April 2016, the consortium of banks informed Tegeta, through Marsden, that it was not willing to finance the R600 million shortfall that Marsden conveyed to them was the difference between the purchase price amount raised by Tegeta.

89. On 11 April 2016, Koko arranged with Singh for a submission to be placed before an urgent BTC meeting to be held that night to decide on emergency procurement of contracts for coal for Arnot. The submission, which was signed by Koko,

89.1. sought approval for the conclusion of short-term contracts with Tegeta and Umsimbithi to provide coal to Arnot;

89.2. noted that Tegeta had requested a prepayment and sought approval for a prepayment to Tegeta; and

89.3. estimated the Tegeta prepayment at R586 787 500.

90. Mabude was one of the Eskom Board members forming part of the BTC meeting of 11 April 2016.

91. The meeting adopted a resolution which authorized -

91.1. conclusion of addenda to the short-term coal supply agreements with Tegeta and Umsimbithi;

91.2. Singh to approve the basis for prepayment to secure the fixed coal price for the period of extension under these addenda provided that there was a discount in the price and the supplier offered Eskom a guarantee; and

91.3. Koko to take all steps necessary to give effect to the resolution, including the signing of any contracts or other documentation.

92. On 13 April 2016, Eskom concluded a prepayment agreement with Tegeta.

92.1. The prepayment agreement was signed by Koko on behalf of Eskom and witnessed by Singh.

92.2. A copy of the prepayment agreement is attached as Annexure **"10"**.

92.3. The prepayment agreement provided for Eskom to make a prepayment of R659 558 079.38 for coal supply by Tegeta to Arnot for the period running from 16 April 2016 to 30 September 2016.

93. On 13 April 2016,

93.1. Tegeta invoiced Eskom for the prepayment amount of R659 558 079.38; and

93.2. Molefe and Singh procured that Eskom pay the amount of R659 558 079.38 to Tegeta before 14h00 on 13 April 2016.

94. On 14 April 2016, Tegeta paid the full amount of the purchase price in terms of the OCH sale agreement.

95. But for the Eskom payment of R659 558 079.38 to Tegeta on 13 April 2016, Tegeta would have been unable to pay the purchase price in terms of the OCH sale agreement by the deadline of 14 April 2016 as stipulated in the Amended and Restated Escrow Agreement.

96. On or around 13 March 2017, Daniels submitted a memorandum recommending that the outstanding penalties on the Hendrina CSA in respect of the period 2012 to 2015 (which had been claimed from OCM under Glencore control in the amount of R2 176 530 611.99) be settled for an amount of R577 million.

97. Singh endorsed Daniels' recommendation on 14 March 2017 and Koko approved the recommendation on 14 March 2017.

98. On 16 March 2017, Eskom's dispute with OCM and Tegeta over the outstanding penalties was settled for an amount of R577 839 105.42 and the settlement was made an award by the arbitrator in the dispute between Eskom and OCM and Tegeta, Adv. Solomon SC. A copy of the arbitration award is attached as Annexure **"11"**.

99. At the time of the settlement of the penalty claim, Daniels, Singh and Koko knew that Eskom's actual justified penalty claim was R1 166 164 713.37 but deliberately settled for the lower amount of R577 839 105.42 to further the interests of Tegeta in accordance with the conspiracy.

100. As appears from Annexure **"11"**, when regard was had to penalties already deducted by Eskom from payments to OCM, the balance due by OCM and Tegeta was R255 400 819.18. OCM and Tegeta have failed to pay Eskom an amount of R133 781 381.48.

101. The total penalty related loss caused to Eskom by the conspiracy accordingly comprises R722 106 989.43 made up as follows:

Penalty Due	R1 166 164 713.37 –
Lesser Penalty Agreed	R 577 839 105.42
	R 588 325 607.95 +
Unpaid Amount	R 133 781 381.48
	R 722 106 989.43

102. Over the period September 2016 to 31 December 2018, being the termination date of the Hendrina CSA, OCM whilst under the control of Tegeta, consistently refused, alternatively was unable, alternatively failed to meet the coal delivery quantity and quality obligations specified in the Hendrina CSA at the time that Tegeta purchased OCM.

103. As a result of OCM's refusal, alternatively inability, alternatively failure to deliver coal the quantity of coal specified in the Hendrina CSA at the time of Tegeta's purchase of OCH, Eskom had to incur additional costs in the aggregate amount of R2 441 161 443 to procure coal from sources other than OCH for the Hendrina Power Station. A spreadsheet setting out details of the additional coal procured by Eskom for Hendrina and the additional cost of such coal is attached as Annexure **"12"**.

104. As a result of OCM's refusal, alternatively inability, alternatively failure to deliver the quality of coal specified in the Hendrina CSA at the time of the Tegeta purchase of OCH, Eskom suffered losses in the aggregate amount of R89 335 464.07, being the aggregate amount of penalties that Eskom did not deduct from purchase payments to Tegeta but would have fallen due to Eskom under the terms of the Hendrina CSA as of the date of the Tegeta purchase, such penalties being an accurate proxy for the cost to Eskom of receiving coal below the contractually specified standard. A spreadsheet setting out details of the unrecovered penalties in respect of sub-standard coal delivered by OCM to Eskom from the Hendrina mine over the period September 2016 to January 2018 is attached as Annexure **"13"**.

105. Eskom has lodged aggregate claims in the amounts of R1 276 031 278.48 and R 358 825 008.55 against OCM and Tegeta respectively to recover contractual penalties from them under the Hendrina CSA.

106. However, OCM and Tegeta are both currently in business rescue and Eskom is unlikely to be able to recover its claims against them.

The Engagement of Trillian to Work with McKinsey at Eskom

107. During the course of 2015, McKinsey was attempting to secure a contract with Eskom under its Top Engineers Programme to work on a turnaround strategy at Eskom.

108. On or about 15 May 2015, Molefe approved a recommendation that Eskom procure the services of McKinsey under the Top Engineers Programme.

109. On 6 July 2015, the BTC approved a mandate to negotiate with McKinsey without a competitive bidding process to advise Eskom on the Top Engineers Programme.

110. On 20 July 2015, Koko leaked to Essa the documents described in paragraph 18.36.1 to 18.36.3 above to assist Essa to procure the appointment of Regiments or some other conspirator Gupta entity as McKinsey's supplier development partner on the Top Engineers Programme.

111. Over the period July to November 2015, McKinsey and Eskom negotiated over the terms of McKinsey's planned appointment but no contract was concluded.

112. In or around October November 2015, Wood decided to leave Regiments and to form Trillian with Essa.

113. Prior to Wood's decision to leave Regiments, McKinsey had planned to use Regiments as its supplier development partner at Eskom. After Wood informed McKinsey that he was leaving Regiments to form Trillian with Essa, McKinsey agreed to use Trillian as its supplier development partner at Eskom.

114. In the first half of November 2015, Essa, Wood and Angel met with Sagar of McKinsey with a view to finalizing arrangements relating to the Top Engineers Programme appointment of McKinsey by Eskom with Trillian as its supplier development partner.

115. On or about 16 November 2015, Angel emailed Sagar making clear that Essa would not arrange any meeting with Molefe for Sagar and Alexander Weiss of McKinsey to finalise the appointment of McKinsey until McKinsey had provided Wood, Angel and Essa with its proposed 50/50 fee split with Trillian and timelines on fees.

116. On or about 18 November 2015, Sagar emailed to Essa a spreadsheet with the proposed 50/50 fee split with Trillian and timelines on fees.

117. On a date unknown to Eskom, but between 18 November 2015 and 17 December 2015, Molefe met with Weiss and Sagar and agreed, on behalf of Eskom, that McKinsey would be given their contract for the Top Engineers Programme with Trillian as its supplier development partner.

118. On 27 November 2015, Sagar emailed Prish Govender ("Govender") of Eskom, copying Koko, forwarding Trillian's details.

119. On 17 December 2015, Govender emailed Koko with a draft of the McKinsey letter of appointment for his review.

120. Later on 17 December 2017, Eskom issued the letter of appointment to McKinsey.

121. At no stage did Eskom or McKinsey ever conclude any contract with Trillian in relation to the Top Engineers Programme and at no stage did Trillian do any work for Eskom on any other programme.

122. On 30 March 2016, McKinsey addressed a letter to Eskom indicating that they would not be engaging Trillian as their supplier development partner in their work at Eskom.

123. Despite the fact that Eskom had no contract with Trillian, and McKinsey had made clear to Eskom that it was not engaging Trillian as its supplier development partner at Eskom,

Molefe, Singh and Koko procured that Eskom paid Trillian aggregate amounts of R595 228 913 as particularized in Annexure **"14"**.

124. Trillian did not provide Eskom for any value in return for these payments.

125. In March 2018, Eskom launched an application in the High Court of South Africa, Gauteng Division, Pretoria ("the High Court"), *inter alia,*

125.1. for the review and setting aside of the decisions taken to negotiate and conclude the Master Services Agreement under which the payments to Trillian were purportedly made;

125.2. for the review and setting aside of the decisions to authorise the payments to Trillian; and

125.3. for payment by Trillian of R595 228 913, interest and costs.

126. On 18 June 2019, the High Court handed down judgment in Eskom's favour,

126.1. reviewing and setting aside the decisions challenged by Eskom; and

126.2. ordering Trillian to repay Eskom an amount of R595 228 913.29, plus interest and costs.

A copy of the judgment is attached as Annexure **"15"**.

127. When Trillian failed to make any payment to Eskom in respect of the Court order, Eskom instituted liquidation proceedings against Trillian on or about 17 January 2020.

128. In these proceedings, it emerged that the South African Revenue Service has attached the property of Trillian and Wood for its own claims against Trillian.

CLAIM A: DAMAGES CLAIM AGAINST MOLEFE FOR BREACH OF CONTRACT

129. Molefe concluded a written contract of employment with Eskom in terms of which Molefe was appointed as Group Chief Executive with effect from 1 October 2015. A copy of the contract of employment is annexed hereto as Annexure **"16"**.

130. The contract of employment was signed by Molefe on 7 March 2016 in Sandton and by Ngubane, in his capacity as chairperson of the Eskom Board, on 15 March 2016 at Megawatt Park, Sunninghill.

131. In terms of his contract of employment, Molefe had obligations in the course of his duties to Eskom -

131.1. to disclose and get prior written consent if he is interested or engaged in any other business or company other than Eskom (Clause 6.2);

131.2. to use his utmost endeavours to protect and promote Eskom's business undertakings and interests (Clause 6.3);

131.3. to preserve Eskom's reputation and goodwill (Clause 6.3);

131.4. to be true and faithful in all dealings and transactions pertaining to Eskom (Clause 6.4);

131.5. to hold Eskom's confidential information in confidence during and after his employment at Eskom and not to disclose it to unauthorized persons (Clause 16.2.1);

131.6. not to use to his own benefit or for the benefit of any other person any of Eskom's confidential information (Clause 16.2.3); and

131.7. to adhere to Eskom's written procedures and policies (Clause 19.1).

132. In breach of these duties, Molefe -

132.1. performed the acts attributed to him in paragraphs 16 to 128 above;

132.2. failed to disclose the existence of the conspiracy to Eskom;

132.3. failed to disclose to Eskom his involvement in the conspiracy; and

132.4. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above.

133. As a result of Molefe's aforesaid breach of his contractual duties to Eskom, Eskom has suffered the following losses:

133.1. R581 700.00, being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

133.2. R662 659.20, being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

133.3. R722 106 989.43, being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

133.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"12"** hereto;

133.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"13"** hereto;

133.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

134. Molefe has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

135. In the circumstances, Molefe is liable to Eskom for payment of the following amounts:

135.1. R581 700.00 plus interest *a tempora morae*;

135.2. R662 659.20 plus interest *a tempora morae*;

135.3. R722 106 989.43 plus interest *a tempora morae*;

135.4. R2 441 161 443 plus interest *a tempora morae*;

135.5. R89 335 464 plus interest *a tempora morae;* and

135.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM B: DAMAGES CLAIM AGAINST SINGH FOR BREACH OF CONTRACT (TO BE REFINED AFTER CONSIDERING HIS CONTRACT OF EMPLOYMENT)

136. Singh concluded a written contract of employment with Eskom in terms of which he was appointed as Chief Financial Officer with effect from 1 October 2015. A copy of the contract of employment is annexed hereto as Annexure **"17"**.

137. The contract of employment was signed by Singh on 5 March 2016 in Sandton and by Ngubane, in his capacity as chairperson of the Eskom Board, on 15 March 2016 at Megawatt Park, Sunninghill.

138. In terms of his contract of employment, Singh had obligations in the course of his duties to Eskom

138.1. to disclose and get prior written consent if he is interested or engaged in any other business or company other than Eskom (Clause 6.2);

138.2. to use his utmost endeavours to protect and promote Eskom's business undertakings and interests (Clause 6.3);

138.3. to preserve Eskom's reputation and goodwill (Clause 6.3);

138.4. to be true and faithful in all dealings and transactions pertaining to Eskom (Clause 6.4);

138.5. to hold Eskom's confidential information in confidence during and after his employment at Eskom and not to disclose it to unauthorized persons (Clause 16.2.1);

138.6. not to use to his own benefit or for the benefit of any other person any of Eskom's confidential information (Clause 16.2.3); and

138.7. to adhere to Eskom's written procedures and policies (Clause 19.1).

139. In breach of these duties, Singh -

139.1. performed the acts attributed to him in paragraphs 16 to 128 above;

139.2. failed to disclose the existence of the conspiracy to Eskom;

139.3. failed to disclose to Eskom his involvement in the conspiracy; and

139.4. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above.

140. As a result of Singh's aforesaid breach of his contractual duties to Eskom, Eskom has suffered the following losses:

140.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

140.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

140.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

140.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"12"** hereto;

140.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"13"** hereto; and

140.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

141. Singh has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

142. In the circumstances, Singh is liable to Eskom for payment of the following amounts:

142.1. R581 700.00 plus interest *a tempora morae;*

142.2. R662 659.20 plus interest *a tempora morae*;

142.3. R722 106 989.43 plus interest *a tempora morae*;

142.4. R2 441 161 443 plus interest *a tempora morae*;

142.5. R89 335 464 plus interest *a tempora morae;* and

142.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM C: DAMAGES CLAIM AGAINST KOKO FOR BREACH OF CONTRACT

143. In terms of his contract of employment dated 2010 and annexed hereto as Annexure **"18"**, Koko had obligations in the course of his duties to Eskom to:

143.1. act honestly, faithfully, diligently and to the best of his ability to fulfil the duties and responsibilities of the office to which he is appointed (Clause 3.1.1.);

143.2. use his best endeavours to promote, develop and protect the interests, wellbeing, reputation and goodwill of Eskom (Clause 3.1.2);

143.3. carry out his duties in a proper, loyal and efficient manner (Clause 3.1.3);

143.4. maintain the highest standards of conduct, honesty and integrity in carrying out his responsibilities under the contract (Clause 3.1.10);

143.5. disclose to Eskom in writing all of his interests which may conflict with those of Eskom (Clause 4.2);

143.6. not, during his employment or thereafter, disclose to any person, any confidential information that has come to his knowledge or into his possession in the course of the performance of the contract (Clause 5.1.1.); and

143.7. use or attempt to use any such confidential for his own personal benefit, or for the benefit of any other person, or organization (Clause 5.1.2).

144. In breach of his contractual obligations to Eskom, Koko -

144.1. performed the acts attributed to him in paragraphs 16 to 128 above;

144.2. failed to disclose the existence of the conspiracy to Eskom;

144.3. failed to disclose to Eskom his involvement in the conspiracy; and

144.4. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above.

145. As a result of Koko's aforesaid breach of his contractual obligations to Eskom, Eskom has suffered the following losses:

145.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

145.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

145.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

145.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"12"** hereto;

145.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"13"** hereto; and

145.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

146. Koko has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

147. In the circumstances, Koko is liable to Eskom for payment of the following amounts:

147.1. R581 700.00 plus interest *a tempora morae;*

147.2. R662 659.20 plus interest *a tempora morae*;

147.3. R722 106 989.43 plus interest *a tempora morae*;

147.4. R2 441 161 443 plus interest *a tempora morae*;

147.5. R89 335 464 plus interest *a tempora morae;* and

147.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM D: DAMAGES CLAIM AGAINST DANIELS FOR BREACH OF CONTRACT

148. Daniels concluded a written contract of employment with Eskom whereby Daniels' current position at the time, being Senior General Manager: Company Secretariat, was recorded. A copy of the contract of employment is annexed hereto as Annexure **"19"**.

149. The contract of employment was signed by Daniels on 24 June 2016 in Pretoria and signed on behalf of Eskom on 24 June 2016 at Megawatt, Sunninghill.

150. In terms of her contract of employment, Daniels had obligations in the course of her duties to Eskom -

150.1. to promote, develop and protect Eskom's interests, wellbeing, reputation and goodwill and not to do anything that is harmful to Eskom (Clause 3.1.2);

150.2. to carry out her duties in a proper, loyal and efficient manner (Clause 3.1.3);

150.3. to promote compliance with all statutory obligations imposed upon Eskom and its employees (Clause 3.1.7);

150.4. to maintain the highest standard of conduct, honesty and integrity in carrying out her duties under the contract of employment (Clause 3.1.10);

150.5. to abide by and conform to the personnel and business practices, business ethics, policies and procedures as may be introduced by Eskom (Clause 3.1.11);

150.6. to disclose to Eskom in writing all her interests which may conflict with the interests of Eskom (Clause 4.2);

150.7. not to disclose to any person any confidential information that has come to her knowledge in the course of the performance of the contract of employment (Clause 5.1.1); and

150.8. not to use or attempt to use any such confidential information for her own personal benefit or for the benefit of any other person or organization (Clause 5.1.2).

151. In terms of a Letter of Appointment dated 28 August 2017 and signed by the Interim Group Chief Executive, Mr J A Dladla, Daniels was appointed as Senior General Manager: Legal and Compliance effective from 1 August 2017. A copy of the letter of appointment of 28 August 2017 is attached as Annexure **"20"**.

152. The terms and conditions contained in the contract of employment of 2016 as pleaded in paragraph 150 above, also applied to the appointment of Daniels as Senior General Manager: Legal and Compliance in 2017.

153. In breach of her contractual obligations to Eskom, Daniels -

153.1. performed the acts attributed to her in paragraphs 16 to 128 above;

153.2. failed to disclose the existence of the conspiracy to Eskom;

153.3. failed to disclose to Eskom her involvement in the conspiracy; and

153.4. failed to take steps to prevent any of the acts of her co-conspirators described in paragraphs 16 to 128 above.

154. As a result of Daniels' aforesaid breach of her contractual obligations to Eskom, Eskom has suffered the following losses:

154.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

154.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

154.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

154.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"12"** hereto;

154.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"13"** hereto; and

154.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

155. Daniels has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

156. In the circumstances, Daniels is liable to Eskom for payment of the following amounts:

156.1. R581 700.00 plus interest *a tempora morae;*

156.2. R662 659.20 plus interest *a tempora morae*;

156.3. R722 106 989.43 plus interest *a tempora morae*;

156.4. R2 441 161 443 plus interest *a tempora morae*;

156.5. R89 335 464 plus interest *a tempora morae;* and

156.6. R595 228 913.29 plus interest *a tempora morae.*

CLAIM E: CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST NGUBANE

157. By virtue of his position as a director of Eskom in the period 11 December 2014 to June 2017, Ngubane owed fiduciary duties to Eskom over that period -

157.1. to act in good faith and in the best interests of Eskom at all times;

157.2. to disclose and to avoid conflicts of interest with Eskom; and

157.3. to disclose to Eskom all information necessary to protect the interests of Eskom.

158. In breach of those fiduciary duties, Ngubane -

158.1. performed the acts attributed to him in paragraphs 16 to 128 above in respect of the period 11 December 2014 to June 2017;

158.2. failed to disclose the existence of the conspiracy to Eskom;

158.3. failed to disclose to Eskom his involvement in the conspiracy; and

158.4. Failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above in respect of the period 11 December 2014 to June 2017.

159. As a result of Ngubane's aforesaid breach of his fiduciary duties to Eskom, Eskom has suffered the following losses:

159.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

159.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

159.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

159.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"12"** hereto;

159.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"13"** hereto; and

159.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

160. Ngubane has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

161. In the circumstances, Ngubane is liable to Eskom for payment of the following amounts:

161.1. R581 700.00 plus interest *a tempora morae;*

161.2. R662 659.20 plus interest *a tempora morae*;

161.3. R722 106 989.43 plus interest *a tempora morae*;

161.4. R2 441 161 443 plus interest *a tempora morae*;

161.5. R89 335 464 plus interest *a tempora morae;* and

161.6. R595 228 913.29 plus interest *a tempora morae.*

CLAIM F: CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST MABUDE

162. By virtue of her position as a director of Eskom in the period 28 June 2011 to 23 June 2017, Mabude owed fiduciary duties to Eskom over that period -

162.1. to act in good faith and in the best interests of Eskom at all times;

162.2. to disclose and to avoid conflicts of interest with Eskom; and

162.3. to disclose to Eskom all information necessary to protect the interests of Eskom.

163. In breach of those fiduciary duties, Mabude -

163.1. performed the acts attributed to her in paragraphs 16 to 128 above in respect of the period January 2015 to 23 June 2017;

163.2. failed to disclose the existence of the conspiracy to Eskom; and

163.3. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above in respect of the period January 2015 to 23 June 2017.

164. As a result of Mabude's aforesaid breach of her fiduciary duties to Eskom, Eskom has suffered the following losses:

164.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

164.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

164.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

164.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"12"** hereto;

164.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"13"** hereto; and

164.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

165. Mabude has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

166. In the circumstances, Mabude is liable to Eskom for payment of the following amounts:

166.1. R581 700.00 plus interest *a tempora morae;*

166.2. R662 659.20 plus interest *a tempora morae*;

166.3. R722 106 989.43 plus interest *a tempora morae*;

166.4. R2 441 161 443 plus interest *a tempora morae*;

166.5. R89 335 464 plus interest *a tempora morae;* and

166.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM G: CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST PAMENSKY

167. By virtue of his position as a director of Eskom in the period 11 December 2014 to 16 November 2016, Pamensky owed fiduciary duties to Eskom over that period -

167.1. to act in good faith and in the best interests of Eskom at all times;

167.2. to disclose and to avoid conflicts of interest with Eskom; and

167.3. to disclose to Eskom all information necessary to protect the interests of Eskom.

168. In breach of those fiduciary duties, Pamensky -

168.1. performed the acts attributed to him in paragraphs 16 to 128 above in respect of the period 11 December 2014 to 16 November 2016;

168.2. failed to disclose the existence of the conspiracy to Eskom;

168.3. failed to disclose his interest in Trillian; and

168.4. failed to take steps to prevent any of the acts of his co-conspirators described in paragraphs 16 to 128 above in respect of the period 11 December 2014 to June 2017.

169. As a result of Ngubane's aforesaid breach of his fiduciary duty to Eskom, Eskom has suffered the following losses:

169.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

169.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

169.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

169.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"12"** hereto;

169.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"13"** hereto; and

169.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

170. Ngubane has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

171. In the circumstances, Ngubane is liable to Eskom for payment of the following amounts:

171.1. R581 700.00 plus interest *a tempora morae;*

171.2. R662 659.20 plus interest *a tempora morae*;

171.3. R722 106 989.43 plus interest *a tempora morae*;

171.4. R2 441 161 443 plus interest *a tempora morae*;

171.5. R89 335 464 plus interest *a tempora morae;* and

171.6. R595 228 913.29 plus interest *a tempora morae*.

CLAIM H: DAMAGES CLAIM AGAINST ALL DEFENDANTS JOINTLY AND SEVERALLY (BROUGHT IN THE ALTERNATIVE TO CLAIMS A TO G RESPECTIVELY IN SO FAR AS IT

IS A CLAIM AGAINST, MOLEFE, SINGH, KOKO, DANIELS, NGUBANE, MABUDE OR PAMENSKY)

172. Eskom repeats paragraphs 16 to 128 above.

173. As a result of the deliberate and wrongful conduct of the defendants and their co-conspirators particularized in paragraphs 16 to 128 above, Eskom has suffered the following losses:

173.1. R581 700.00 being the amount paid by Eskom to ABSA Bank on or about 11 December 2015 for the ABSA Bank guarantee;

173.2. R662 659.20 being the amount paid by Eskom to ABSA Bank on 11 March 2016 for the ABSA Bank guarantee;

173.3. R722 106 989.43 being the total penalty loss caused by the conspiracy to Eskom as particularized in paragraph 96 to 101 above;

173.4. R2 441 161 443 being the total loss caused by the conspiracy to Eskom in the form of inadequate quantities of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"12"** hereto;

173.5. R89 335 464 being the total loss caused by the conspiracy to Eskom in the form of inadequate quality of coal delivered under the Hendrina CSA while OCM was under the control of Tegeta and particularized in Annexure **"13"** hereto; and

173.6. R595 228 913.29 plus interest being the judgment debt of Trillian to Eskom that Eskom has been unable to recover.

174. Each of the defendants has failed to pay Eskom the amounts specified in the preceding paragraph, or any part thereof.

175. In the circumstances, the defendants are jointly and severally liable to Eskom for payment of the following amounts:

175.1. R581 700.00 plus interest *a tempora morae;*

175.2. R662 659.20 plus interest *a tempora morae*;

175.3. R722 106 989.43 plus interest *a tempora morae*;

175.4. R2 441 161 443 plus interest *a tempora morae*;

175.5. R89 335 464 plus interest *a tempora morae;* and

175.6. R595 228 913.29 plus interest *a tempora morae.*

WHEREFORE THE PLAINTIFFS CLAIM:

A. CLAIMED AGAINST MOLEFE

(i) An order directing Molefe to make payment to Eskom of the following amounts:

a. R581 700.00 plus interest *a tempora morae;*

b. R662 659.20 plus interest *a tempora morae*;

c. R722 106 989.43 plus interest *a tempora morae*;

d. R2 441 161 443 plus interest *a tempora morae*;

e. R89 335 464 plus interest *a tempora morae;* and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

B. CLAIMED AGAINST SINGH

(i) An order directing Singh to make payment of the following amounts:

a. R581 700.00 plus interest *a tempora morae;*

b. R662 659.20 plus interest *a tempora morae*;

c. R722 106 989.43 plus interest *a tempora morae*;

d. R2 441 161 443 plus interest *a tempora morae*;

e. R89 335 464 plus interest *a tempora morae;* and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

C. CLAIMED AGAINST KOKO

(i) An order directing Koko to make payment of the following amounts:

a. R581 700.00 plus interest *a tempora morae;*

b. R662 659.20 plus interest *a tempora morae*;

c. R722 106 989.43 plus interest *a tempora morae*;

d. R2 441 161 443 plus interest *a tempora morae*;

e. R89 335 464 plus interest *a tempora morae;* and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

D. CLAIMED AGAINST DANIELS

(i) An order directing Daniels to make payment of the following amounts:

a. R581 700.00 plus interest *a tempora morae;*

b. R662 659.20 plus interest *a tempora morae*;

c. R722 106 989.43 plus interest *a tempora morae*;

d. R2 441 161 443 plus interest *a tempora morae*;

e. R89 335 464 plus interest *a tempora morae;* and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

E. CLAIMED AGAINST NGUBANE

(i) An order directing Ngubane to make payment of the following amounts:

a. R581 700.00 plus interest *a tempora morae;*

b. R662 659.20 plus interest *a tempora morae*;

c. R722 106 989.43 plus interest *a tempora morae*;

d. R2 441 161 443 plus interest *a tempora morae*;

e. R89 335 464 plus interest *a tempora morae;* and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

F. CLAIMED AGAINST MABUDE

(i) An order directing Mabude to make payment of the following amounts:

a. R581 700.00 plus interest *a tempora morae;*

b. R662 659.20 plus interest *a tempora morae*;

c. R722 106 989.43 plus interest *a tempora morae*;

d. R2 441 161 443 plus interest *a tempora morae*;

e. R89 335 464 plus interest *a tempora morae;* and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

G. CLAIMED AGAINST PAMENSKY

(i) An order directing Ngubane to make payment of the following amounts:

a. R581 700.00 plus interest *a tempora morae;*

b. R662 659.20 plus interest *a tempora morae;*

c. R722 106 989.43 plus interest *a tempora morae;*

d. R2 441 161 443 plus interest *a tempora morae;*

e. R89 335 464 plus interest *a tempora morae;* and

f. R595 228 913.29 plus interest *a tempora morae.*

(ii) Further and alternative relief; and

(iii) Costs of suit.

H. CLAIMED JOINTLY AND SEVERALLY AGAINST ALL DEFENDANTS BUT IN THE ALTERNATIVE TO CLAIMS A TO G RESPECTIVELY IN SO FAR AS IT IS A CLAIM AGAINST MOLEFE, SINGH, KOKO, DANIELS, NGUBANE, MABUDE OR PAMENSKY

(i) An order directing Ngubane to make payment of the following amounts:

a. R581 700.00 plus interest *a tempora morae;*

b. R662 659.20 plus interest *a tempora morae;*

c. R722 106 989.43 plus interest *a tempora morae;*

d. R2 441 161 443 plus interest *a tempora morae;*

e. R89 335 464 plus interest *a tempora morae;* and

f. R595 228 913.29 plus interest *a tempora morae*.

(ii) Further and alternative relief; and

(iii) Costs of suit.

DATED AT **WENDYWOOD** ON THIS THE **2ND** DAY OF **AUGUST 2020**.

MICHAEL MOTSOENENG BILL

Plaintiffs' Attorney with right of appearance

in terms of section 4 (2) of the Right of

Appearance Act, 1995.

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COMMISSION OF INQUIRY INTO STATE CAPTURE

info@mbaincorporated.co.za; and

michael@mbaincorporated.co.za

Ref: MAT744

C/O MANAMELA MAROBELA AND ASSOCIATES INC

130 Gordon Road

Colbyn

Pretoria

Email: nyikon@manamelainc.co.za and

khashaneM@manamelainc.co.za

Tel: 012 432 0060

Fax: 012 342 2509

COMMISSION OF INQUIRY INTO STATE CAPTURE

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 I Company Secretary
Office of the Company Secretary I Office of the Chairman I Third Floor T36
2 Maxwell Drive Megawatt Park I Tel : +27 11 800 8542 I Cell : +27 84 200 0087 I Fax : +27 86 652 3139 I eFax: 0866523139
E-mail : phukubm@eskom.co.za
Secretariat website: http://sivmas045.eskom.co.za/corporate_secretariat/

COMMISSION OF INQUIRY INTO STATE CAPTURE

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 becomes 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 that 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.

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:

COMMISSION OF INQUIRY INTO STATE CAPTURE

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: Nazeem Howa <nazeemh@tnamedia.co.za>
Sent: Tuesday, 31 March 2015 07:46
To: Salim Essa
Subject: Statement from new board March 31
Attachments: Statement from new board March 31.docx

Salim bhai

An amended version for your approval.

--
This message has been scanned for viruses and
dangerous content by **MailScanner**, and is
believed to be clean.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Statement by Dr Ben Ngubane, chairperson of Eskom, on behalf of the board

Nearly a month has passed since we took the decisive step to ask four of our most senior executives to step down from their day-to-day roles to allow the board to appoint independent persons to assist us to develop a plan to ensure that Eskom is able to deliver a sustainable, secure and efficient supply to its consumers.

Yesterday at a meeting of the board it was decided accepted the resignation of Mr Zola Tsotsi , as both chairperson and a director.

On behalf of the Board, I want to express our sincere thanks to Mr Tsotsi for his selfless decision and I want to wish him well for his future endeavours.

The board has once again re-affirmed its approach around its broad-ranging investigation and the request for key individuals to stand down in order for the process to take place without fear or favour.

We are convinced on the basis of information we have gathered so far that this approach is the only way forward to provide a long-term strategy to resolve the current issues at Eskom. We are relieved, too, by the recent decision of the labour court on the appeal of the suspended CEO.

None of the board's decisions are taken lightly, but rather in the spirit of meeting our obligations as the board responsible for a utility which needs to support our country's economic growth and the overall wellbeing of our nation.

The board spent much time over the past few weeks to discuss and debate the processes around the investigation and to finalise the key areas of work to be delivered as a matter of urgency by the team we have appointed.

As a board, we have spent the time since our appointment to assess the business and to get some understanding of some of the key issues facing Eskom.

We were saddened by the recent decision of S&P to downgrade Eskom. We believe this decision is based on a lack of understanding of the current conditions at Eskom and our comprehensive plan to ensure a stable and reliable supply. However, the board will redouble our efforts to meet the challenges faced by Eskom and is determined to win back lost ground with ratings agencies.

The board once again confirms the key challenges impacting on Eskom and its ability to provide a sustainable, secure and efficient electricity supply.

These are:

1. Cash constraints at the utility
2. An overburdened energy system leading to unprecedented load-shedding
3. An ageing fleet, and a seriously flawed maintenance programme
4. Rapidly increasing price of electricity
5. Delays and cost overruns of the new build programme

6. Overpaying for major procurement items and consumables.

It was against this backdrop that we took the step to launch the enquiry so that we as a Board are able to understand what has caused this sad state of affairs and to develop strategies to begin to remedy the situation. As part of this process it is planned to benchmark costs and structures required to run Eskom efficiently.

It is our express desire that the investigation determines whether the current situation was exacerbated by incompetence, ill-formed decision-making, mismanagement or untoward actions.

We will also look into the current operating polices and processes and the business structure to understand how we can introduce further efficiencies and best practices to get Eskom to be the utility we all wish it to be.

Our aim of this element of the investigation is to secure the supply of our primary energy inputs so we can align our outputs to the demands of our economy.

We will use this investigation to:

1. To plan and correlate a holistic fleet management programme to ensure operational efficiency of our current fleet
2. To review and analyse our new build programme to ensure energy is generated soonest from this critical element of our strategy. This will include all contracts and performance agreements which could be inhibitors to our urgent delivery of power.
3. Introduce checks and balances to mitigate any fraud and manipulation of processes within our operations.
4. Analyse and restructure of our balance sheet and all our incumbent debt instruments.
5. Realign key performance indicators for senior leadership to ensure better performance aligned to the board's current strategy.
6. Introduce an effective demand-side solution aimed at reducing the need for loadshedding.
7. Review current non-core assets and look to sale and lease options to fund further requirements at the utility.

The board spent much time reviewing our strategy so far and confirming the way ahead. We know that there is no alternative but to implement several radical solutions and we call on all South Africans to assist us in dealing with the challenges at Eskom. To do nothing, is not an option. Eskom requires a radical, well-thought through intervention and our investigation is aimed at delivering that solution.

The board today is determined to ensure a turn-around at Eskom and has adopted a position that it will not tolerate incompetence, tardiness, any dereliction of duty from any member of the Eskom team in the delivery of this turn around.

Our priority is to deliver an efficient and reliable service to our consumers and we will expect each of our executives to step-up to the plate to deliver on this commitment.

Info

Statement from new board March 31 (007)

E-mail attachment: C:\Users\rohanh\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\J7H0SEJ9\Statement from new board March 31 (007).docx

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Eskom | Powering your world

Eskom Board and Chairperson agree to part ways amicably

2015/03/31

Tuesday, 30 March 2015: After much deliberation the Eskom board today accepted the presentation made by Chairperson Mr Zola Tsotsi. The Board and the Chairperson thereafter held a constructive discussion about charting a way forward for the power utility.

Following this discussion, Mr Tsotsi agreed to step down as a Director and Chairperson of the Board. Speaking after the meeting, Mr Tsotsi indicated that the board had unity of purpose and that his decision to step down was in the interest of the company and the country and was done in order to allow the board to focus on the core issues facing Eskom.

This step, the board believes, will ensure that the Eskom can focus on the challenges facing it and sets the company on a new path to regain the confidence of all stakeholders concerned in ensuring the important work of meeting the energy needs of the country.

Speaking on behalf of the board, Acting Chairperson Dr Ben Ngubane thanked Mr Tsotsi for the selfless decision he has taken in placing the interests of the company and the nation first. Dr Ngubane also thanked Mr Tsotsi for his valuable service to Eskom over the years and wished him well in his future endeavours.

ENDS

Our Company
About Electricity
Tenders
Services
Optimise Energy
Customer Care
Careers

Contact

086 00 **ESKOM**
086 00 37566
Full Contact List

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Monday, 28 September 2015 17:47
To: baldwin.ngubane
Subject: RE: For Chairpersons
Attachments: 28092015 BOD Round Robing Resolution.docx

Importance: High

Best regards
Suzanne

From: baldwin.ngubane [mailto:baldwin.ngubane@gmail.com]
Sent: Monday, September 28, 2015 5:23 PM
To: Suzanne Daniels
Subject: Fwd: For Chairpersons

Sent from my Samsung device

-------- Original message --------
From: Business Man
Date: 28/09/2015 4:41 PM (GMT+02:00)
To: "baldwin.ngubane"
Subject: Fwd: For Chairpersons

Sir Documents as Discussed

Eskom	RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	October 2012
		Office of the Company Secretary	

RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD

STRICTLY CONFIDENTIAL

URGENT REQUEST TO APPROVE THE SUSPENSION OF CONTACT IN ANY FORM WHATSOEVER AND/ OR COMMERCIAL RELATIONSHIP WITH MAIL GUARDIAN, CITY PRESS AND SUNDAY TIMES ON A ROUND ROBIN BASIS

Having had due regard for the following factors:

INTRODUCTION

On the 28 September 2015, the Chairperson received a letter from Minister of Public Enterprise enclosing the letter from the Chairperson of Transnet and resolution of the Transnet Board. These are attached as annexures hereto.

City Press, Mail Guardian and Sunday Times in the recent past have published stories in the respective papers making unsubstantiated allegations of fraudulent conducts, maladministration and corruption against officials of the sister's state own companies. They have selected to not report on the verifiable responses provided by the relevant SOC's and irresponsibly publish gossip and sensationalism, without any regard for fact.

The above form of reporting by the three newspapers is misled to members of public and is intended to influence public perception that state own companies are corrupt and guilty of stealing public funds.

If this negative trend by the three newspapers is not challenged, it will cause irreparable damage to the roles of the state own companies in assisting government in job creation and economic growth.

It is therefore important that the state own companies should collectively suspend any dealings with the above three newspapers until such time they provide verifiable proof supporting the allegations referred above.

RESOLVED THAT:

(1) Eskom shall suspend any dealings, be it the placement of advertising, or any other commercial relationship with the Mail and Guardian, Sunday Times and City Press pending the resolution of the complaints that the state own entities have against the three newspapers.

Eskom	RESOLUTION OF THE BOARD OF DIRECTORS OF ESKOM HOLDINGS SOC LTD	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	October 2012
		Office of the Company Secretary	

The resolutions above are approved / not approved

BOARD MEMBER	APPROVED (Signature)	NOT APPROVED (Signature)	DATE
BS Ngubane			
M Pamensky			
Z Khoza			
V Klein			
R Khumalo			
P Naidoo			
V Naidoo			
N Carrim			
M Cassim			
B Molefe			
A Singh			

From: baldwin.ngubane <baldwin.ngubane@gmail.com>
Sent: Monday, 28 September 2015 17:23
To: Suzanne Daniels BTC
Subject: Fwd: For Chairpersons
Attachments: URGENT REQUEST.docx; Resolution.docx

Sent from my Samsung device

-------- Original message --------
From: Business Man
Date: 28/09/2015 4:41 PM (GMT+02:00)
To: "baldwin.ngubane"
Subject: Fwd: For Chairpersons

Sir Documents as Discussed

COMMISSION OF INQUIRY INTO STATE CAPTURE

(Company Logo)

28 September 2015

REFERENCE NUMBER: ROUND ROBIN B1 – 28/09/15

THE BOARD

Attention:

Dear Members

URGENT REQUEST TO APPROVE THE SUSPENSION OF CONTACT / AND OR COMMERCIAL RELATIONSHIP WITH MAIL GUARDIAN, CITY PRESS AND SUNDAY TIMES ON A ROUND ROBIN.

INTRODUCTION

On the 28 September 2015, the Chairperson received a letter from Minister of Public Enterprise enclosing the letter from the Chairperson of Transnet and resolution of the Transnet Board.

City Press, Mail Guardian and Sunday Times in the recent past have published stories in the respective papers making unsubstantiated allegations of fraudulent conducts, maladministration and corruption against officials of the sister's state own companies. They have selected to not report on the verifiable responses provided by the relevant SOC's and irresponsibly publish gossip and sensationalism, without any regard for fact.

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If this negative trend by the three newspapers is not challenged, it will cause irreparable damage to the roles of the state own companies in assisting government in job creation and economic growth.

It is therefore important that the state own companies should collectively suspend any dealings with the above three newspapers until such time they provide verifiable proof supporting the allegations referred above.

Resolved that:

(1) Denel / Eskom hereby suspend any dealings, be placing advertising, or any other commercial relationship with Mail and Guardian, Sunday Times and City Press pending the resolution of the complaints that the state own entities have against the three newspapers, until such time they provide verifiable proof supporting the allegations referred above.

Yours Faithfully

(Submitted electronically therefore unsigned)

Company Secretary

(Company Logo)

URGENT REQUEST TO APPROVE THE SUSPENSION OF CONTACT / AND OR COMMERCIAL RELATIONSHIP WITH MAIL GUARDIAN, CITY PRESS AND SUNDAY TIMES ON A ROUND ROBIN.

PLEASE FAX OR E-MAIL THE COMPLETED ROUND ROBIN REQUEST BY NO LATER THAN 16:00 ON 29 SEPTEMBER 2015.

THE GROUP COMPANY SECRETARY

TEL:

FAX:

EMAIL:

RESOLVED THAT:

(1) Denel / Eskom suspend any dealings, be placing advertising, or any other commercial relationship with Mail and Guardian, Sunday Times and City Press pending the resolution of the complaints that the state own entities have against the three newspapers.

The resolutions above are approved / not approved

COMMENTS (IF ANY)

……
……
……..

NAME **SIGNATURE**

DATE

From: baldwin.ngubane <baldwin.ngubane@gmail.com>
Sent: Saturday, 11 June 2016 12:19
To: Suzanne Daniels
Cc: Business Man
Subject: Re: FW: Draft Statement by Chairman

Suzanne I suggest we list the eight points at the end of the statements as a summary of the boards position.

Sent from my Samsung device

-------- Original message --------
From: Suzanne Daniels
Date: 11/06/2016 11:56 (GMT+02:00)
To: "baldwin.ngubane"
Subject: FW: Draft Statement by Chairman

Regards

Suzanne

From: Suzanne Daniels
Sent: 11 June 2016 11:56 AM
To: 'MABUDE CHWAYITA' ; 'Zethembe Khoza' ; Mark Vivian Pamensky
Subject: Draft Statement by Chairman
Importance: High
Sensitivity: Confidential

Dear All

As per Chairman's telephone call, for your consideration and review.

Yours sincerely

SUZANNE DANIELS

Group Company Secretary

Eskom Holdings SOC Ltd

Phone: +2711 800 3091 Mobile: +2782 580 7832 Fax: +2786 662 7327

Email:danielsm@eskom.co.za

I'm part of the 49Million initiative...
www.eskom.co.za/idm

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From: Business Man <infoportal1@zoho.com>
Sent: Saturday, 11 June 2016 13:13
To: Suzanne Daniels
Subject: Re: FW: Draft Statement by Chairman

Please add ok line about the big 4 that they supply 80% of eskoms coal and Tegeta supply less then 5%

I am then happy that we issue asap

---- On Sat, 11 Jun 2016 14:39:41 +0400 Suzanne Daniels wrote ----

Ok will do.

Yours sincerely,

SUZANNE DANIELS
Group Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832
Fax: +27 86 662 7327
Email: danielsm@eskom.co.za

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: "baldwin.ngubane" <baldwin.ngubane@gmail.com>
Date: 2016/06/11 12:19 (GMT+02:00)
To: Suzanne Daniels <DanielSM@eskom.co.za>
Cc: Business Man <infoportal1@zoho.com>
Subject: Re: FW: Draft Statement by Chairman

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-------- Original message --------
From: Suzanne Daniels <DanielSM@eskom.co.za>
Date: 11/06/2016 11:56 (GMT+02:00)
To: "baldwin.ngubane" <baldwin.ngubane@gmail.com>
Subject: FW: Draft Statement by Chairman

Regards

Suzanne

From: Suzanne Daniels
Sent: 11 June 2016 11:56 AM
To: 'MABUDE CHWAYITA' <chwayitam@yahoo.com>; 'Zethembe Khoza' <khozazw@telkomsa.net>; Mark Vivian Pamensky <mark@markpam.com>

Subject: Draft Statement by Chairman
Importance: High
Sensitivity: Confidential

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SUZANNE DANIELS

Group Company Secretary

Eskom Holdings SOC Ltd

Phone: +2711 800 3091 Mobile: +2782 580 7832 Fax: +2786 662 7327

Email: danielsm@eskom.co.za

I'm part of the 49Million initiative...
www.eskom.co.za/idm

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http://www.eskom.co.za/Pages/Email_Legal_Spam_Disclaimer.aspx

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Saturday, 11 June 2016 12:40
To: baldwin.ngubane
Cc: Business Man
Subject: Re: FW: Draft Statement by Chairman

Ok will do.

Yours sincerely,

SUZANNE DANIELS
Group Company Secretary
Eskom Holdings SOC Ltd
Phone: +27 11 800 3091 Mobile: +27 82 580 7832
Fax: +27 86 662 7327
Email: danielsm@eskom.co.za

Sent from my Samsung Galaxy smartphone.

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From: "baldwin.ngubane"
Date: 2016/06/11 12:19 (GMT+02:00)
To: Suzanne Daniels
Cc: Business Man
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Email: danielsm@eskom.co.za

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From: matshela2010 <matshela2010@yahoo.com>
Sent: Thursday, 10 December 2015 07:31
To: Suzanne Daniels
Subject: Fwd: 2 Pager

Sent from my Samsung device

-------- Original message --------
From: Business Man
Date: 2015/12/10 00:15 (GMT+02:00)
To: matshela2010
Subject: 2 Pager

2 pager between Tegeta and Eskom, salient points:

- Eskom will provide bank guarantee for R1.68 Billion
- CP for release is
    - Section 11 Approval from DMR
    - Competitions Commission Approval
- Tegeta will supply from OCM as per contract, but for the 12 months prepayment (jan 2016 to Jan 2017) will give a 5% discount off the R154
- Tegeta will supply from Kroonfontein as per contract for same period at the original R380, not the requested increased tariff
- At end of each month starting (end Feb 2016) Eskom shall deduct R140 million from amounts due to recoup the R1,68 Billion
- Tegeta receiving prepayment for 2 mines supply but eskom can use monies owed from all 3 Mines (Brakfontein also) to recoup the R140m a month
- Therefore if Tegeta does not deliver full volume from OCM or Kroon, the payments due for Brakfontein can be clawed
- Any amounts due over the R140m for each month shall be payable to Tegeta

2 pager, almost as addendum to the supply contracts

"AM13"

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Suite 301, Infotech Building1090 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

COMMISSION OF INQUIRY INTO STATE CAPTURE

"AM4"

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

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 Mabotha 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:
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Contact: 082 901 0766

Issued by: Department of Communications (DoC)

COMMISSION OF INQUIRY
INTO STATE CAPTURE

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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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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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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 enquiry[1].

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

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[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 Moshoana. In his judgment Justice GN Moshoana 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 Moshoana concluded that[5]:

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 2015[6], while I was serving as Group Executive: Technology and Commercial, I together with 3 others of my then colleagues[7], 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

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[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 Eskom[8]. 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 that[10]:

"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

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[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)

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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 THECOMMISSION

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:

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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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

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.

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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 Daniels[11], 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 attached[12]. 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.

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[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

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 sworn to/affirmed before me and the deponent's signature/mark/thumb-print was placed thereon in my presence.
At Dldale 2020/09/01
Smiso Ali
Topaas & Douglas
Douglasdale SAPS
RANK CST
SA POLICE SERVICE

Matshela Moses Koko

1 September 2020

Johannesburg

SOUTH AFRICAN POLICE SERVICE
DOUGLASDALE
2020 -09- 01
CLIENT SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE

COMMISSION OF INQUIRY INTO STATE CAPTURE

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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:

Seperation (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

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

(HELD IN JOHANNESBURG)

BRIAN MOLEFE'S AFFIDAVIT RELATING TO VARIOUS ESKOM MATTERS

I, the undersigned,

BRIAN MOLEFE

do hereby make oath and say that:

1. I was the Acting Chief Executive Officer of Eskom from April 2015 to September 2015. I was the Chief Executive Officer from October 2015 to December 2016. The facts set out in this affidavit are within my personal knowledge unless otherwise stated, and are to the best of my belief true and correct.

2. This affidavit is in response to an e mail from the commission's[1] Mr Pather dated 24 December 2019. In it, Mr Pather listed a number of issues where the commission required clarification from myself.

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[1] The Judicial Commission of Enquiry Into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State (hereafter the Commission)

3. Subsequent to Mr Pather's request, I asked the commission to facilitate my access to a number of documents which would assist me, (and the commission), in answering most of the questions that were being asked.[2]

4. Initially, most of the documents could not be made available.[3] There are three broad reasons that were furnished by the commission, namely;

4.1 Document not with the commission;

4.2 Document requested but not yet provided at the time; and

4.3 Document irrelevant, (or relevance not apparent)

5. Of the 39 documents initially requested, 30 could not be made available, 5 were made available and the rest were considered to not exist. Four documents which were not requested were also made available.

6. Subsequently, *"on further reflection"*, the commission's legal team indicated that the documentation that I have requested will be made available.[4] More documents were made available on the 15th of April 2020.[5]

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[2] Letter to Mr Pather dated 28.12.2019 (Annexure BM1)
[3] E-mail from Mr Pather dated 24.01.2020 (Annexure BM2)
[4] E-mail from Mr Pather dated 06.03.2020 (Annexure BM28)
[5] E-Mail from Mr Pather dated 15.04.2020 (Annexure BM29)

Background

7. My highest qualification is the Master of Business Leadership degree from the University of South Africa (Unisa). This is in addition to the B. Com degree from Unisa as well as a Post Graduate Diploma in Economics from the University of London's School of Oriental and African Studies (SOAS). I have also completed several short advanced finance and management courses at Universities outside South Africa. In Addition I have completed the Nuclear Reactor for Executives course at the Massachusetts Institute of Technology (MIT).

8. I have had a career in the civil service spanning a period of over twenty one years. Notably, I have worked as a Deputy Director General in the National Treasury, Chief Executive of The Public Investment Corporation, Chief Executive of Transnet and Chief Executive of Eskom.[6]

9. I was seconded from Transnet to Eskom and later appointed as Eskom Chief Executive in 2015. At the time of my secondment, Eskom was experiencing unprecedented load-shedding and could not meet South Africa's electricity requirements. This was considered to be the single most important factor that was hampering the growth of the South African Economy.[7]

[6] Curriculum Vitae attached as Annexure BM3.
[7] Annexure BM4

10. In addition, Eskom had major liquidity problems. In 2015, Eskom's auditors were considering to qualify Eskom's financial results to the effect that Eskom was no longer a going concern.

11. By the time I left Eskom in December 2016, the following had been achieved;[8]

10.1 South Africa had not experienced load-shedding from the 8th of August of 2015. This represented in excess of 540 days without load-shedding. The absence of load-shedding continued for a further two years after I had left. Load shedding was defeated by a rigorous strategy and implementation of maintenance without load-shedding.[9]

10.2 Profit, (Ebitda), was R31.5bn for the period ending 30 September 2016.

10.3 Cash generated from operations was R31.9bn. Liquid assets were R43.8 Eskom did not have a liquidity, nor a going concern problem

10.4 Plant performance, measured by the Energy Availability Factor, was 78.49%, hovering close to the 80% benchmark. This had improved from about 68% in just over a year and was confirmation of our rigorous maintenance regime.

[8] www.eskom.co.za/IR2016/interim Annexure BM5
[9] Annexure BM6

10.5 99 869 households were connected to the grid for the first time during the one year period ending 30 September 2016.

11. All these were achieved by implementing a turn-around plan that was supported by the board, implementing a generation maintenance strategy, improving staff morale and positively impacting on Eskom's reputation and brand, amongst others.[10]

Secondment/Appointment to Eskom

12. While I was the Group Chief Executive of Transnet in early 2015, I was asked by the Minister of Public Enterprises, Ms Lynn Brown if I would agree to being seconded to Eskom to assist with the debilitating load-shedding which South Africa was suffering at the hands of Eskom. I indicated my willingness to do so.

13. She communicated this desire by government to have me seconded to Eskom, to the boards of Transnet and Eskom.[11]

14. The board of Transnet approved my secondment,[12] and so did the board of Eskom.[13] A secondment agreement was concluded between the two State Owned Entities.[14]

15. While I was seconded to Eskom, my employment contract at Transnet was renewed for another five years.

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[10] Chairman's letter to the Minister of Public Enterprises (Annexure BM30).
[11] The Commission was unable to obtain this correspondence from either Transnet or Eskom (Annexure BM2 at 3.1).
[12] Transnet Board minutes of 20.04.2015 (Annexure BM31 at para 4.1.5)
[13] Eskom Board minutes of 23.04.2015 (Annexure BM7 at para 7.1)
[14] Secondment Agreement (Annexure BM32)

16. I deny any other alleged motive relating to my secondment. I believe that the commission has the power to obtain these documents from these entities for further clarification relating to this matter.

Pension Payment

17. In April 2015 I was seconded from Transnet to Eskom as Group Chief Executive Officer in an acting capacity.[15]

18. In or around September 2015, the Chairperson of Eskom wrote a letter to the Minister of Public Enterprises recommending that I be appointed as the Group Chief Executive Officer of Eskom as a permanent employee.[16]

19. On the 2nd of October 2015, the Minister of Public Enterprises wrote a letter to the Chairperson of the board of Eskom indicating that she had received cabinet's endorsement for my appointment as Group Chief Executive Officer and ex-officio member of the Eskom board. The letter did not have a limitation on the period of employment.[17]

20. On the 2nd of October 20015, I received a letter from the Minister of Public Enterprises appointing me as Chief Executive Officer of Eskom and ex officio

[15] Secondment Agreement (Annexure BM32)
[16] Chairman's letter to the Minister of Public Enterprises (Annexure BM30 para 3)
[17] Minister's letter to the Chairman dated 02.10.2015 (Annexure BM33)

member of the Eskom board. The letter did not have a limitation on the period of employment.[18]

21. In October 2015 I also received a letter from the Chairman of Eskom, Dr Ben Ngubane confirming my appointment as Group Chief Executive Officer. There was no limitation on the period of employment.

22. In early October 2015 I received (and signed) the Executive Employment Contract from Eskom which specified the commencement date as 01 October 2015 (clause 1.2.7). The contract specified that employment was to continue for an indefinite period (clause 3.1).

23. In late October 2015 my membership of the Eskom Pension Fund was finalised. On the 26th of October 2015 I transferred R4 264 575.34 *(Four Million Two Hundred and Sixty Four Thousand and Five Hundred and Seventy Five Rand and Thirty Four Cents*), being proceeds from my Transnet Pension Fund, to the Eskom Pension Fund.[19] The Eskom Pension Fund accepted my membership of the fund and loaded my membership in their system as "PPX" meaning that I was a permanent employee.

[18] Minister's letter to Mr B Molefe dated 02.10.2015 (Annexure BM34)
[19] Eskom Pension and Providend Fund Receipt (Annexure BM27)

24. Receipt of the funds was also acknowledged by a letter from Joey Sankar dated 04.11.2015 which letter quoted my unique number as 4610263.[20]

25. On the 1st of November 2015, the Minister wrote a letter to Dr Ngubane informing him of a cabinet decision to employ all Parastatal Executives on five year contracts. This meant that my contract of employment would be changed to a five year contract.

26. On the 9th of November 2015 I received a letter from Dr Ngubane advising me that I will be required to enter into a fixed term contract of employment. At that point, I was only required to acknowledge receipt of the Chairman's ***"Offer of Employment"***. [21] I duly acknowledged receipt of the offer on the 11th of November 2015.

27. I resisted this change to my employment contract. This caused the Chairperson of the board to write a letter to Minister Brown on the 25th of November 2015 requesting her approval that;

27.1. At the end of the five year contract, I be allowed to retire from service as if I am 63 years old;

[20] Letter from Joey Sankar (Annexure BM27)
[21] Chairperson's ***"offer of employment"*** dated 09.11.2015 (Annexure BM37).

27.2. Penalties prescribed by the EPPF be waived and Eskom would carry the cost of the penalties.

28. The letter of 25 November 2015 from Dr Ngubane to the Minister was sent by the Eskom Company secretary, Ms S Daniels, to Ms K Davids (Minister's PA), O Ruthman and Z Mbilase at the Department of Public Enterprises. The letter was e mailed at 20h33 on the 25/11/2015 by Ms Daniels.

29. At 21h05 on the 25/11/2015, Ms K Davids acknowledged receipt of the letter and undertook to bring the letter to the Minister's attention.

30. On the 26/11/2015, K Mhlongo sent an e mail to Ms S Daniels confirming that the letter will be brought to the Minister's attention.

31. To the best of my knowledge, the Minister never responded to the Chairperson's letter.

32. On the 09/02/16, the People and Governance sub-Committee of the Eskom board (P&G) received a presentation from Mr A Minnaar where he;

32.1. reported that a five year contract for the Group Chief Executive of Eskom is a first for Eskom;

32.2. referred to previous precedents at Eskom where additional pensionable service was granted to executives and penalties were waived;

32.3. explained that the EPPF rule that employees may proceed on retirement from age 50 with ten years' service remains applicable;[22]

33. Furthermore, he recommended that the P&G Committee should adopt a resolution to the effect that;

33.1. Where executive directors (not specifically the GCE) on fixed term contracts take early retirement and there is a shortfall regarding the ten years, Eskom will bridge the gap, waive penalties and refund EPPF cost.

34. At this meeting, the P&G sub-committee made a resolution that;[23]

"In cases where Executive Directors (appointed on fixed term contracts) 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 10years

[22] This was wrong and was the source of the entire "mistake". It had been inferred from the EPPF Member's guide para 3.3(c) (Annexure BM24)
[23] Annexure BM23

ii. ***Waive penalties to early retirement***

iii. ***Refund the EPPF actual costs for additional service added, plus penalties applicable to early retirement.***"[24]

35. On the basis of this resolution by the P&G Committee, I agreed to sign a five year contract on condition that the board will finalise all the administrative arrangements that would empower them to contract with me on the basis of their resolution. The contract was signed on the 7th of March 2016.[25] It specifically provided that I would *"continue"* to be a member of the EPPF.[26]

36. I note that former Eskom CEO, Mr Brian Dames testified before the parliamentary committee enquiry into state capture that there was a practise at Eskom to permit executives to take early retirement from Eskom. Mr Sibusiso Luthuli, Principal Officer of the EPPF said that Pension Fund Rule 28 permitted normal retirement from the Fund at age 50, with the permission of the employer. I further refer to the Guide to Benefits of the EPPF which refers to early retirement from the Fund being possible from the age of 50.[27] The Guide informed my understanding of the EPPF Rules and was referred to by Mr Minaar in the P & G sub-committee, referred to above.

[24] Resolution of the P & G Committee (Annexure 36)
[25] Contract of Employment (Annexure BM25)
[26] Annexure BM25 para 10.1 and 10.2
[27] Annexure BM24

37. On the 11/11/2016, I wrote a letter to Dr Ngubane requesting early retirement in terms of the rules of the EPPF and the resolution of the P&G meeting of 09/02/16.

38. On 24/11/2016, I received a letter from Dr Ngubane communicating the Eskom Board's acceptance of my early retirement.

39. On the 18/02/2017, I received a letter from the EPPF welcoming me as a pensioner and providing details of my pension.

40. I received a lump sum of some R7.7m from the EPPF on being admitted to the Fund. Of this, some R4.3m had been transferred by me from the Transnet Pension Fund to the EPPF.[28]

41. In April 2017, after I had accepted appointment as a Member of the National Assembly by the North West Province of the ANC, Members of the Eskom board and Company Secretary met with me and intimated that the acceptance of my early retirement application was a mistake. I asked them to make a proposal on a way forward that would get the Minister of Public Enterprises' approval.

[28] Annexure BM27

COMMISSION OF INQUIRY INTO STATE CAPTURE

42. On the 11/05/2017 I received a letter from Dr Ngubane requesting me to resume duties as Eskom Group Chief Executive. Because of the common error of implementing the early retirement, the legal position was that the situation had to be restored to *status quo ante*. I obtained legal advice from senior counsel who confirmed that that was indeed the legal position. I signed a Reinstatement Agreement which regulated my return to duties, as did Eskom. Eskom also assured me that the Minister was comfortable and had approved this arrangement. Ms Daniels, in her testimony to the parliamentary committee, indicated that such approval from the Minister had been obtained.

43. On the 15/05/2017 I resumed duties as Eskom Group Chief Executive.

44. On the 17/05/2017 the Eskom Group Company Secretary wrote a letter to the Principal Officer of the EPPF advising him of my resumption of duties at Eskom with effect from 15/05/2017 and further advising that my membership of the Pension Fund must be reinstated.

45. On 15 May 2017 the DA launched an urgent High Court application to challenge my resumption of duties. This was followed by an application by the EFF. The matter was originally set down to be heard on the 02/06/2017.

46. On the 31/5/2017 Minister Brown sent a letter to Dr Ngubane instructing the board to rescind the decision to reinstate me as Group Chief Executive.[29]

47. On 24 May 2017 Solidarity launched an urgent High Court application seeking to review various decisions concerning my resumption of duties and related relief.

48. On the 02/06/2017 after a brief Eskom board meeting I received a letter from Dr Ngubane advising me of the Minister's instruction to rescind my reinstatement.

49. On 05/06/2017 I launched a Labour Court Application to set the summary dismissal aside.

50. On 06 June 2017 the High Court application was postponed pending the outcome of my Labour Court application

51. On the 04/07/2017 the Labour court issued an order postponing hearing my application until after judgement in the High Court applications brought by the DA and the EFF.

[29] Annexure BM26

52. The High Court ruled on the matter in January 2018 and granted judgement in favour of the Democratic Alliance and Solidarity Trade Union.

53. I requested leave to appeal the judgement which was denied by the High Court, the SCA and the Constitutional Court.

54. In December 2018, the Eskom Pension and Provident Fund brought an application the Gauteng Division of the High Court for an order that would deal with matters relating to my pension. The matter is pending.

Guarantee to Tegeta

55. On the 1st of December 2015, I underwent a surgical procedure to repair my right shoulder at Morningside clinic in Sandton. During the procedure, I had respiratory failure which was caused by what the doctors believe to be pulmonary oedima. I was under an induced coma for approximately 30 hours after the operation while the doctors recovered the functioning of my lungs.

56. The result was that I was on sick leave for the whole of December 2015 and for two weeks in January 2016.

57. I was therefore not at Eskom when the guarantee was negotiated and approved and do not have first hand knowledge of what transpired. The roll call for the board resolution of the 8th of December 2015 correctly records my apology as ***"off sick"***.[30]

[30] Resolution of the board of Directors 08.12.2015 (Annexure BM35).

58. However, I have been able to gather that on the 06th of December 2015, Mr Matshela Koko wrote a letter to Mr Joel Raphela and Dr Thibedi Ramontja of the Department of Minerals and Energy which was sent by email.[31] In the letter, he expressed concern about the security of the supply of coal relating to several power stations –especially Hendrina power station. He requested for intervention from the Department of Mineral resources *"to assist in assuring resolution to the coal supply situation and certainty going forward."*[32]

59. Dr Ramontja responded to Mr Koko's letter shortly thereafter through an undated letter.[33] In this letter Dr Ramontja advised that Eskom should consider *"some prepayment to be made for up to one (1) year of coal supply… thereby averting any national crisis that we as South Africans can ill afford."* This letter, in my opinion, planted the seed that would result in the December 2015 guarantee as well as the prepayment April 2016.

60. On the 8th of December 2015, Mr Koko and Mr Singh signed a submission to the Eskom Board of Directors[34] and attached the letter from DMR. In the submission, they recommended a pre payment of coal, (*"advance purchase"*) to the value of R1.68bn to *"secure a future supply of coal to Eskom"*.[35] This was clearly in line with the advise from the DMR.

61. The draft resolution was circulated by the company secretary and it sought to authorise the "(acting) *Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer, …, to negotiate and conclude*

[31] Letter from Koko to Ramontja 06.12.2015 Annexure BM8
[32] Letter from Koko to Ramontja 06.12.2015 Annexure BM8 pg 2
[33] Letter from Ramontja to Koko udated Annexure BM9
[34] Round Robin Submission to Board of Directors Annexure BM10
[35] Round Robin Submission to Board of Directors Annexure BM10 para 3.4.1

prepurchase of coal agreement with the proposed owners of OCM (coal supplier)."[36]

62. It appears that while a pre-payment was approved by the board on recommendation by DMR, what was subsequently implemented was a guarantee and not a prepayment. I am not sure as to how and why this was done, but it was better because there were no immediate cash flow implications.

63. In the end, the guarantee was never called.

Prepayment to Tegeta

64. The prepayment for coal was approved at a Board Tender Committee, (BTC), that was held by tele-conference on the 11th of April 2016.[37] This meeting was followed by a BTC meeting on the 13th of April 2016 where the securities from Tegeta Resources were discussed.[38] I was not present at, nor was I required to be part of, these meetings.

65. The prepayment for the delivery of coal by Tegeta over the winter period of 2016. The delivery of coal would be in terms of an existing agreement between tegeta and Eskom. Umsimbithi also had a similar agreement for the delivery of coal , (without prepayment), which also continued over the winter period.

66. A prepayment agreement was the second addendum to the original coal supply agreement between Eskom and Tegeta.[39]

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[36] Resolution of the Board of Directors Re: Urgent request to approve the pre-purchase of coal from Optimum Coal (Pty) Ltd Annexure BM11 para 2.1.2

[37] Minutes of the special Eskom Board Tender committee Meeting of 11.04.2016 Annexure BM12.

[38] Minutes of the Eskom Board Tender committee Meeting of 13.04.2016 Annexure BM13.

[39] Second Addendum to the Coal Supply Agreement (Annexure 36).

67. The second amendment to the coal supply agreement, (prepayment agreement), was reviewed by Eskom's Assurance and Forensics Department.[40] The recovery of the advance payment was found to be in line with the contract terms both in terms of quantity and quality,[41] (in other words, the coal, in terms of quantity and quality, that was contracted for in terms of the prepayment, was delivered).

68. The email to Albert Scholz which is purported to come from me,[42] was not sent by myself. There were several emails like it which requested payment from one person or another at Eskom which were fraudulent. I believe that this was one of them.

69. The matter of these false e-mails was investigated internally by Mr Shaun Maritz and Mr Dika Modise. An outside service provider, Sithabile Technology Services was also engaged to assist with the investigation. Their conclusion was that these were fake emails and a criminal case was opened with the South African Police Services.

Glencore OECM Penalties

70. When I arrived at Eskom, I discovered that Glencore was owing Eskom an amount in excess of R2bn in penalties in terms of the coal supply agreement. Furthermore, Eskom was not taking adequate steps to recover the money. It is

[40] Advance payment review (Annexure BM39).
[41] Annexure BM39 para 4.3
[42] E-mail to Albert Scholz Annexure BM14

not clear to me why there was a reluctance from Eskom to recover this money that was legitimately due to Eskom.[43]

71. Mr Effron acknowledges in his submission to the commission that; *"... we had been discussing these penalties with Eskom for a number of years..."*[44]

72. The penalties were not a figment of my imagination, as alleged. They were a legitimate claim that Eskom had against OCM.

73. I put in place measures to recover the money. Attorneys Cliffe Dekker Hofmeyr were instructed to write a letter of demand to Optimum as well as to issue summons with a view to obtaining a judgement.[45] This caused visible irritation, (understandably), with myself on the part of Glencore.

74. The Public Finance Management Act requires accounting authorities of public entities to take effective and appropriate steps to collect all revenue due to the public entity concerned.[46]

[43] Nagar S "Affidavit and Annexures" https://sastatecapture.org.za/site/files/documents/71/U2._Snehal_Nagar_-_Affidavit_&_Annexure.pdf para 7.3 Date of use 27.02.2020.
[44] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 41.
[45] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 41.
[46] Public Finance Management Act 1 of 1999 s 51(b)(i).

75. I found it difficult to reconcile Eskom's inaction on this matter with our demand that the residents of Soweto should pay their debts to Eskom.

Glencore Coal Supply Negotiations

76. Eskom and Optimum Coal Mine, (OCM), Proprietary were parties to a coal supply agreement relating to Hendrina Power Station which agreement was to expire in 2018. This coal supply agreement was entered into in 1993.

77. In terms of the agreement, OCM was obligated to supply coal with a CV of 23.5MJ/.kg to the Hendrina Power station at a price of R154 per tonne.

78. In July 2013, OCM issued a hardship notice and initiated a hardship claim against Eskom in February 2013. This was despite the fact that at the time, Eskom was going through its own hardships and was experiencing load-shedding.

79. At the time of the request to increase the price at which OCM was supplying coal to Hendrina power station from R154 to R442 per tonne, the shareholders of OCM were, amongst others, Purito BV, (owned by Glencore group), with a

shareholding of 67.58%, and Lexshell 849 (Pty) Ltd (owned by Mr Cyril Ramaphosa), with a shareholding of 9.64%.[47]

80. Mr Ramaphosa was Chairman of Optimum at the time of the initiation of the hardship claim.[48]

81. The competition Commission approved the sale of Lexshell 849 (Pty) Ltd by Mr Ramaphosa's Shanduka Group (Pty) Ltd to Pembani Group (Pty) Ltd on the 19th of August 2015.[49]

82. This notice and hardship claim were preceded by another amendment to the contract in April 2011 following arbitration.

83. In his submission to the commission, Mr Ephron claims that; "*Glencore was not able to undertake a comprehensive due diligence exercise*" at the time of acquiring Optimum.[50] Furthermore, he states that *"Glencore did not, for example, know how any price-adjustment mechanisms in the CSA worked."*

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[47] Lourens C *"Shanduka raises stake in Glencore coal project"* 15.12.2011 https://www.iol.co.za/business-report/economy/shanduka-raises-stake-in-glencore-coal-project-1199008 Date of use 20.02.2020.

[48] Imaralu D *"Glencore, Ramaphosa acquire 70% stake of optimum coal"* 25.06.2012 http://venturesafrica.com/glencore-ramaphosa-acquire-70-stake-of-optimum-coal/ Date of use 20.02.2020.

[49] *Pembani Group Proprietary v Shanduka Group Proprietary Limited* (LM041Jun15) [2015] ZACT 126 (18 September 2015) (Annexure BM17).

[50] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 13.

Glencore discovered that they are unhappy about the price of coal after conducting a "*post acquisition review*" in July 2013.[51]

84. OCM had also taken a gamble on the export price of coal. It is when this bet went sour, when the price of coal collapsed in 2012, that the hardship was concretised.[52] It is worth noting that Eskom would not have participated in their good fortune had the export price of coal gone the other way.

85. On the 4th of May 2015, Mr Bester (of Eskom), wrote a memo[53] to his superior, Mr Mboweni, recommending that Eskom should agree to the proposed price increase from R154 to R442 per tonne.[54] In his memo, Mr Bester intimates that;

"As a result of continued low international coal prices Optimum, without the prospect of a recovery in the next two years, at the end of January 2015 Optimum made the decision to close their export operations and began a section 189 for the opencast section of the mine"

86. It is therefore apparent that their *"hardship claim"* was a result of their own negligence and failure to conduct proper due diligence at acquisition for which they now wanted Eskom to pay.[55] Furthermore, they had gambled in the

[51] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 15.
[52] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 21.
[53] Memo from Bester to Mboweni dated 04 May 2015 Annexure BM15.
[54] Annexure BM15 para 3.
[55] Annexure BM18 para 17.

international coal market and had failed to protect themselves by putting in place adequate measures to protect themselves against international coal price volatility. It was, in my opinion, unreasonable for Eskom to be expected to pay for these management failures, (perhaps even incompetence).

87. In exchange for the price increase, Mr Bester recommended that the contract should be extended to 2023 and that Eskom should take up 15% of shares in Optimum,[56] a company that was in financial distress.

88. I was suspicious of these recommendations from Mr Bester and the analysis that preceded them. They completely ignored Eskom's financial and operational position. Not once did Mr Bester refer to the fact that Eskom was itself going through hardship. Mr Bester's recommendation heavily favoured OCM and Glencore.[57] I felt that it was not an honest appraisal and an appropriate negotiation position with a hostile supplier.

89. Firstly, the recommendation that the supply agreement be extended to 2023 without going through a competitive process, (or at least hard bargaining on Eskom's part), was a problem to me. Secondly, Eskom's proposed 15%

[56] Annexure OBM15 para 3.

[57] This is also confirmed in Bester's submission to the Commission Annexure BM16 at para 38, 40, 44, 46

shareholding in Optimum would be meaningless as it would be a minority stake where we would have no say in the cost structure of the company.

90. I did not believe that OCM's threat to shut down the mine was credible. On the contrary, my interpretation of it was that it was designed to instil fear in us, threaten us with more load-shedding and extort a higher price and extend the contract by a further five years.

91. I am not aware that we were under obligation to agree with their position at all costs. Mr Ephron's submission to the commission seems to imply a certain "*entitlement*" to the price increase.[58]

92. My suspicions about Mr Bester's incompetence at handling such complex negotiations in the interests of an employer, such as Eskom, are confirmed in his submission to the Commission at paragraph 47 where, after referring to my negotiation tactics, he says; "*Optimum countered, offering to continue supply until the end of the contract at R300 per tonne, thus Glencore would subsidise the coal price from the Optimum Colliery to Hendrina Power Station until the end of 2018, see annexure JAB/Z16.*"

[58] Annexure BM18 para 31.

93. Even at this early stage of the negotiations, Mr Bester, by his admission, would have cost Eskom R112 per tonne for three years. Money that Eskom did not have.

94. The stalemate as a result of no agreement, (correctly) led to the Hardship Arbitration being embarked on. A hearing was scheduled for the period 16-27 May 2016.[59] I was happy with this outcome because it was in the interests of Eskom.

95. On the 21st of July 2015, the directors of OCH and OCM took a resolution to commence business rescue (BR) proceedings in respect of OCM and OCH.

96. On the 5th of August 2015, the Department of Minerals announced that Glencore's mining licences have been suspended.[60] The reason for the suspension was that Glencore had not followed due process in the proposed retrenchments of their workers.[61] The effect of the suspension of the mining licenses would be to guarantee the suspension of coal supplies by Optimum to Hendrina.

97. Dr Ngubane and I had a meeting with Minister Ramatlhodi where Dr Ngubane asked him to reconsider the decision to suspend the licenses of Glencore

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[59] Statement of Clinton Martin Ephron at the Commission Annexure BM18 para 38.
[60] BD Live *"Ramatlhodi suspends Glencore license"* 05.08.2015 http://thegremlin.co.za/business-news/wordpress/2015/08/05/ramatlhodi-suspends-glencore-licence/ Date of use 27.02.2020
[61] Wittles G *"Ramatlhodi Glencore urgently trying to resolve licence issue"* 05.08.2015 https://ewn.co.za/2015/08/05/Ramatlhodi-Glencore-urgently-trying-to-resolve-its-licence-issue Date of use 27.02.2020

because of our concern about the negative impact on the security of supply of coal to Hendrina power station and the possible impact on load shedding

98. We were relieved, when a few days later, the suspension of the licenses was withdrawn.[62]

99. I was dumbfounded when, in May 2017, former Minister Ramatlhodi claimed that the Eskom Chairman, (Dr Ngubane), and I met with him to ask him to suspend Glencore's license, and that he refused because it would result in more load shedding. He seemed to have forgotten that **he had in fact suspended the license at the time**.

100. On 20 August 2015, the business rescue practitioners, (BRP's), suspended the supply of coal by OCM to Eskom. Eskom had stopped load-shedding on the 8th of August 2015. This move by the BRP's put us at the risk of returning to load-shedding.

101. We had anticipated that this stoppage of supply from the Business Rescue process was a possibility and had put in place contingency measures to ensure that Hendrina continues to supply power to the grid. Mr Bester's fears of an inability to keep Hendrina functioning when OCM stops coal supply to Hendrina did not materialise, nor did the heavens fall from the skies.

[62] Reuters "Ramatlhodi withdraws Glencore mine suspension" 07.08.2015. https://www.fin24.com/Companies/Mining/Ramatlhodi-withdraws-Glencore-mine-suspension-20150807 Date of use 27.02.2020.

102. We were able to keep Hendrina functioning and did not have one day of load-shedding during the period that OCM was not supplying Hendrina with coal.

103. In October 2015, at the request of Mr Phuthuma Nhleko of Pembani Group, I held a meeting with him and Mr Kennedy Bungane. At this meeting, they expressed Pembani's desire to buy OCM. They indicated that this was, however, conditional on Eskom agreeing to a higher price for the coal, an extension of the coal supply agreement and a waiver of the penalty due to Eskom. I indicated to them that we have already turned down Glencore on all of these requests and could not see how we would justify acceding to their request. I indicated that doing so would suggest that we were giving them special treatment and that we could potentially even be accused of possible corruption.

104. Mr Nhleko subsequently wrote a letter to me confirming our discussion.[63]

105. I subsequently learnt in November 2015 that the BRP's were in negotiations with Oakbay for the sale of OCM. A transaction was subsequently concluded between the parties. It was approved by OCM creditors as well as the competition commission.

[63] Letter from Mr Nhleko to B Molefe dated 16.10.2015 Annexure BM19.

McKinsey MSA

106. A cursory look at Eskom's financials will reveal the high costs relating to consultants –especially for the new build programme.

107. In July 2015 there was a proposal for the development of an internal consulting capacity. These consulting engineers would be trained from Eskom's (young) engineers from the TOP programme by Mc Kinsey consulting.

108. McKinsey would not be paid from the consulting but would share in the cost savings that Eskom would realise from using its own internal capacity for engineering consulting. There would therefore not be any upfront cash outlay for the training, young engineers would be trained and costs would be saved.

109. In May 2015 I approved the proposal.[64]

110. In August 2016, the Group Capital Integration and Assurance wrote a memo to the board tender committee indicating that the organisation had made savings of R18.6bn through the programme. R2.84bn was payable to McKinsey as a success fee and Group Capital had negotiated this fee down to R1.8bn.[65]

[64] Strategy to develop current TOP engineers to an internal consulting unit Annexure BM20
[65] Submission to BTC 08.08.2016 (Annexure BM40)

111. On 13December 2016 another submission was made to Board Tender Committee for a mandate to negotiate to further reduce the fee payable to McKinsey to R849m.[66]

Nuclear 100 Project

112. Eskom operates two nuclear reactors at Koeberg for purposes of generating electricity. These reactors were commissioned in the 1980's. Since commissioning, these reactors have been operated safely and there have not been any major nuclear incidents in South Africa.[67] They are currently the cheapest source of electricity for Eskom.

113. Eskom is a member of the World Association of Nuclear Operators (WANO) which uses peer reviews and inspections to advise member nuclear operators of possible risks in operations as well as to recommend improvements.

114. In 2015, WANO wrote a report to me as the Chief Executive of Eskom warning about the risk that Eskom is facing because of the future unavailability of nuclear reactor operators to the utility. Eskom was losing its operators to new nuclear

[66] Submission to BTC 13.12.2016 (Annexure BM

[67] Potgieter P and Yelland C *"Discussing nuclear energy operations with Peter Pozesky CEO of WANO"* https://www.ee.co.za/article/discussing-nuclear-energy-operations-peter-prozesky-ceo-wano.html Date of use 24.02.2020

reactors that were being commissioned elsewhere in the world –especially the Middle East.

115. In addition, we did not have a full complement of nuclear operators at Koeberg, (which was a risk on its own).

116. Furthermore, the remaining nuclear operators at Koeberg were making demands for remuneration benefits which were above Eskom's policies and affordability. Failure to meet these would see us losing them to the Middle East operators. Some already had offers of employment and were threatening to leave Koeberg at short notice.

117. What was odd, however, was that Eskom is the only nuclear power station outside the United States of America whose training programme is accredited by the National Academy for Nuclear Training[68] to train nuclear operators, (both for ourselves and for other new operators).[69] Eskom had not trained operators in a very long time.

[68] Nationa Academy of Nuclear Training Accreditation Certificate (Annexure BM
[69] Njobeni S *"Esskom's new recruits to get nuclear know how"* 10.06.2016 https://www.iol.co.za/business-report/companies/eskoms-new-recruits-to-get-nuclear-know-how-2032911 Date of use 24.02.2020.

COMMISSION OF INQUIRY INTO STATE CAPTURE

118. I authorised the recruitment and training of 100 electrical engineering artisans to be trained as nuclear operators. The programme was also authorised by the Koeberg Nuclear Power Station Manager.[70]

119. I was not involved in their recruitment. Any CV's received directly by myself relating this programme were forwarded to Eskom's HR Department. The recruitment of these artisans was not a secret and was communicated to the public. The project was launched by the Minister of Public Enterprises.[71]

Public Protector's Report Relating to Cell Phone Records

120. The Public Protector released a report titled "State of Capture Report" dated 14 October 2016. The report contained a series of "observations" and did not make any findings.

121. Paragraphs 5.96 to paragraph 5.101 deal with my phone records and makes some "notes".

122. Although the Public Protector makes the "notes", she did not ask me for my side of the story as regards the phone calls, nor did she bring the phone records in her possession to my attention before she finalised the report as is required by the Public Protector's Act[72] and natural justice.

---

[70] Approval of the Artisan Nuclear Operating Pipeline 12.04.2016 (Aneexure BM

[71] Njobeni S *"Esskom's new recruits to get nuclear know how"* 10.06.2016 https://www.iol.co.za/business-report/companies/eskoms-new-recruits-to-get-nuclear-know-how-2032911 Date of use 24.02.2020

[72] Public Protector's Act 23 of 1994 s 7(9)

123. Significantly, the Public Protector's report did not make any findings as regards her "notes" relating to my phone records. She has also not indicated any wrongdoing on my part.

124. Nevertheless, paragraph 5.97 refers to contact between myself and Mr Ajay Gupta on a number of occasions. The Public protector fails to provide any other details about the phone calls. She does not provide the phone numbers, confirmation that the numbers belonged to Mr Ajay Gupta, nor the dates and times when the phone calls were made. It is therefore difficult for me to determine the veracity of her claim in paragraph 5.97 of the report.

125. Similarly in paragraph 5.98, there are no details of the phone numbers or the dates and times of the phone calls. I can therefore not confirm or deny the veracity of the claims.

126. In paragraph 5.100 the Public Protector says that I can be placed in the Saxonwold area 19 times. That is all that is said. She does not provide context or even suggest what I may have been doing there. What I understand from enquiries made to a communication expert is that any user of a cell phone within the area of coverage of a cell phone tower (e.g. Lynnwood) will be recorded as being in the "area" of, say, Lynnwood. This includes a user who is in transit through the coverage area of that tower.

127. But more importantly, paragraph 5.99, which suggests the number of instances that I was purportedly in the Saxonwold area, only shows that I was there five times and not 19 times.

127.1. **05 August** when, according to the cell phone service provider's records, I was in the area between 09h17 and 09h41 and made one phone call and received nine others.

127.2. **17 August** when, according to the cell phone service provider's records, I made two phone calls while I was in transit in the area

127.3. **18 August** when, according to the cell phone service provider's records, I made one phone call while I was in transit in the area

127.4. **23 August** when, according to the cell phone service provider's records, I listened to my voice messages while in transit in the area.

127.5. **28 August** when, according to the cell phone service provider's records, I received two calls, listened to my voice messages and received one call while in transit in the area.

128. Paragraph 5.101 says that I had contact with Mr Atul Gupta. This is not true because the phone call from Mr Atul Gupta to myself was forwarded to my message box. There is no other record in my phone records that shows that I returned Mr Atul Gupta's call or that he ever tried to contact me again.

129. This is according to my cellular phone records which I have had thoroughly examined since the release of her report. An affidavit from an expert cellular phone analyst confirms the existence of these discrepancies.[73]

130. I would have raised these and other discrepancies had Ms Madonsela afforded me an opportunity to be heard.

[73] Affidavit by Mr Nico Smith (Annexure BM22).

E mail from Sahara Loans

131. The commission has forwarded to me an email from Sahara loans dated 27 June 2017. Apparently the email was sent to my Eskom email address. I was no longer at Eskom on the 27th of June 2017. I therefore did not receive the email.

132. Until it was sent to me by the commission, I was not aware of the existence of this email.

133. I have no idea as to who Sahara Loans is.

BRIAN MOLEFE 13.05.20

I certify that the deponent knows and understands the contents of the aforegoing Affidavit which was signed and attested to at the undermentioned address on this day of **FEBRUARY 2020**.

SUID-AFRIKAANSE POLISIEDIENS
SAPS LYTTELTON
2020 -05- 13
COMMUNITY SERVICES CENTRE
SOUTH AFRICAN POLICE SERVICE

7232711 - 1 CST

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

STATEMENT BY ADVOCATE NGOAKO ABEL RAMATLHODI

---

1. I am a senior member of the African National Congress (ANC). I have over the years been appointed to serve in Government. I was appointed as:

   1.1 The 1st Premier of Limpopo and served in office from 10 May 1994 to 22 April 2004;

   1.2 Deputy Minister of Correctional Services from 1 November 2010 to 25 May 2014;

   1.3 Minister of Mineral Resources from 25 May 2014 to 23 September 2015;

   1.4 Minister of Public Service and Administration from 23 September 2015 to 31 March 2017.

2. Following my appointment, I received many congratulatory messages including one from Duduzane Zuma.

3. What was peculiar about Duduzane's message was that he asked to meet me and convey his message personally. At the time I responded by saying I was very busy in Cape Town, and that during weekends I would still be busy because of my political appointments.

4. Then after a few months I got a frantic call from Duduzane who was demanding to meet me. I arranged to see him at St Georges Hotel where we were having a National Executive Meeting. In that meeting he said to me he was sorry to meet me under those circumstances where he had to lodge a complaint against me, instead of meeting me in order to congratulate me.

NR

5. He went on to tell me that he had received information from two sources that reported that I have been going around bad mouthing him and his business associates, saying that they were involved in criminal activities.

6. I asked him who his sources were.

7. He mentioned two names, one from India and other from South Africa.

8. I do not remember those names because he promised to furnish me with the names in writing. That never happened.

9. He also mentioned that he told his father, the President, about these allegations. My response was that he grew up in front of me, so I was one of his uncles, as we were referred to those days by children in exile.

10. I went on to say that as his uncle, I do not need to run around reporting on him doing crime. I would simply summon him and ask him if he was doing crime and if he was, I would order him to stop or report him to the police. I went on to tell him that I will tell his father about our conversation.

11. His response was to ask me to meet Ajay Gupta in order to explain the situation to Ajay Gupta. I told him I don't know Ajay and I owe him nothing. He left the meeting on that note.

12. In the mean time I received a report from Adv. Mahlodi Moufhe that there was a request from the Guptas to meet me, and that he had told them that he did not think I would agree to meet them. I confirmed that I did not want to meet them. Please see the article attached hereto as **Annexure A** in particular paragraph 1. I confirm the contents of the article.

13. Around the same time the Director General ("DG") of the Department of Mineral Resources ("DMR"), Dr. Ramontja told me that there was a request from Guptas that we increase the order volume of the New Age Newspaper that was supplied to the department. I refused to authorize the request.

14. Dr. Ramontja also told me that during Minister Shabangu's term the Guptas would host the department in their Cape Town home during the Mining

TT 12

Indaba. I indicated to the DG that this would not happen under my leadership of the department.

15. A few months later I got a call from Duduzane who wanted to meet me on a Friday. I told him that I would meet him on Monday as he sounded desperate.

16. I then asked the DG Dr. Ramontja to inquire into what the issue could be. It emerged that one of the Gupta owned mines was non-compliant with safety regulations. Mr. Msiza who was then head of Safety confirmed to me that they had closed the mine because of non- compliance.

17. I was shown pictures of people working without protective clothes in that mine.

18. I then decided to meet the President the following Monday instead of meeting Duduzane. In the meeting with the President I advised that the President should tell his son to lodge whatever complaints he might have with the Department and not with me, as that would compromise procedural protocols. The President promised to do so.

19. The next event had to do with Mr. Brian Molefe, who had suspended the Optimum mine contract to supply Hendrina Power Station with coal.

20. The reason as provided by Mr. Molefe (then Eskom Chief Executive Officer) (CEO) was that Eskom was owed ± Two billion Rand by Glencore. Mr. Molefe was refusing to meet with Glencore to resolve the issue. I had a meeting with Mr. Molefe to persuade him to meet with Glencore to resolve the matter.

21. The same evening Mr. Molefe called me to say Dr. Baldwin Ben Ngubane, his Chairperson wanted to meet with me. We then met in the office in the presence of some officials. At that meeting Dr. Ngubane basically instructed me to shut down all Glencore owned mines. He said that he needed a decision to be made in the meeting so that he could report to the President, who was leaving on a foreign mission on that day. I informed him that I was unable to take a decision like that without due processes being followed as these processes would enable me to make an informed decision.

TY 2

21.1 Please See attached hereto the media report from Independent Media in which I confirmed that I was prepared to tell a judicial inquiry that Mr. Molefe and Dr. Ngubane tried to force me to suspend mining company Glencore's licenses. This appears on paragraph 2 of **Annexure B** (Hand labeled purely for the purposes of the Commission's ease of reference). I confirm this media report.

22. On paragraph 9 of the same article referred to in paragraph 21.1 herein above I confirmed that I advised that "I am not going to shut the mine". On paragraph 13 of the above mentioned article, I went on to confirm that "I will tell the truth in front of anybody".

23. I then asked them to supply me with the list of Glencore mines that was supplying Eskom with coal. I advised that in the meantime they must engage in negotiations with Glencore as agreed with Mr. Molefe The meeting ended on that note.

24. When the President returned from his trip he called me to Mahlamba Ndlopfu and thanked me for having served the Department very well. He advised that he has decided to "promote" me to the Department of Public Service and Administration (DPSA).

25. While at the DPSA I received an application from the Department of Mineral Resources (DMR) requesting the DPSA to appoint Mr. Mzwanele Jimmy Manyi as Director General for the DMR. Mr. Manyi did not qualify, and therefore, the application was declined.

26. Mr. Manyi then went to Adv. Moufhe and asked why I had declined his application. Adv. Moufhe told me that his response was that we are bound by the rules of Public Service.

26.1 I would like to refer to my response and report to the Sunday Times, regarding the appointment of Mr. Mzwanele Jimmy Manyi. Please see paragraph 4 of **Annexure C** where I confirmed to the media that "***I stopped that thing of Manyi***" because he did not meet the requirement of a post graduate degree.

NR

26.2 I confirm that my other reason for declining his Application was further based on, and in line with, the contents of the Directive on Compulsory Capacity Development, Mandatory Training Days and Minimum Entry Requirements for Members of the Senior Management Services (SMS) which is attached hereto as Annexure D.

26.3 I further point out that in paragraph 15 of Annexure B, it is recorded that after leaving the public service, Manyi worked for the Gupta's ANN7 TV station.

27. On the 1st of April 2017, I woke up to the news that I was fired as Minister. Ironically in the last Cabinet meeting that I attended I had made a joke about April fool's day.

28. I was never formally (either personally or telephonically) informed of my removal from the cabinet post that I had been appointed to.

29. On the 16th May 2017 and at 11h58, during the interview with Lameez Omarjee and Mathew Le Cordeur of the **ENCA**, which is the 24 hours television news broadcaster owned by **e.tv**, I confirmed, as recorded in paragraph 5 of **Annexure E** hereto, that "I did not co-operate with the Gupta family members". Please see the article attached hereto as **Annexure E**.

Dated at Pretoria **this** 07 **day of November 2018.**

Adv Ngoako Abel Ramatlhodi

COMMISSION OF INQUIRY INTO STATE CAPTURE

A

EWN
EYEWITNESS NEWS

NGOAKO RAMATLHODI JOINS THE 'GUPTA CONFESSION' CHORUS

He was moved from the position of Mineral Resources Minister and replaced by Mosebenzi Zwane.

Public Service and Administration Minister Ngoako Ramathlodi. Picture: AFP.

Gupta family (https://ewn.co.za/Topic/Gupta-family) Mcebisi Jonas (https://ewn.co.za/Topic/Mcebisi-Jonas) Ngoako Ramatlhodi (https://ewn.co.za/Topic/Ngoako-Ramatlhodi)

Stephen Grootes (//ewn.co.za/Contributors/stephen-grootes) | 2 years ago (258 days ago)

1 JOHANNESBURG - Public Service and Administration Minister Ngoako Ramatlhodi's (http://ewn.co.za/Topic/Ngoako-Ramatlhodi)spokesperson has confirmed that Ramatlhodi was invited to a social engagement by the Gupta family, shortly after he was appointed to his previous job as Mineral Resources Minister.

2 But, the minister's office says he declined the invitation.

3 Ramatlhodi was moved from the position of Mineral Resources Minister by President Jacob Zuma and replaced by Mosebenzi Zwane (http://ewn.co.za/2015/09/25/Mosebenzi-Zwanes-relation-with-the-Guptas-raises-concerns).

4 Zwane's office has confirmed that he went on a trip with the Gupta family to help in negotiations around the Optimum Coal mine deal, but the Gupta family have denied that.

5 Ramatlhodi's spokesperson Mahlodi Moafhe says, "They sent us an invite for some dinner at some point, but Minister Ramatlhodi was so focused with his work and he was not taking any invites which were social."

6 The Deputy Finance Minister Mcebisi Jonas's revelation yesterday that he was offered Treasury's top job (http://ewn.co.za/2016/03/16/Mcebisi-Jonas-confirms-job-offer-by-Guptas) by the Gupta family has prompted calls for both judicial and parliamentary enquiries into the family's influence.

7 African National Congress Secretary General Gwede Mantashe says no one in the ruling party is untouchable (http://ewn.co.za/2016/03/17/ANC-says-Zuma-is-not-untouchable), including President Zuma.

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'B'

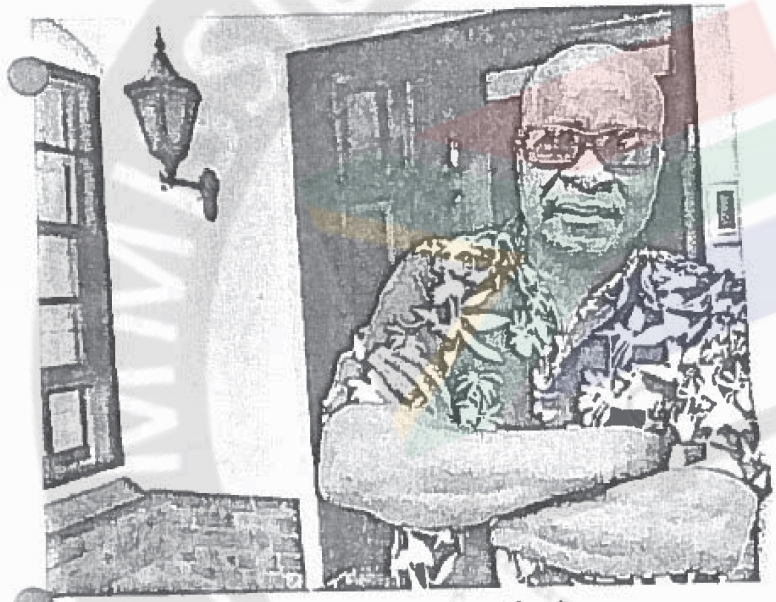
Busani Mabunda

From:	Busani Mabunda
Sent:	Monday, 03 September 2018 9:57 PM
To:	Busani Mabunda
Subject:	Ramatlhodi stands firm on Gupta claims | IOL News

https://www.iol.co.za/news/politics/ramatlhodi-stands-firm-on-gupta-claims-9180106

Ramatlhodi stands firm on Gupta claims

Luyolo Mkentane



Ngoako Ramatlhodi File picture: Masi Losi

1 Johannesburg - Former mineral resources minister Ngoako Ramatlhodi says he's not afraid to repeat his explosive claims in a judicial commission of inquiry that Eskom chief Brian Molefe and chairperson Dr Ben Ngubane interfered in his work.

2 On Tuesday, Ramatlhodi told Independent Media he was prepared to tell a judicial inquiry that Molefe and Ngubane tried to force him to suspend mining company Glencore's licences at the time the country was going through load shedding.

3 Ramatlhodi also claimed President Jacob Zuma's son Duduzane was the messenger used by the Gupta family to try to arrange a meeting with him.

4 The revelation has prompted ANC alliance partners, the SACP and Cosatu, to repeat calls for Zuma to step down.

Ramatlhodi said he held a meeting with Molefe in 2015 where they discussed Glencore's R2 billion penalty for supplying Eskom with substandard coal.

Read Ramatlodhi's explosive claims here

"Brian (Molefe) was not keen to meet Glencore and therefore I was mediating (in) that matter. He was receptive to my ideas," said Ramatlhodi. "However, after my meeting with Brian, the chairman (Ngubane) insisted they wanted another meeting with me. That's when I realised that this was going to be a serious meeting, so I brought in my DG (director-general) and DDGs (deputy directors-general). There are witnesses to the meeting."

Department of Mineral Resources director-general Dr Thibedi Ramontja resigned in December 2015, citing "personal reasons".

At the second meeting, Molefe and Ngubane reportedly insisted Ramatlhodi suspend all Glencore licences pending the payment of the R2bn fine. A suspension of all its licences would have reportedly brought Glencore's 14 coal operations to a standstill and risked the jobs of its 35 000 employees.

Ramatlhodi reportedly said Ngubane insisted that he suspend Glencore's licences, but he refused. "I said I'm not going to shut the mine."

The Eskom board chairperson then reportedly said he would have to report on their meeting to Zuma straightaway as the president needed to be in the know before leaving on a foreign trip.

Zuma went to China on September 2, 2015, and on his return, Ramatlhodi was moved to the Public Service and Administration portfolio. He was replaced by ANC MP Mosebenzi Zwane, who is allegedly linked to the Guptas.

Ramatlhodi said that if asked to repeat his claims in a judicial commission of inquiry, he would.

"I will tell the truth in front of anybody," he said.

Asked if he was being forced to suspend Glencore to make way for Optimum, which at the time the Guptas were said to be planning to buy, he said: "I prefer to put my views to myself on that matter."

Former public protector Thuli Madonsela had recommended a judicial commission be set up to investigate allegations that Molefe favoured the Guptas in the awarding of coal tenders at Eskom.

15. Zuma's spokesperson Bongani Ngqulunga, Molefe and Ramontja couldn't immediately be reached for comment.

16. ANC secretary-general Gwede Mantashe said: "Ngoako has spoken, he is a member of the ANC. What do you want me to say?"

Political Bureau

Kind Regards

COMMISSION OF INQUIRY INTO STATE CAPTURE

'C'

Busani Mabunda

From: Busani Mabunda
Sent: Monday, 03 September 2018 10:13 PM
To: semane.semono@gmail.com
Subject: Fwd: Minister blocked Manyi bid for top minerals job

Dear Advocate Ramathlodi. Please find the link. I will hear from you.

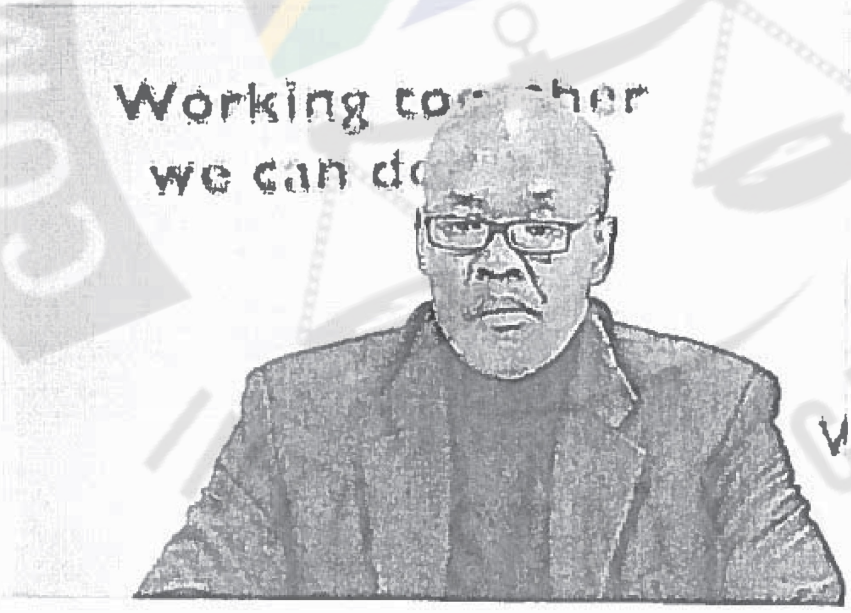
Kind Regards

Begin forwarded message:

From: Busani Mabunda <busani@mabundainc.com>
Date: 12 July 2018 at 11:48:49 SAST
To: Busani Mabunda <busani@mabundainc.com>
Subject: Minister blocked Manyi bid for top minerals job

https://www.timeslive.co.za/sunday-times/news/2017-06-11-minister-blocked-manyi-bid-for-top-minerals-job/

Minister blocked Manyi bid for top minerals job



Former public service and administration minister Ngoako Ramatlhodi blocked Gupta family defender and one-time government spin doctor Mzwanele Manyi from scoring a cushy R1.6-million-a-year government post.

2. Manyi, who has played a key role in advancing the white monopoly capital narrative, had been earmarked for the director-general post in the Department of Mineral Resources despite lacking the required qualifications, Ramatlhodi confirmed.

3. He had reportedly already been interviewed for the position when Ramatlhodi put the brakes on the move.

4 "I stopped that thing of Manyi ... Because he did not meet the requirement of a postgraduate [degree]. We could not allow it," he said.

5. The Times reported last week that Manyi sent his CV to the Gupta family in 2014. Two years later, Gupta-linked Mineral Resources Minister Mosebenzi Zwane reportedly wanted him to replace Thibedi Ramontja, who had resigned citing personal reasons.

6. Zwane is said to have lobbied Ramatlhodi to make an exception for Manyi, who did not meet the requirements for the job. Manyi has a national higher diploma in economic geology.

7. Ramatlhodi , who has since been fired, said he could not relax the requirement and blocked the appointment - a decision he said had made him "unpopular" among his cabinet colleagues.

8. According to the advert for the director-general post, candidates were required to have an appropriate tertiary qualification, a postgraduate qualification and eight to 10 years of senior managerial experience.

9. The requirements included in-depth understanding and knowledge of the mining industry and the regulatory regime affecting it .

10. Asked for comment on the director-general bid, Manyi said: "I do not discuss government-related matters. What is government's final response, that is the response."

11. He described any link between the director-general job and his CV being e-mailed to the Guptas in 2014 as "absolute rubbish".

12 Questions sent to Zwane went unanswered.

13 Manyi was previously a director-general in two departments - labour and the Government Communication and Information System.

14. He has long had a relationship with the Guptas. A Gupta guard revealed that Manyi visited the family' s compound in Saxonwold, Johannesburg, in 2011, when he was at GCIS.

15. After leaving the public service, Manyi worked for the Guptas' ANN7 TV station, where he claimed he was "head-hunted" for a show that was later canned.

16. Last December, the Sunday Times reported that the Black Business Council rebutted Manyi's attempt to have Gupta company Oakbay become a corporate member. Manyi called this "blue lies".

Kind Regards

COMMISSION OF INQUIRY INTO STATE CAPTURE

D

the dpsa
Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

Private Bag X916, PRETORIA, 0001 Tel: (012) 336 1000, Fax (012) 326 7802
Private Bag X9148, Cape Town, 8000 Tel: (021) 467 5120, Fax (021) 465 3610

TO ALL HEADS OF NATIONAL AND PROVINCIAL DEPARTMENTS

AMENDED DIRECTIVE ON COMPULSORY CAPACITY DEVELOPMENT, MANDATORY TRAINING DAYS AND MINIMUM ENTRY REQUIREMENTS FOR MEMBERS OF THE SENIOR MANAGEMENT SERVICE (SMS)

1. The circular dated 08 April 2016, regarding the implementation of the Directive on compulsory capacity development, mandatory training days and minimum entry requirements for SMS has reference. The above-mentioned Directive was introduced on 1 April 2015 and amended with effect from 1 April 2016. New developments necessitated further amendments to the Directive.

2. Following the initial implementation of the Directive, challenges with regard to the recruitment of Heads of Department due to the provision that specifically required that five (5) of the 8-10 minimum years of experience required for entry into a post of a HOD or DG must be as a member of the SMS in the Public Service. This was amended with effect from 1 April 2016 to reflect that experience required must be as a senior manager within any organ of state. However there were still challenges with regards to the area concerning the minimum entry requirements for Heads of Department. In response to such and noting the impact of required amendments, the following amendment was enacted ensuring Cabinet concurrence on 7 December 2016.

2.1 The number of years of experience for a Head of Department will now reflect, 8-10 at a senior managerial level of which at 'least three (3) years' experience must be within any organ of State as defined in the Constitution, Act 108 of 1996, in order to widen the opportunity to attract individuals at that level.

3. The amendments as reflected in paragraph 2.1 *supra* will be effective from 1 April 2017. For further information kindly contact Ms Renel Singh Dastaghir on 012 336 1241 or email: Renels@dpsa.gov.za

4 Your co-operation is highly appreciated.

MR M DIPHOFA
DIRECTOR-GENERAL
DATE: 06/03/2017

COMMISSION OF INQUIRY INTO STATE CAPTURE

DIRECTIVE ON COMPULSORY CAPACITY DEVELOPMENT, MANDATORY TRAINING DAYS AND MINIMUM ENTRY REQUIREMENTS FOR SMS

First issued 1 April 2015

Amended with effect from 1 April 2017

DETERMINED IN TERMS OF SECTION 3(2) OF THE PSA, 1994 AS AMENDED BY THE NPSA

COMMISSION OF INQUIRY INTO STATE CAPTURE

Directive on compulsory capacity development, mandatory training days and minimum entry requirements for SMS

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Directive on compulsory capacity development, mandatory training days and minimum entry requirements for SMS

Glossary of Terms

AO	Accounting Officer
CBA	Competency Based Assessment
CMC	Core Management Criteria
CPP	Cognitive Personality Profile
DPSA	Department of Public Service and Administration
EA	Executive Authority
EEA	Employment Equity Act, 1998
EHW	Employee Health and Wellness
EMDP	Executive Management Development Programme
EE	Employment Equity
HEI	Higher Education Institute
HRD	Human Resource Development
HRDS	Human Resource Development Strategy
HRM	Human Resource Management
HRPS	Human Resource Planning Strategy
LDF	Leadership Development Framework
LDM	Leadership Development Management
LDMS	Leadership Development Management Strategy
LDMSF	Leadership Development Management Strategic Framework
LDP	Leadership Development Programme
LMCF	Leadership Management Competency Framework
LRA	Labour Relations Act: 1995
M&E	Monitoring and Evaluation
MACI	Management and Administration of Career Incidents
MPSA	Minister for the Public Service and Administration
MTSF	Medium Term Strategic Framework
MTSP	Medium Term Strategic Plan
NSG	National School of Government
NQF	National Qualifications Framework
PA	Performance Agreement
PAJA	Promotion of Administrative Justice Act, 2000
PAMB	Public Administration and Management Bill, 2007
PDI	Previously Disadvantaged Individual
PDP	Personal Development Plan
PMDS	Performance Management and Development System
PMS	Performance Management System
PSA	Public Service Act, 1994 (as amended)
PSETA	Public Sector Education and Training Authority
PSLDP	Presidential Strategic Leadersh p Development Programme
ROI	Return on Investment
RPL	Recognition for Prior Learning
SAQA	South African Qualifications Authority
SDA	Skills Development Act: 1998
SDLA	Skills Development Levies Act, 1999
SETA	Sector Education and Training Authority
SMS	Senior Management Service
WPPSTE	White Paper on Public Service Training and Education
WPSP	Workplace Skills Plan

Directive on compulsory capacity development, mandatory training days and minimum entry requirements for SMS

1. Background

1.1 In a report of 2000, prior to the establishment of the Senior Management Service (SMS), certain key areas were identified in respect to the skills of senior leadership. Two significant areas identified were:

1.1.1 Poor levels of performance and skills among managers, resulting in inadequate service delivery;

1.1.2 Insufficient attention to training and development and nurturing of a sustainable pool of senior management cadre.

1.2 Against this background the SMS was established and adopted various principles and processes to effectively respond to the findings identified in the 2000 report.

1.3 A review of the SMS was then conducted in 2005 and the following were some of the findings related to training and development:

1.3.1 Compulsory targeted training was identified as a key area for developing SMS members;

1.3.2 Major identified areas for development were the core competencies for SMS as well as a targeted orientation and induction course

1.4 Following the significant research above, which provided sufficient information to acknowledge the need for Employers to vigorously lead the continuous development of their senior management employees; the Leadership Development Management Strategic (LDMS) Framework was developed in order to create a culture of continuous training and development within the Senior Management Service (SMS) Cadre. The framework emphasizes that:

1.4.1 Targeted training and development remains an imperative to improve the level of competence of members of the SMS.

1.4.2 Creating an environment that is structured towards the promotion of training and development, which is broadly the intention of the Directive.

1.5 In recognizing the importance of promoting professionalization in the Public Service and regularizing the quality of individuals who enter the SMS, it is imperative that the Public Service creates minimum standards of entry.

1.5.1 An empirical mechanism to improve the quality of leadership within the Public Service is to promote stricter conditions associated to entry.

1.5.2 The Public Service, as an employer when taking this approach shows intent to advance professionalism by creating the opportunity for individuals who are interested in joining or advancing in the Public Service with the necessary path and pre-conditions to follow.

2. Purpose

2.1 The purpose of this Directive is to instill a culture of continuous development and to promote professionalism in senior managers through compulsory capacity development.

3 |

2.2 This Directive also provides for pre-entry requirements for entry and movement within the SMS

3. Objectives

3.1 To promote continuous professional development of members of the SMS

3.2 To ensure that training on identified skills gaps is implemented in departments

3.3 To ensure that compulsory training programmes aimed at addressing the developmental needs of senior managers within the Public Service have been identified.

3.4 To promote and encourage SMS members to be trained in a structured manner.

3.5 To provide minimum entry requirements for appointment into the SMS through obtaining a compulsory Public Service specific qualification.

3.6 To achieve a highly competent SMS cadre.

3.7 To strengthen the recruitment process at SMS level

4. Scope of Application

4.1 This Directive is applicable to all members of the Senior Management Service of the Public Service. Departments recruitment as well as training and development policies be aligned to the requirements as stipulated in this Directive.

5. Performance Management and Development System:

5.1 Following the identification of developmental needs, such needs must be incorporated into the Performance Agreement and PDP under the PMDS, the supervisor and SMS members must agree on the content thereof.

5.2 PDP must include areas of compulsory training for SMS. Compulsory training must be considered over 3 performance cycles.

6. Competency Based Management

6.1 The Competency Framework for SMS provides an indication of the generic managerial competencies required for SMS members to effectively perform their duties.

6.2 The competency assessment tools are used to conduct competency assessments in order to determine:

6.2.1 Strengths

6.2.2 Weaknesses

6.2.3 Learning potential

6.2.4 Current level of work

6.2.5 Developmental gaps

8.2.6 Identified training and development in the form of a Personal Development Plan

8.3 The CORE and Process Competencies measured are:

CORE COMPETENCIES: *Presents the idea behind the competency, succinctly defines what that idea means; and proposes typical behaviours which illustrate the competency.*	PROCESS COMPETENCIES[1]: *Explains how the function is performed by employing these competency techniques*
Strategic Capability and Leadership; People Management and Empowerment; Programme and Project Management; Financial Management Change Management;	Knowledge Management Service Delivery Innovation (SDI); Problem Solving and Analysis; Client Orientation and Customer Focus; Communication;

6.4 The competency assessment determines an individual's training and development gaps and expected interventions are reflected in a competency Personal Development Plan (PDP)

6.5 The details of competency PDP must be incorporated into the Performance Agreement and PDP for purposes of training and development in respect to the Performance Management and Development System (PMDS) for the SMS. This promotes a link between Competency Based Assessments, PMDS and training and development.

7. Compulsory capacity development:

7.1 SMS members are expected to be subjected to continuous development in order to remain up to date with developments in their relevant fields. All SMS members must undergo relevant training to close identified development gaps as determined by a competency assessment and/or a performance assessment at a specific performer level. Such training must be in generic managerial competencies and/or technical skills. From a generic training perspective, an SMS member is required to complete related courses over a 3 year performance cycle. Technical training which is departmental specific must be included.

7.2 It remains the relevant department's prerogative to determine how prioritization is managed considering aspects like financial and operational implications. It is however important that all SMS members are provided with a fair opportunity for training, noting the need to address deficient skills as a priority

[1] A depiction of how the process competency is covered within the core competency, which form part of training on each core competency

Directive on compulsory capacity development, mandatory training days and minimum entry requirements for SMS

7.3 Competency based training (comprises of the generic managerial competences as stipulated in the Competency Framework for SMS). The following provides an understanding of the constitution of training based on the core competencies as listed in paragraph 6:

7.3.1 Strategic Capability and Leadership:

Strategic Leadership Capability involves building and sustaining re ationships, and managing in the political-cultural context. Leaders and managers create and drive the vision, the strategy and lead people to execute the mandate of government. The following figure illustrates how the core competency is integrated with the process competency and the three dimensions.

Strategic Planning Frameworks: Organisational Performance; Programme Performance; Financial Performance.
Leading People and Task Execution Management: Organisational Management Systems and Individual Performance Management Systems.
Annual Performance Reporting: Responsive to MDGs; Macro/ micro economics, Globalisation

7.3.2 People Management and Empowerment:

Managers achieve goals through others therefore they must ensure that people perform and are managed and developed in order to achieve the desired results The following represent the dimensions that form modules for training and development should a gap in this competency be identified

HR Planning; HR Management and HR Development: Planning, Recruitment, Selection; Career management (Leadership Pipeline), Talent and retention management; Job evaluation.
Employee Health and Wellness and Diversity Management
Transformation management.
Performance Management and Development
Employee Relations Management: Labour relations management

7.3.3 Programme and Project Management:

Departmental mandates are achieved through programmes and projects designed to address needs of society/citizenry The assumption is that the manager's work entails managing programmes or projects which are strategic in nature and involves both the management of people, finance/budget and expenditure of the project/programme The following dimensions are what will constitute the modules within the core competency

Directive on compulsory capacity development, mandatory training days and minimum entry requirements for SMS

Programme and Project Planning
Programme and Project Execution.
Programme and Project Performance: Monitoring and Evaluation.

7.3.4 Financial Management:

The management role includes budgeting and spending and the success of all programmes and projects of government rely on the extent of financial management of those programmes. The following dimensions are what will constitute the modules within the core competency.

Financial Planning and Performance: (PFMA, MTSF, MTEF, Treasury regulations)
Financial Execution and Budgeting: (Assets Management, financial accounting, Supply Chain management and procurement, Risk Management.)
Financial Reporting: In Year Monitoring, Auditor General's Report.

7.3.5 Change management:

The diverse nature of the transformation agenda of the South African Public service requires expertise in change management and therefore the expectation from managers to develop and implement turn around strategies to accelerate transformation and positively change the lives of South Africans. The following dimensions are what will constitute the modules within the core competency.

Envision Change Strategy, Plans Change and Executes Planned Changes: Transformation management.
Organisational Design, Structural Changes and Change Management: Practical change models.
Change Impact: Results have positive impact on the lives of citizens.

7.4 Computer Literacy:

Computer Literacy is articulated as the knowledge and ability to use computers and related technology efficiently which includes a range of skills covering levels from basic use to programming and advanced use. Computerised technology is continuing to grow at a rapid rate. As the Public Service become more dependent on technology (eg. Integrated Financial Management System- IFMS) the value an SMS members has may be measured in terms of his or her technological competency and ability to harness and utilize technology to improve performance.

Directive on compulsory capacity development, mandatory training days and minimum entry requirements for SMS

8. Technical / Professional Capacity Development

8.1. SMS members who have a dual career path must ensure that skills related to their occupational classifications are updated within a three (3) year performance cycle. SMS members who require continuous professional development as obliged by their respective professional body must update their skills accordingly.

8.2 Supervisors must ensure that technical/professional training needs and requirements are also captured in the PDP.

8.3 This Directive identifies generic managerial training as outlined in the SMS Competency Framework. Technical/professional training and the identification thereof remains the responsibility of the relevant supervisor and employee.

9. Mandatory training days:

9.1 Every SMS member must spend a minimum of 10 days on training over a 3 year performance cycle. Training can be either generic/technical or a combination of both. Training must be appropriately prioritized for all SMS members.

10. Minimum entry requirements into SMS and movement within the SMS[1]:

10.1 Minimum qualifications for entry into SMS positions shall be:

10.1.1 For a Director and Chief Director – an undergraduate qualification (NQF level 7) as recognized by SAQA.

10.1.2 For a Deputy Director-General and Head of Department – an undergraduate qualification and a post graduate qualification (NQF level 8) as recognized by SAQA

10.2 Minimum years of service:

Good human resource practice shows that in order for individuals to be operationally successful, it is imperative to consider the length of time necessary for an individual to spend in a position together with the type of exposure in respect to development. Time spent in a post before movement is not the only measure that may be considered to determine whether a person has the necessary requirements.

It is however prudent to have best practice in place to ensure consistency in appointing SMS members in the Public Service. The time an individual spends in a post must be coupled with appropriate developmental opportunities in order to assess an individual's capability to successfully deliver from an operational perspective.

[1] Paragraph 10 shall be also be dependent on the approved Job Evaluation and Grading system for the SMS over and above the set minimum qualification requirements.

Directive on compulsory capacity development, mandatory training days and minimum entry requirements for SMS

An SMS member must demonstrate that she/he has validated her/his competencies at their current performar level before progressing to a higher level of SMS.

The table below reflects minimum years of experience as an entry requirement into the SMS:

SMS Level	*Relevant experience (wef 1 April 2015)*
Entry (level 13)	5 years of experience at a middle/senior managerial level
Level 14	5 years of experience at a senior managerial level
Level 15	8-10 years of experience at a senior managerial level *
Level 16	8-10 years of experience at a senior managerial level (at least 3 years[3] of which must be with any organ of State as defined in the Constitution, Act 108 of 1996)*

*Noting that most Heads of Department in Provinces are remunerated at different salary level within the SMS, the years of experience for an individual who is expected to be functioning as an HoD will be 8-10 years of experience at a senior managerial level (at least 3 years of which must be with any organ of State as defined in the Constitution, Act 108 of 1996).

10.3 Pre-entry certificate into the Senior Management Service

10.3.1 In order to ensure that potential SMS members have a background on processes and procedures linked to the SMS, a further requirement for appointment at SMS level will be the successful completion of the Senior Management Pre-entry Programme as endorsed by the National School of Government. This is a Public Service specific training programme which will be applicable for appointments at SMS level.

10.3.2 With effect from 1 April 2020, an individual may only qualify, if they have successfully completed a Public Service Senior Management Leadership Programme for appointment at SMS level.

10.3.3 The content of the Public Service Senior Management Leadership Programme pre-entry will be determined by the NSG in conjunction with the DPSA.

10.4 Strengthening recruitment at SMS level

10.4.1 In order to improve the quality of appointments made at the SMS level, all shortlisted candidates for SMS posts must undertake a pre-entry practical exercise as part of the interview process based on the technical or generic requirements[4] of the post.

[3] As amended with effect from 1 April 2017.
[4] Generic requirements as stipulated in the competency framework for the SMS.

14.2.2 immediately report to the Director General: Department of Public Service and Administration the particulars of such non-compliance; and

14.2.3 as soon as possible report to the Director General: Department of Public Service and Administration, the particulars of the disciplinary steps taken.

15. Date of Implementation

This Directive shall be implemented as follows:

15.1 The compulsory training and mandatory training days as identified in this directive shall be implemented wef 01 April 2018.

15.2 The pre-entry certification for SMS shall commence wef 01 April 2020.

15.3 All other aspects of this Directive shall commence wef date of approval by the MPSA.

15.4 Any post advertised on or after the date of approval, must comply with all the requirements of the Directive.

15.5 The amendments to this Directive become effective on the date of approval

16. General

Request for deviation in respect to any part of this Directive may only be considered by the Minister for Public Service and Administration provided that such a request, citing the reasons therein, is in writing and signed by the relevant Executive Authority.

Approved:

Adv. Ngoako Ramathlodi, (DR.) (MP)
Minister for Public Service and Administration
Date: 03/03/2017

10.4.2 The practical exercise may take the form of a formal presentation on a topical issue that tests the candidate's ability in successfully performing in the post and/or a written practical exercise. Departments are required to score the practical exercise as another criterion in the interview process.

10.4.3 Departments must practice competency based interviewing and competency assessments as prescribed.

10.5 Existing SMS members:

10.5.1 Existing SMS members will be required to comply with *all* minimum requirements in order to progress to higher levels within the SMS.

11. Specific Training for Heads of Department:

11.1 Compulsory training for HoDs should constitute the following:

11.1.1 Executive Induction Programme for HoDs

11.1.2 Structured exchange/coaching programme

12. Financial Implications

12.1 Departments must ensure that sufficient funding is made available for the application of this Directive. Departments shall apply the requirements of personnel budget for training and development in the Public Service.

13. Monitoring, Evaluation, Reporting.

13.1 DPSA shall monitor the implementation of this Directive through the annual reporting processes.

13.2 A Template for reporting on the implementation of this Directive will be provided to Departments.

13.3 Departments will be required to report on the implementation of this Directive on 1 June of every year, wef from 2016.

14. Compliance

14.1 This Directive is issued in terms of the Public Service Act and as such an Executive Authority shall immediately take appropriate disciplinary steps against a Head of Department who does not comply with the provisions of this Directive and report to the Minister for Public Service and Administration the particulars of the disciplinary steps taken

14.2 A Head of Department shall -

14.2.1 immediately take appropriate disciplinary steps against an employee of the department who does not comply with the provisions of this Directive

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ZAR/EUR	ZAR/GBP	ZAR/JPY	ZAR/USD	ZAR/AUD
▼ 16.62 (-0.33%)	▼ 18.63 (-0.39%)	▼ 0.13 (-0.23%)	▼ 14.65 (-0.47%)	▼ 10.40 (-0.31%)

Ramatlhodi: I told the Guptas to back off

May 16 2017 11:58 Lameez Omarjee and Matthew Le Cordeur

1. Johannesburg – During his time as mineral resources minister, Ngoako Ramatlhodi said he was asked to meet with the Guptas, but refused to do so.

2. Ramatlhodi was speaking to eNCA when he revealed how he was asked by the president's son Duduzane Zuma to meet with Ajay Gupta, his business associate at Tegeta Exploration and Resources.

3. "Since I became the minister of mineral resources, the Guptas tried to have meetings with me. I refused to have those meetings. I simply told them to back off," Ramatlhodi told eNCA.

4. He had reported this to President Jacob Zuma, who said it was not a problem. Ramatlhodi confirmed to eNCA that there was no continued pressure to meet with the family thereafter.

5. "I did not cooperate with the Gupta members," Ramatlhodi reiterated.

6. This comes following a report by amaBhungane where Ramatlhodi said he was pressurised in 2015 by Eskom CEO Brian Molefe and chairperson Ben Ngubane to help the Guptas take over Glencore's coal mine in 2016.

7. READ: Ramatlhodi spills beans on how Molefe 'helped' Guptas

Ramatlhodi said he was asked to suspend the licences of Glencore mines. He refused to do so and was later removed as mines minister by Zuma and redeployed to public service.

8. The president had told Ramatlhodi he had done a good job as mines minister, and that with his background he could manage public service. "I accepted those reasons and I still do," said Ramatlhodi.

9. However, Ramatlhodi added that he was willing to "share more" on a different platform, such as a judicial commission of inquiry as proposed by former public protector Thuli Madonsela in her State of Capture report.

10. Molefe was implicated in the report over procurement of coal contracts with Optimum Coal Mine linked to Gupta-owned Tegeta.

Duduzane Zuma| Foto: brendan croft

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- Davies: I met with the Guptas, but so did Helen Zille

COMPANY SNAPSHOT

MINISTRY
PUBLIC SERVICE AND ADMINISTRATION
REPUBLIC OF SOUTH AFRICA

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Mr MJ Zwane, MP
Minister of Mineral Resources
Private Bag X 59
ARCADIA
0007

Fax: 012 444 3145

Dear Colleague

FILLING OF THE VACANT POST OF DIRECTOR-GENERAL: DEPARTMENT OF MINERAL RESOURCES

Your letter and the accompanying Cabinet Memorandum in the above regard, have reference.

I have noted the contents of the Cabinet Memorandum whereby you are recommending the appointment of Mr. MJ Manyi as Director-General of the Department of Mineral Resources.

According to the advertisement availed, the post of Director-General in your Department was advertised with the educational requirements of "*an appropriate qualification (NQF Level 7) and a post-graduate qualification (NQF Level 8) as recognised by SAQA.*" In this regard, SAQA verified Mr. Manyi's highest qualification to be at NQF Level 7. Although Mr. Manyi's excellent knowledge of mining legislation as well as latest developments in the mining industry and his strategic capability and leadership skills as reflected in the Cabinet Memorandum have been duly noted; he however does not meet the educational requirements as clearly articulated in the advertisement for the post.

Furthermore, it is acknowledged that Mr. Manyi previously served as a Director General in 2 departments, i.e. the Department of Labour and Government Communication Information Systems; this was prior to the introduction of new entry requirements as outlined in the Directive endorsed by Cabinet.

Your Department's recommendation that Mr. Manyi be appointed as Director-General: Mineral Resources does not comply with the requirements of the post as advertised and with the provisions of the Directive on compulsory capacity development, mandatory training days and minimum entry requirements for the

Senior Management Service, issued on 1 April 2015 (as amended). Amongst the requirements of the said Directive are specific entry requirements regarding the minimum educational qualifications for the appointment of a Head of Department, which are ***"an undergraduate qualification and a postgraduate qualification (NQF level 8) as recognized by SAQA."***

Against the above background, I am not in a position to table this appointment before Cabinet for concurrence due to the fact that the process as noted above does not comply with relevant prescripts, which will be regarded as irregular when subjected to audit processes.

As a way forward your Department may revisit the candidature of the other shortlisted candidates in order to determine their suitability or not for appointment to the post concerned. In the event that none of those candidates are being found suitable for appointment, the post will have to be re-advertised nationally in order to attract a new pool of candidates for consideration. In order to broaden the potential pool of candidates to be generated through such an advertisement, your Department may request identified potential candidates to submit their candidature for the post prior to the closing date of the advertisement. Applications received from such identified potential candidates must then be considered together with all other applications and all the normal selection processes will apply.

Kind regards

ADV. NGOAKO. A. RAMATLHODI, (DR.) (MP)
MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION
DATE: 05/06/2016

COMMISSION OF INQUIRY INTO STATE CAPTURE

DMR 1

MINISTER
MINERAL RESOURCES
REPUBLIC OF SOUTH AFRICA

Private Bag X59, Arcadia, 0007, 71 Trevenna Campus, Building 2C 4th floor, Cnr Meintjies and Francis Baard Street, Sunnyside Tel: (+27 12) 444 3999, Fax: (+27 12) 444 3145
Private Bag X9111, Cape Town, 8000, 7th Floor, 120 Plein Street, Cape Town, 8000 Tel: (+27 21) 462 2310, Fax: (+27 21) 461 0859

From: Director: Human Resources Administration and Practices
Tel: (012) 444 3360 Fax: 086 734 3223 E-mail: Ngwanabanna.Maleka@dmr.gov.za
Enquiries: Mr N Maleka Ref: SP S4/ 1/ 5

Adv. N Ramatlhodi
The Minister of the Public Service and Administration
Private Bag X 884
PRETORIA
0001

Dear Colleague

FILLING OF THE VACANT POST OF DIRECTOR-GENERAL: MINERAL RESOURCES, DEPARTMENT OF MINERAL RESOURCES

1. The post mentioned above was advertised nationally during 10 January 2016 to 24 January 2016. After assessment of the applications against the key performance areas and the requirements attached to the post as advertised, candidates were shortlisted.

2. The selection committee conducted interviews with all the shortlisted candidates. Mr Tumelo Mahuma, the Acting Director: Human Resource Administration and Practices acted as scriber to assist the committee.

3. After thorough consideration of the candidature of the individuals against the background of the particular requirements and circumstances of the post, Mr MJ Manyi was found to be the most suitable candidate for the post.

4. The following documents regarding the filling of the post are attached:

(a) Copy of advertisement.
(b) List of the candidates who applied for the post.
(c) Cabinet Memorandum for submission to Cabinet.
(d) Copy of letter from NIA regarding security vetting.
(e) Documentary proof of the outcome of personnel suitability checks.
(f) Exposition of representivity profile at SMS level.
(g) Copy of curriculum vitae/rsesume.
(h) Copy of ID.
(i) Copy of competency assessment report

5. In view of the aforementioned, it will be appreciated if you can obtain Cabinet's concurrence with the appointment of Mr MJ Manyi to the post of Director-General: Mineral Resources on salary level 16, (R 1,866,183 all-inclusive packages).

Thank you for your co-operation and assistance.

Kind regards

MR MJ ZWANE, MP
MINISTER: MINERAL RESOURCES

COMMISSION OF INQUIRY INTO STATE CAPTURE

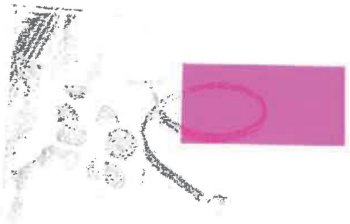
JANUARY 10 2016 Sunday Times

Saying too much, is certainly switch and serve!

MPV
2015 Mercedes Benz B200 A/T
Premium: R 735 pm
OUTbonus: R 2 804

Sedan
2015 Toyota Corolla Quest 1.6
Premium: R 459 pm
OUTbonus: R 1 769

Bakkie
2014 VW Amarok 132kW Highline 4x4
Premium: R 859 pm
OUTbonus: R 3 281



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DIRECTOR-GENERAL

•Salary: 1 666 133 per annum (all inclusive package) (Level 16) •Centre: Head Office (Pretoria)
•Ref: DMR/16/0001 •Five-year renewable contract

REQUIREMENTS: •An appropriate qualification (NQF Level 7) or 1 a post-graduate qualification (NQF Level 8), as recognised by SAQA coupled with 9-10 years experience at a Senior Managerial level of which 5 years must have been at SMS Level within the Public Service PLUS the following competencies **Knowledge:** •In-depth understanding and knowledge of the Mining industry •Knowledge of the regulatory regime affecting the Minerals and Mining industry •Government policy and legislation •Human Resource practices and procedures •Administrative procedures •Financial management •Project management •Personnel management **Skills:** •Strategic leadership •Sound organising and planning skills •Good communication skills •Facilitation skills. **Creativity:** •Innovative and strategic thinker •Meticulous and good analytical skills •Careful, correct and appropriate decision making **Other:** •Ability to work under extreme pressure •Ability to work long hours voluntarily •Ability to gather and analyse information •Ability to work individually and in a team •Honesty

DUTIES: •Provide direction in the development and promotion of mineral and mining related policies •Ensure the regulation of the Mining and Minerals industry •Ensure the safe mining of minerals under healthy working conditions •Ensure that a corporate service function is rendered (communication, management, etc) •Ensure provisioning of Supply Chain and Information Management support service •Ensure the establishment of reporting procedures to facilitate effective performance monitoring and evaluation •Advise the Ministers and Management in the performance of their duties and promote co-operative Governance

RECOMMENDATION NOTE: A panel consisting of SMS members will be appointed to a technical exercise that intends to identify the strengths and weaknesses of the job. The logistics of which will be communicated by the Department. Following the interview and technical exercise, the selection panel will recommend candidates to attend a general managerial competency assessment.

ENQUIRIES: [illegible] 012 444 3005

Note: Applications must be on Form Z83 [illegible] and should be completed in full, accurately, legibly, signed and dated and must be accompanied by a comprehensive CV and original certified copies of qualifications as well as ID not older than 3 months where a driver's licence is a requirement, a certified copy must be attached. NB: Applicants who do not comply with the above-mentioned requirements, as well as applications received after the closing date will not be considered. Requirements stated on the advertised post are minimum, applicants will be ranked, therefore criterion for shortlisting will depend on the proficiency of the applications received. The Department reserves the right to determine suitable candidate(s) during the selection process. Confirmation of final appointment will be subject to a positive security clearance. Due to the large number of responses [illegible] correspondence will be limited to shortlisted candidates only. Shortlisted candidates will be contacted within [illegible] weeks after the closing date. Applicants who have not been contacted during this period may regard their applications as unsuccessful.

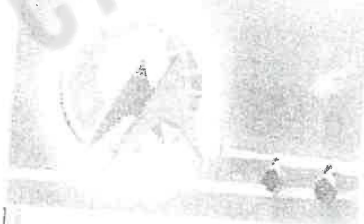
APPLICATIONS: The Director-General, Department of Mineral Resources, Private Bag 129, Arcadia, 0007 or hand-delivered to Trevenna Campus, corner Meintjes and Francis Baard Schoeman Streets, Sunnyside. **FOR ATTENTION:** Ms M Matlala or Ms T Sibuma

[illegible] CLOSING DATE: 24 JANUARY 2016

REPUBLIC OF SOUTH AFRICA

MatCH Health Systems is a division of the Wits Health Consortium under the School of Public Health of the University of the Witwatersrand. MatCH is committed to supporting the sustainable development goals aimed at gender equity, maternal and child health and combatting HIV. These guide our work which focuses on HIV treatment and care, maternal, child and women's health and sexual and reproductive health. MatCH supports health systems strengthening including service delivery, capacity building and technical support. MatCH conducts clinical, behavioural and operations research.

MatCH



The SAGAA, a key player in the [illegible] overseeing the functioning of the [illegible]

Executive: Hur

(5-year performa[illegible]-base

WITS VACANCIES

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THE MINE CLOSURE PROCESS IS REGULATED IN TERMS OF SECTION 43 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 AND ITS ASSOCIATED REGULATIONS.

A mining right / mining permit holder or prospecting right holder must in terms of Section 43 lodge a closure application with the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in subsection (3) and must be accompanied by the [prescribed environmental risk report] required information, programmes, plans and reports prescribed in terms of this Act and the National Environmental Management Act, 1998.'

In terms of NEMA, 1998 this will also trigger a Basic Assessment Process as applying in terms of Section 43 of the MPRDA, 2002 is a trigger in Listing Notice 1 of the EIA Regulations, 2014 (as amended)

Upon receipt of the requisite closure documentation, the Regional Office will consult other organs of state (specifically Department of Water and Sanitation and the Directorate: Mine Health and Safety) and request comments within 60 days.

An inspection is conducted and the Holder of the permit / right will be directed to undertake any further rehabilitation or aftercare and maintenance based on the findings of the inspection.

Comments from other organs of state are sent to the holder to address and implement any recommendations / requirements from these organs of state. Other organs of state may conduct inspections of the site prior to commenting.

Upon receipt of comments from Department of Water and Sanitation and the Directorate Mine Health and Safety, recommendation and submission is drafted for granting of closure and issuing of a closure certificate and release of all or a portion of the financial provision held by the Regional Office. The issuing of closure certificates has been delegated to the Chief Director.

#NB - No closure certificate may be issued unless the Chief Inspector and each government department charged with the administration of any law which relates to any matter affecting the environment have confirmed in writing that the provisions pertaining to health and safety and management pollution to water resources, the pumping and treatment of extraneous water and compliance to the conditions of the environmental authorisation have been addressed."

43. Issuing of a closure certificate.—(1) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, remains responsible for any environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance to the conditions of the environmental authorisation and the management and sustainable closure thereof, until the Minister has issued a closure certificate in terms of this Act to the holder or owner concerned.

[Sub-s. (1) substituted by s. 34 (a) of Act No. 49 of 2008.]

(2) On the written application in the prescribed manner by the holder of a prospecting right, mining right, retention permit, mining permit or previous holder of an old order right or previous owner of works that has ceased to exist, the Minister may transfer such environmental liabilities and responsibilities as may be identified in the environmental management report and any prescribed closure plan to a person with such qualifications as may be prescribed.

[Sub-s. (2) substituted by s. 34 (b) of Act No. 49 of 2008.]

(3) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, must apply for a closure certificate upon—

(*a*) the lapsing, abandonment or cancellation of the right or permit in question;

(*b*) cessation of the prospecting or mining operation;

(*c*) the relinquishment of any portion of the prospecting of the land to which a right, permit or permission relate; or

(*d*) completion of the prescribed closing plan to which a right, permit or permission relate.

[Sub-s. (3) amended by s. 34 (c) of Act No. 49 of 2008.]

(4) An application for a closure certificate must be made to the Regional Manager in whose region the land in question is situated within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation, relinquishment or completion contemplated in subsection (3) and must be accompanied by the required information, programmes, plans and reports prescribed in terms of this Act and the National Environmental Management Act, 1998.

[Sub-s. (4) substituted by s. 34 (d) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(5) No closure certificate may be issued unless the Chief Inspector and each government department charged with the administration of any law which relates to any matter affecting the environment have confirmed in writing that the provisions pertaining to health and safety and management pollution to water resources, the pumping and treatment of extraneous water and compliance to the conditions of the environmental authorisation have been addressed.

[Sub-s. (5) substituted by s. 34 (e) of Act No. 49 of 2008.]

(5A) Confirmation from the Chief Inspector and each government department contemplated in subsection (5) must be received within 60 days from the date on which the Minister informs such Chief Inspector or government department, in writing, to do so.

[Sub-s. (5A) inserted by s. 34 (f) of Act No. 49 of 2008.]

(6) When the Minister issues a certificate he or she must return such portion of the financial provision contemplated in section 41 of the National Environmental Management Act, 1998, as the Minister may deem appropriate, to the holder of the prospecting right, mining right, retention permit or mining permit, previous holder of an old order right or previous owner of works or the person contemplated in subsection (2), but may retain any portion of such financial provision for latent and residual safety, health or environmental impact which may become known in the future.

[Sub-s. (6) substituted by s. 34 (g) of Act No. 49 of 2008 with effect from 8 December, 2014.]

(7) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, must plan for, manage and implement such procedures and such requirements on mine closure as may be prescribed.

[Sub-s. (7) added by s. 34 (h) of Act No. 49 of 2008.]

(8) Procedures and requirements on mine closure as it relates to the compliance of the conditions of an environmental authorisation, are prescribed in terms of the National Environmental Management Act, 1998.

[Sub-s. (8) added by s. 34 (h) of Act No. 49 of 2008.]

(9) The Minister, in consultation with the Minister of Environmental Affairs and Tourism, may identify areas by notice in the *Gazette*, where mines are interconnected or their safety, health, social or environmental impacts are integrated which results in a cumulative impact.

[Sub-s. (9) added by s. 34 (h) of Act No. 49 of 2008.]

(10) The Minister may, in consultation with the Minister of Environmental Affairs and Tourism, publish by notice in the *Gazette*, strategies to facilitate mine closure where mines are interconnected, have an integrated

impact or pose a cumulative impact.

[Sub-s. (10) added by s. 34 (h) of Act No. 49 of 2008.]

(11) The holder of a prospecting right, mining right, retention permit, mining permit, or previous holder of an old order right or previous owner of works that has ceased to exist, or the person contemplated in subsection (2), as the case may be, operating or who has operated within an area identified in subsection (9), must amend their programmes, plans or environmental authorisations accordingly or submit a closure plan, subject to the approval of the Minister, which is aligned with the closure strategies contemplated in subsection (10).

[Sub-s. (11) added by s. 34 (h) of Act No. 49 of 2008.]

(12) In relation to mines with an interconnected or integrated health, safety, social or environmental impact, the Minister may, in consultation with the Minister of Environmental Affairs and Tourism, determine the apportionment of liability for mine closure as prescribed.

[Sub-s. (12) added by s. 34 (h) of Act No. 49 of 2008.]

(13) No closure certificate may be issued unless—

(*a*) the Council for Geoscience has confirmed in writing that complete and correct prospecting reports in terms of section 21 (1) have been submitted to the Council for Geoscience;

(*b*) the complete and correct records, borehole core data or core-log data that the Council of Geoscience may deem relevant, have been lodged with the Council for Geoscience; or

(*c*) in the case of the holder a permit or right in terms of this Act, the complete and correct surface and the relevant underground geological plans have been lodged with the Council for Geoscience.

[Sub-s. (13) added by s. 34 (h) of Act No. 49 of 2008.]

COMMISSION OF INQUIRY INTO STATE CAPTURE

93. Orders, suspensions and instructions.—(1) If an authorised person finds that a contravention or suspected contravention of, or failure to comply with—

(*a*) any provision of this Act; or

(*b*) any term or condition of any right, permit or permission or any other law granted or issued or an environmental authorisation issued, has occurred or is occurring on the relevant reconnaissance, exploration, production, prospecting, mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person may—

(i) order the holder of the relevant right permit or permission, or the person in charge of such area, any person carrying out or in charge of the carrying out of such activities or operations or the manager, official, employee or agent of such holder or person to, take immediate rectifying steps; or

(ii) order that the reconnaissance, prospecting, exploration, mining, production or processing operations or part thereof be suspended or terminated, and give such other instructions in connection therewith as may be necessary.

[Para. (b) amended by s. 67 of Act No. 49 of 2008 with effect from 8 December, 2014.]

(2) The Director General must confirm or set aside any order contemplated in subsection (1) (a) or (b).

(3) The Director-General must notify the relevant holder or other person contemplated in subsection (1) in writing within 60 days after the order referred to in subsection (1) (a) or (b) has been set aside or confirmed, failing which such order shall lapse.

54. Inspector's power to deal with dangerous conditions.—(1) If an *inspector* has reason to believe that any occurrence, practice or condition at a *mine* endangers or may endanger the *health* or *safety* of any person at the *mine*, the *inspector* may give any instruction necessary to protect the *health* or *safety* of persons at the *mine*, including but not limited to an instruction that—

(*a*) operations at the *mine* or a part of the *mine* be halted;

(*b*) the performance of any act or practice at the *mine* or a part of the *mine* be suspended or halted, and may place conditions on the performance of that act or practice;

(*c*) the *employer* must take the steps set out in the instruction, within the specified period, to rectify the occurrence, practice or condition; or

(*d*) all affected persons, other than those who are required to assist in taking steps referred to in paragraph (c), be moved to *safety.*

[Sub-s. (1) amended by s. 23 of Act No. 72 of 1997.]

(2) An instruction under subsection (1) must be given to the *employer* or a person designated by the *employer* or, in their absence, the most senior *employee* available at the *mine* to whom the instruction can be issued.

(3) An *inspector* may issue an instruction under subsection (1) either orally or in writing. If it is issued orally, the *inspector* must confirm it in writing and give it to the person concerned at the earliest opportunity.

(4) If an instruction issued under subsection (1) is not issued to the *employer*, the *inspector* must give a copy of the instruction to the *employer* at the earliest opportunity.

(5) Any instruction issued under subsection (1) (a) must either be confirmed, varied or set aside by the *Chief Inspector of Mines* as soon as practicable.

(6) Any instruction issued under subsection (1) (a) is effective from the time fixed by the *inspector* and remains in force until set aside by the *Chief Inspector* or until the *inspector's* instructions have been complied with.

(7) . . . . . .

[Sub-s. (7) deleted by s. 17 of Act No. 74 of 2008.]

(8) . . . . . .

[Sub-s. (8) deleted by s. 17 of Act No. 74 of 2008.]

(9) . . . . . .

[Sub-s. (9) deleted by s. 17 of Act No. 74 of 2008.]

(10) . . . . . .

[Sub-s. (10) deleted by s. 17 of Act No. 74 of 2008.]

COMMISSION OF INQUIRY INTO STATE CAPTURE

AFFIDAVIT

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

I, the undersigned

ADVOCATE NGOAKO ABEL RAMATLHODI

State under oath as follows:

INTRODUCTION

1. I am an adult male and a senior member of the African National Congress (ANC). Over the years I have been appointed to serve in the Government of the Republic of South Africa.

2. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.

3. I depose to this affidavit to clarify certain aspect raised in my statement I deposed to on 7 November 2018 in Pretoria, in order to ensure that all the relevant facts are placed before the Commission of Enquiry into State Capture (**the Commission**).

NR

PROFESSIONAL EXPERIENCE

4. My professional experience is summarised as follows:

4.1. 1st Premier of Limpopo and served in office from 10 November 1994 to 22 April 2004;

4.2. Deputy Minister of Correctional Services from 1 November 2010 to 25 May 2014;

4.3. Minister of Mineral Resources from 25 May 2014 to 23 September 2015; and

4.4. Minister of Public Service and Administration from 23 September 2015 to 31 March 2017.

RETURN TO PUBLIC SERVICE

5. During 2009, I was approach by the ANC to assist and head up the ANC elections campaign, which I agreed to. After the elections, I was appointed as a Member of Parliament (MP). On 1 November 2010, I was appointed as the Deputy Minister of Correctional Services (DCS).

6. Towards the end of my tenure at DCS, the platinum sector in the platinum belt went on strike around January 2014. On 25 May 2014, I was appointed as Minister of DMR and resolved the strike within a month of my appointment. I resolved the strike by acknowledging AMCU as a new emerging union despite objection from the ANC and their Alliance partners.

MR O

Notwithstanding the objects as mentioned, former President Zuma supported my approach.

CONTEXT FROM PREVIOUS STATEMENT

7. To give some context for purposes of this affidavit, it is necessary to make mention of some of the matters already addressed in my statement of 7 November 2018.

8. After my appointment, I received many messages of congratulations and in particular from Duduzani Zuma (Duduzani), son to former President Zuma. He requested to meet me in person to convey his best wishes. Due to my busy schedule, I could not meet him.

9. Several months later, I again received a message from Duduzani which seemed urgent that I meet with him, which I did at the St George hotel in Irene, where we were having a National Executive meeting. He said that he had to lodge a complaint against me. He was concerned that he had received information that I have been bad mouthing him and his business associates, saying that they were involved in criminal activities. He also told me that he had informed his father about the allegations. I denied these allegations as mentioned in my previous statement.

10. After discussing the allegations detailed in my statement, he asked that I meet Ajay Gupta in order to explain the situation to him, which I refused to do.

11. After my meeting with Duduzani, I met the President in Cape town and discussed what had transpired between me and Duduzani. I told the President that Duduzani grew up in front of me and if I had any issue with him, as he had alleged, I would personally speak to him. The President told me not worry about it. I left it at that.

12. Subsequently to the meeting with Duduzani, I was advised by Adv Mahlodi Moufe, that there was a request to meet with the Guptas and that he had advised them that I would, in all likelihood, not meet them, which I confirmed I would not meet them.

13. During the same time, the Director-General of the Department of Mineral Resources, Dr Ramontja, told me that there was a request from Guptas that we increase the order volumes of the New Age newspaper that was supplied to the department. I again refused their request. The DMR never attended nor funded any of the new Age Business briefings during my tenure as Minister at DMR.

14. Dr Ramontja also informed me that the Guptas were to host the department in their Cape town home during the Mining Indaba, which I also declined as stated in my previous statement.

15. Several months later, Duduzani asked to meet me on a particular Friday. I told him that I could meet him the Monday as he was sounding desperate. I asked my DG, Dr Ramontja to inquire what the issue could be. He later advised that one of the Gupta owned mines, and if I can recall, it was the

NRM

Shiva Uranium mine, which was not compliant with safety regulations and closed down, which was confirmed to me by Mr David Msiza who was the then head of Safety at the DMR.

16. I decided not to meet Duduzani and met the President instead. I requested that the President advise his son to rather lodge complaints with the Department and not personally with me, as this would compromise procedural protocols. The President agreed to speak to him.

GLENCORE/ OPTIMUM

17. Around the 5th August 2015, the National Union of Mines (NUM) was complaining that Glencore was not following proper procedures during retrenchments at Optimum mine. I then authorised Joel Rapahela, to stop the operations to allow a team of the DMR, NUM and Optimum representatives to resolve the issue of the retrenchments. This was resolved in two days, and the operational stoppage was lifted and the mine resumed operations. It is important to note that the stoppage was never dealt with as a suspension but rather under a provision of the Mineral and Petroleum Resources Development Act (MPRDA). I cannot recall the specific section.

18. In August 2015, after the retrenchment issue had been resolved, it emerged that there was conflict between Eskom and Glencore over a penalty of approximately R2 billion imposed by Eskom on Glencore for bad performance and poor quality coal, if I can recall correctly. As a result, Mr

NR

Brian Molefe (Molefe), the then Chief Executive Officer (CEO) of Eskom, had stopped taking coal from one of the Glencore mines known as Optimum.

19. I arranged to meet Molefe at a small boutique hotel near the Mall of Africa in Waterfall, to discuss this issue with Glencore and he requested that I suspend Glencore mining licences during our discussion. I told Molefe that I was not going to suspend the licences as suggested and that nothing will be resolved if he does not meet with Glencore. I then suggested that a team from Eskom, DMR and Optimum be created to mediate and resolve the situation. He agreed to meet as suggested. However, the following day Molefe called me and advised that the Eskom Chairman, Dr Ben Ngubane (Ngubane), would like to meet with me.

20. I agreed to set up an official meeting between Molefe, Ngubane, myself, Joe Rapahela, and Dr Ramontja on or about 1 September 2015.

21. At the meeting Ngubane, requested that all licences for Glencore must be suspended. I asked him how this would affect coal supply in the country. Ngubane did not think that this was an issue and he was comfortable that Eskom would negate any shortfall of coal. I then said that I needed time to consider all the facts to make an informed view of suspending the licences as it could have significant economic impact if not dealt with correctly. We were already experiencing power outages. The suspension of licences for mining concerns cannot be taken lightly as it is a protracted process.

However, Ngubane became impatient as he advised me that he had to brief the President on the outcome of the meeting before he left for his BRICS meeting that afternoon. I did not waver in my stance.

22. A few weeks, after the return of the President from his BRICS meeting, on 22 September 2015, I was called to meet the President as his official residence. When I arrived, I met Mr Ace Magashule and Mr Mosebenzi Zwane, whom I did not know at the time, in the waiting area. I privately met the President, who thanked me for my exemplary service as Minister of the DMR and informed me that he is moving me to the position of Minster of DPSA, as there was a vacancy at the time. I then agreed and then left.

23. On 31 March 2017, the President, exercised his constitutional rights as head of the executive branch by appointing, reshuffling and dismissing ministers from their ministerial duties. I was one of the Misters that was dismissed. I learned about my dismissal in the media. I was never formally advised by the President.

24. I have known the Molefe family for a very long time. Brian Molefe grew up in front of me. During this time as mentioned above, I took a drive to Ga-Rankua to meet him. During a general discussion we had, I asked him what it was with this relationship he had with the Gupta family. His answer to me was that he had thought of going to the private sector, but then he came to a conclusion that his relationship with the Guptas is one of- you are guilty if you do or guilty if you don't.

NR

Ramatlhodi

Adv Ngoako Abel Ramatlhodi

I hereby certify that the deponent has acknowledge that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at Centurion on this the 11th day of June 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.

H. Erasmus

COMMISSIONER OF OATHS

EX OFFICIO COMMISSIONER OF OATHS (RSA)
HERCULES ERASMUS, CFE - 31464589 (member no.)
Association of Certified Fraud Examiners - SA Chapter
2 Einstein Street, Highveld,
Techno Park Centurion, 0157
082 800 2997

IN THE STATE CAPTURE COMMISSION OF INQUIRY

AFFIDAVIT

I, the undersigned,

THIBEDI RAMONTJA

do hereby state under oath and declare as follows:

1. I am an adult male former Director-General of the Department of Mineral Resources ("Department").

2. The facts in this affidavit are within my personal knowledge and to the best of my belief are true and correct unless converse otherwise appears.

3. On 26 June 2020, I was requested by the investigator for the Commission of Inquiry into State Capture to provide clarity and further information on the following issues:

3.1 Suspension of Optimum Coal Mine operations in terms of the Mineral and Petroleum Resources Development Act (MPRDA) in August 2015;

3.2 Discussions of the meeting between the then Eskom officials (Dr. Baldwin Ben Ngubane and Mr. Brian Molefe) and the Department;

3.3 Background on the Mine Health and Safety Act inspections; and

3.4 Inspections undertaken in terms of the Mine Health and Safety Act by the Department at one of the Glencore mines.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Suspension of Optimum Coal Mine operations in terms of the MPRDA in August 2015

4. On or about 4 August 2015, the Department suspended Optimum Coal Mine operations in terms of the MPRDA (Annexure "TR1"). The suspension related to concerns about retrenchment processes that were being implemented by the mine management. The dispute was attended to and the suspension was lifted on or about 7 August 2015, as evident from the attached Financial Times news release (Annexure "TR2", paragraph 1).

Discussions of the meeting between the then Eskom officials (Dr. Baldwin Ben Ngubane and Mr. Brian Molefe) and the Department

5. Around September 2015, I was called by the office of the former Minister Ngoako Abel Ramatlhodi to attend a meeting with Eskom officials at the office of the Minister. The attendees of the meeting were myself as the then Director-General of the Department, the former Minister Ngoako Abel Ramatlhodi, Mr. Joel Raphela (former Deputy-Director General of the Department), Dr. Baldwin Ben Ngubane (former Chairperson of Eskom) and Mr. Brian Molefe (former CEO of Eskom). The deliberations at the meeting were primarily between the former Minister Ramatlhodi and Dr. Ngubane.

6. I was provided with the affidavit of the former Minister Ngoako Abel Ramatlhodi signed and dated 11 June 2020 for the purpose of commenting on the contents of paragraph 21. I concur with the contents of the paragraph safe to mention that to the best of my knowledge and belief I cannot vividly recall the following points and behaviour as mentioned in the statement:

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6.1 Whether Dr. Ngubane did mention that he did not think that this was an issue and he was comfortable that Eskom would negate any shortfall of coal; and

6.2 That Dr. Ngubane became impatient in the form of his behaviour. However, he did advise the Minister that he will brief the President on the outcome of the meeting.

7. I was also provided with an affidavit of Mr. Brian Molefe signed and dated 13 May 2020 and requested to comment on statements contained in paragraphs 96, 97, 98 and 99. The paragraphs relate to a meeting attended by the former Minister Ramatlhodi, Dr. Ngubane and Mr. Molefe. The affidavit does not mention other parties present at that meeting. Unless Mr. Molefe is referring to another meeting besides the one mentioned above in paragraph 5 of my affidavit, I have no knowledge of the issues that are raised in these paragraphs. However, I can only recall and concur with the issues discussed in the meeting that I attended together with the former Minister Ramatlhodi, Mr. Raphela (former Deputy Director-General), Dr. Ngubane and Mr. Molefe.

Background on the Mine Health and Safety Act inspections

8. Section 50 of the Mine Health and Safety Act (MHSA) empowers the Department's inspectors to monitor or enforce compliance with the Act. Section 54 of the same Act provides the inspectors with powers to give any instruction necessary to protect the health or safety of persons at the mine, including but not limited to an instruction that operations at the mine or a part of the mine be halted.

9. All inspections are undertaken by inspectors stationed at the regional offices of the Department. The Chief Inspector of Mines handles appeals to the decisions of the inspectors. If the parties are not satisfied with the appeal process, they can refer the dispute to the Labour Court for

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consideration and adjudication. Neither the Director-General nor the Minister is involved in these administrative processes. Accordingly, during my tenure as the Director-General, I would not be involved in the day to day inspection processes. However, the Chief Inspector of Mines would brief me, as and when necessary, on inspection activities.

Inspections undertaken in terms of the Mine Health and Safety Act by the Department at one of the Glencore mines

10. On or about 27 November 2015, Mr. David Msiza (Chief Inspector of Mines) informed me that someone from the office of the former Minister Mosebenzi Zwane had requested that the Mine Health and Safety Inspectorate should undertake inspections at one of Glencore's mines. Furthermore, he informed me that the request was for the inspections to be held on Saturday, 28 November 2015. I just noted and left the matter without following it afterwards.

Mamilja

Deponent

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at SANDTON ..... on this the 30 ..... day of July 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.

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
SANDTON
2020 -07- 30
KLIENTE DIENSSENTRUM
SUID-AFRIKAANSE POLISIEDIENS

Commissioner of Oaths

LEAH CATHRINE PHASWANE
02 SUMMIT ROAD
MORNINGSIDE
SERGEANT (SAPS)

"TR1"

DMR 10

mineral resources
Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

Private Bag X7279, Emalahleni, 1035, Tel: 013-653 0500, Fax: (013) 690 3288
Province Building, Cnr Botha & Paul Kruger Streets, Emalahleni, 1035

Enquiries: Ms. S Radebe **Ref No:** MP 30/5/1/2/3/2/1/ 267 MR
Sub-directorate: Social and Labour Plan

BY HAND

The Directors
Optimum Coal (Pty) Ltd
Private Bag X1201
Pullenshope
1096

For attention: Mr Thys de Bruin

ORDER IN TERMS OF SECTION 93(1)(B)(II) OF THE MINERAL AND PETROLEUM RESOURCE DEVELOPMENT ACT, 2002 (ACT NO 28 OF 2002) TO SUSPEND MINING OPERATION IN RESPECT OF THE FARM EIKEBOOM 267 JS , SITUATED IN THE MAGISTERIAL DISTRICT OF MIDDELBURG.

Please take note that you were ordered on **26 March 2015** to take immediate rectifying steps with regard to the non-compliance identified during the deliberation process of Section 52 of the Act, in that you were found to be in contravention with the provision of Regulation 46(d) (i) to (iv) of the Act and you were ordered to:

a) Establish a functional future forum as required in terms of Section 189 of the Labour Relations Act and Section 52 (1) of the Mineral and Petroleum Resources

COMMISSION OF INQUIRY INTO STATE CAPTURE

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"TR 1"

Development Act, 2002 whereby you were required to consult with organized labour and provide a plan to save jobs.

b) During the follow-up meeting that took place on the **21st May 2015 and 30th July 2015** respectively with organized labour, it was found that the instructions stated in paragraph (a) and (b) were not adhered to.

c) You failed to manage the retrenchment process humanly in consultation with the organized labour as required in terms of Section 52 (1) of the Mineral and Petroleum Resources Development Act, 2002 and Section 189 of the Labour Relations Act.

d) According to Section 25 (2) (f) of the Mineral and Petroleum Resources Development Act, 2002 you were required to comply with the requirements of the approved Social and Labour Plan, whereby you were expected to implement the following programmes; self employment training programme, training and re-employment programme.

Therefore, you are ordered by the Regional Manager for Mpumalanga Region, by virtue of the power and the authority as bestowed in terms of Section 93(1)(b)(i) & (ii) of the Mineral and Petroleum Resources Development Act, 2002 (act 28 of 2002) and duly authorized by the Director-General, Department of Mineral Resources that your mining operation at the abovementioned property be suspended with immediate effect until all the non-compliances as listed in paragraph (a) and (b) are addressed.

Yours Faithfully

.....

REGIONAL MANAGER

MPUMALANGA REGION

DATE: 03/08/2015

Optimum GM
03 August 2015

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U19-BSN-0881

ITR2 11

African companies

Glencore to resume South Africa mining

Government lifts licence suspension but supply dispute continues

Andrew England in Johannesburg AUGUST 7 2015

Glencore is set to resume operations at its Optimum coal mine after the South African government lifted its suspension of the mine's licence.

Ngoako Ramatlhodi, South Africa's mining minister, had ordered the Swiss-based group to suspend operations at the lossmaking mine earlier this week, criticising the company for what he described as the "inhumane" way it planned to cut about 360 jobs.

Mahlodi Muofhe, a spokesman for the minister, said the suspension was lifted after talks with Glencore in which the government's concerns were discussed.

However, the future of the mine remains uncertain.

Shortly after the mine's licence was suspended, Glencore announced it was placing Optimum in "business rescue" — the local equivalent of bankruptcy proceedings. Its move was related to a dispute with Eskom, the state utility, which Glencore says has refused to renegotiate a long-running supply contract.

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U19-BSN-0882

"TR2"

Optimum is contracted to supply 5.5m tonnes of coal per annum and Glencore says that, at the current rate, it would incur a loss of R250 a tonne, or R1.4bn per year. If Eskom succeeds with an additional claim it has made for penalties, the mine would supply coal to the utility at a cost equivalent to R1 per tonne, Glencore added.

But even though its licence suspension has been lifted, the company said Optimum remained in the business rescue process.

"The business rescue practitioners of Optimum also confirmed their commitment to continue engaging with the government and the unions regarding the unsustainable financial position at Optimum," Glencore said in a statement on Friday.

Mr Ramatlhodi has held a series of emergency meetings with mining bosses and unions this week, in a bid to stem a wave of job losses in South Africa's mining sector. Over the past two years, the industry — which employs about 500,000 people — has shed more than 35,000 jobs.

A collapse in commodity prices has heaped more pressure on companies that were already complaining about spiralling costs and policy uncertainty.

Glencore is one of the biggest exporters of South African coal and produced about 45m tonnes in the country during 2013. It said its Optimum mine operation has complied with all legal requirements in respect of the proposed job cuts, including extensive consultation with the government and trade unions.

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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STATEMENT OF CLINTON MARTIN EPHRON

for the purpose of the

JUDICIAL COMMISSION OF ENQUIRY TO ENQUIRE INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE ("***Commission***")

1. I am a chartered accountant, having qualified as such in South Africa in 1993. During the period 2013 to 2017, I was the Chief Executive Officer ("**CEO**") of Glencore's coal business in South Africa and a director of both Optimum Coal Mine Proprietary Limited ("**OCM**") and Optimum Coal Holdings Proprietary Limited ("**OCH**").

2. Where I refer to "Glencore" in this statement, I am referring to the Glencore group of companies.

3. This statement is intended to provide information relating to the sale by OCH of shares held by it in its subsidiaries, including OCM.

4. This statement sets out my recollection and understanding of events at the time they occurred.

The period prior to the acquisition of Glencore's interest in OCH

5. The matters set out in this section represent my current understanding of the history of OCH and OCM prior to Glencore acquiring its interest in them.

6. To the best of my knowledge, Optimum Collieries (the "**Mine**") had been supplying coal to Eskom since the 1970s. Initially, coal was supplied only to Eskom on a cost-plus-margin basis but, from approximately 1983, the Mine operated as a "multi-product" mine, supplying coal locally to Eskom as well as to the export market.

7. On 4 January 1993, a Coal Supply Agreement (the "**CSA**") was concluded between Eskom and Trans-Natal Coal Corporation Limited and Trans-Natal Collieries Limited ("**TNC**"), pursuant to which TNC undertook to supply the Hendrina Power Station ("**Hendrina**") with an annual volume of 6,500,000 tons of coal (with certain specifications) at a fixed price per tonne for a period of 25 years until 31 December 2018. A copy of the CSA is annexed hereto marked "**CE1**".

8. Again, to the best of my knowledge, at some stage prior to May 2008 BHP Billiton Energy Coal South Africa Limited ("**BHP**") acquired ownership of the Mine. In June 2008, OCM acquired the Mine and a 9.5% interest in Richards Bay Coal Terminal from BHP. OCM was incorporated on 15 March 2006 as a BEE coal mining and exploration company.

9. As part of the sale by BHP to OCM, BHP (as the supplier of coal to Eskom under the CSA) ceded its right, title and interest under the CSA to OCM. Eskom consented to this substitution and certain amendments were made to the CSA, principally in relation to the quantity and quality specifications of the coal, reflecting the fact that there were disputes at that stage regarding the coal being supplied to Eskom.

10. I understand that other disputes subsequently arose between OCM and Eskom, primarily in relation to the price paid for coal by Eskom, resulting in amendments to the CSA in April 2011 following an arbitration commenced by OCM.

11. In March 2010, OCH, the holding company of OCM, listed on the Johannesburg Stock Exchange.

The acquisition of OCH by Glencore

12. In the period June 2011 to March 2012, Piruto BV (an entity within the

Glencore group) and Lexshell 849 Proprietary Limited ("**Lexshell**") (an entity then owned by Cyril Ramaphosa) acquired OCH through a series of transactions resulting in Piruto BV (Glencore) holding a 67.58% effective interest in OCH and Lexshell holding a 9.64% effective interest in OCH. The remaining shares in OCH were held by various minority partners (2.92%) and the Community Trust and the Employee Trust (19.86%). This transaction closed during March 2012 and OCH was delisted in July 2012.

13. For completeness, I note that Mr Ramaphosa divested his entire interest in OCH on 22 May 2014.

14. Prior to the acquisition of its interest in OCH, Glencore was not able to undertake a comprehensive due diligence exercise. In particular, Glencore only had publicly available information regarding the CSA and, accordingly, it only knew the duration, volume to be supplied and price per tonne provided by the CSA. Glencore did not, for example, know how any price-adjustment mechanisms in the CSA worked.

OCM's relationship with Eskom in 2012 to 2014

15. Following the acquisition by Glencore of its interest in OCH, differences continued to arise between OCM and Eskom, particularly in relation to sizing and quality of the coal supplied to Hendrina (although Eskom continued to accept and use the coal). In April 2013, OCM issued a notice requesting renegotiation of the sizing provisions in accordance with a provision in the CSA which specifically provided for such renegotiation. A copy of the notice is annexed hereto marked "**CE2**".

16. As regards the price of the coal supplied pursuant to the CSA, upon acquiring OCH, Glencore naturally took steps to better understand the viability of OCM and, in particular, the CSA. As a result of this post-acquisition review, by July 2013 OCM considered that the CSA was no

longer commercially viable.

17. By way of further explanation, at that time about half of OCM's coal was supplied to Eskom, and the price at which OCM was selling coal to Eskom pursuant to the CSA was significantly below the cost of producing each tonne of coal. Specifically, based on March 2013 invoice prices, OCM was losing approximately R150 per tonne of coal delivered to Eskom (the equivalent of R829 million per annum).

18. In OCM's considered view, these circumstances triggered the "*Hardship*" clause in the CSA, which entitled OCM to a revision of the purchase price for the coal. Eskom disputed OCM's declaration of "Hardship", and a disputed "*Hardship Notice*" from OCM to Eskom was subjected to arbitration (the "**Hardship Arbitration**") pursuant to an arbitration agreement concluded during December 2013. A copy of the Hardship Arbitration Agreement is annexed hereto marked **"CE3"**.

19. While the arbitration proceedings were progressing, OCM and Eskom engaged in discussions regarding various other disputes concerning penalties, delivery shortfalls and other alleged breaches of the CSA.

20. In early 2014, Eskom approached OCM to see if it would agree to suspend the Hardship Arbitration to allow for a period of negotiation regarding the hardship claim and other disputes. OCM agreed, and on 23 May 2014, OCM/OCH and Eskom entered into a co-operation agreement (the "**Co-operation Agreement**") providing a process to further negotiate potential amendments and an extension to the CSA, as well as the possible settlement of disputes in relation to hardship and penalties. The Hardship Arbitration was suspended and certain interim arrangements were put in place to ameliorate the difficulties experienced by OCM. The parties also suspended the enforcement of their respective rights on account of alleged breaches of the CSA, and an effective

moratorium was agreed. A copy of the Co-operation Agreement is annexed hereto marked "**CE4**".

21. Whilst engaging with Eskom, OCM continued to review the rest of its business in order to determine how best to address its deteriorating financial situation.

Closure of the opencast section of the Mine

22. As at 2012, about half of OCM's coal was supplied to Eskom and the other half was exported. I understand that, prior to the acquisition of Glencore's interest in OCM, the export operations of OCM had generally subsidised the price at which coal was supplied locally to Eskom pursuant to the CSA. However, the export coal price began to decline in 2012, to a level at which it became impossible for OCM to operate profitably on the same basis.

23. By 2014 (i.e. around the time the Co-operation Agreement came into effect), OCM was losing cash of approximately R80 million to R100 million per month.

24. Following a review by OCM of its operations, OCM commenced a process to consider the closure of the opencast section of the Mine in January 2015, from which OCM was producing coal for export. The closure was effected in July 2015. This closure meant that the Mine could not produce enough coal both to supply Eskom and to export. From this point, Eskom was OCM's only customer, with all coal being supplied pursuant to the CSA.

25. Whilst the closure of the opencast section of the Mine enabled OCM to reduce its losses, it remained loss-making and OCM was accordingly required to raise additional funding, to which Glencore, as the majority shareholder of OCH, contributed. However, this funding did not prove to

be sufficient and OCM soon required yet further funding. In January and February 2015 alone, Glencore made approximately R480 million available to OCM by way of shareholder funding.

OCM's relationship with Eskom in the first half of 2015

26. Progress was made in the negotiations between OCM and Eskom in 2014 and early 2015. As part of this process, OCM provided substantial information to Eskom and its advisers, Nedbank and Basis Points Capital, in order to substantiate its costs and satisfy Eskom that it was indeed in a precarious financial position and suffering hardship. OCM also engaged with Eskom regarding the specifications of coal that it could reasonably deliver. I believed that we were successful in convincing the Eskom negotiating team regarding OCM's position both on its financial hardship and the coal specifications.

27. This process ultimately resulted in the production of a draft addendum to the CSA in early 2015 (the "**Fourth Addendum**"). The Fourth Addendum would have provided for an extension of the CSA until 2023 (the existing expiry being 31 December 2018), a revised price for coal, a mechanism whereby Eskom would be able to source coal elsewhere if it could do so at a lower price and a settlement of claims between OCM and Eskom. Glencore considered this proposal to be beneficial to all parties (a "win-win"), because it would have (i) ensured security of coal supply to Hendrina beyond 31 December 2018, (ii) enabled OCM to sell coal to Eskom at a more sustainable price, (iii) ensured the continued operation of the Mine and (iv) settled the claims between OCM and Eskom. The final draft of the Fourth Addendum is annexed hereto marked "**CE5**".

28. On 25 March 2015, OCM was advised that Eskom's Executive Procurement Committee had approved the Fourth Addendum subject to approval by the Eskom Board's Procurement Committee, which was

scheduled to meet on 15 April 2015. My understanding is that, on 15 April 2015, the Fourth Addendum was presented to the Eskom Board's Procurement Committee, which in turn referred the matter to the Eskom Main Board for consideration. Given that the Fourth Addendum had been presented to the Main Board of Eskom and would therefore have been acceptable to the Eskom Board's Procurement Committee, OCM was hopeful that the requisite approval would be forthcoming.

29. The Eskom Board had recently been reconstituted and, during late April 2015, OCM was informed by Mr Johann Bester of Eskom that the Fourth Addendum was to be reviewed by the then (newly appointed) Group Acting Chief Executive Officer, Mr Brian Molefe ("**Mr Molefe**"). OCM was further informed by Mr Molefe that he would contact OCM to discuss.

30. However, OCM did not hear from Mr Molefe. I therefore attempted to arrange to meet with him.

31. After a number of attempts at arranging a meeting with Mr Molefe, I was finally able to meet with him on 18 May 2015. At that meeting, Mr Molefe adopted an inflexible approach and indicated that Eskom would not amend the terms of the CSA and would instead continue to enforce its terms. He said that any amendments to the CSA would be considered closer to the end of the term of the CSA.

32. OCM considered this turn of events to be unfortunate given its belief that the Fourth Addendum represented a win-win for all parties, and wished to ensure that Mr Molefe had all the facts and information available to him (Mr Molefe having only taken office approximately three days prior to 23 April 2015, being the date when the Fourth Addendum was furnished to the Eskom Main Board). Accordingly, in a further attempt to resolve the impasse with Eskom, OCM addressed a letter to Mr Molefe on 22 May 2015 for the purpose of furnishing him with a synopsis of

OCM's financial position and details of the engagement between OCM and Eskom which had culminated in the draft Fourth Addendum. A copy of the letter is annexed hereto marked "**CE6**".

33. Eskom was advised in this letter of 22 May 2015 that the shareholders of OCM had indicated that if no progress was made with Eskom by the end of May 2015, "*the shareholders will have to reconsider their support for OCM and might withdraw all funding. If this occurs, the directors of OCM will, in accordance with their legal duties, have no choice but to place OCM in business rescue* [("**BR**")] *or liquidation…*". As a responsible contractual counterparty, OCM felt it appropriate to ensure that Eskom was apprised of the difficult financial position that OCM was in, and the real risk of BR, so as to avoid uncertainty regarding the potential consequences of not concluding an agreement with OCM by 31 May 2015. By that stage, the funding provided by shareholders of OCM since October 2014 totalled approximately R1 billion.

34. Eskom failed to respond to this letter and I arranged to meet once again with Mr Molefe on 11 June 2015. I was accompanied on this occasion by the Glencore Group's CEO, Mr Ivan Glasenberg ("**Mr Glasenberg**") (who was visiting South Africa at the time). Mr Molefe was accompanied by a number of representatives of Eskom and he advised that, in his view, OCM must honour the CSA and that he would not renegotiate the terms of the CSA.

35. We made it plain to Mr Molefe that OCM had not overstated the consequences of a failure to renegotiate the CSA but, rather, that OCM had endeavoured to explore a number of options since 2012. We tried to impress upon Mr Molefe that the amendments proposed to the CSA were intended to achieve a win-win situation. We were of course very mindful that we were asking Eskom to expend more for coal for the immediate future but, in Glencore's view, this needed to be balanced against

Eskom's long-term interest in obtaining security of supply at a reasonable price.

36. Mr Molefe was unwavering in his stance and refused to agree to any changes. This was subsequently confirmed in writing when, on 22 June 2015, Eskom sent a letter (dated 10 June 2015) in which it stated that it no longer wished to participate in the settlement process envisaged by the Co-operation Agreement and, further, that it would enter into negotiations for a new CSA only in respect of the period after 31 December 2018 (that being the expiry date of the existing CSA). A copy of the letter is annexed hereto marked **"CE7"**.

37. While Glencore and OCM understood that Mr Molefe was entitled to his position and how that position might benefit Eskom in the very short-term (i.e. Eskom would continue to receive coal at low prices), we felt that Mr Molefe's position did not necessarily appreciate the risk that Eskom faced after 2018 where they would have no security of coal supply from the Mine (which was located very close to Hendrina) and therefore would be left in a weak negotiating position.

38. On 30 June 2015, and in response to Eskom's letter, OCM addressed a further letter to Mr Molefe and Mr Vusi Mboweni (the acting Head of Primary Energy for Eskom), in which OCM made a final proposal in a last attempt to resolve the dispute with Eskom and reach a new long-term agreement with Eskom. This letter provided for a further reduced price, which was now below OCM's cost of production. No response was received to this letter. A copy of the letter is annexed hereto marked **"CE8"**.

39. Ultimately, Eskom's termination of the settlement process led to the Hardship Arbitration being re-commenced on 23 June 2015 and a hearing was scheduled for the period 16-27 May 2016.

The First Oakbay Offer and Eskom's alleged R2 billion penalty

The First Oakbay Offer (1)

40. On 1 July 2015, Glencore received a letter from KPMG Services ("**KPMG**") advising that it had been requested by one of its clients, who wished to remain anonymous, to present an expression of interest to purchase either OCM or OCH for R2 billion (the "**First Oakbay Offer**"). KPMG further advised that its client would, in the event of an acquisition, continue to honour the existing CSA with Eskom. Mr Shaun Blankfield ("**Mr Blankfield**"), on behalf of Glencore, contacted Mr Werner Jacobs ("**Mr Jacobs**") of KPMG and told Mr Jacobs that OCM and OCH would not engage with an "anonymous" offeror. Mr Jacobs thereafter advised that the interested offeror was Oakbay Investments Proprietary Limited ("**Oakbay**"). A copy of the letter is annexed hereto marked **"CE9"**.

The alleged R2 billion penalty

41. By mid-July 2015, OCM had been able to secure additional funding from Glencore to enable OCM to continue supplying coal to Eskom for the time being and intended to continue complying with its obligations to Eskom.

42. Shortly afterwards, on 16 July 2015, OCM received a letter from attorneys Cliffe Dekker Hofmeyr ("**CDH**"), representing Eskom, demanding payment of (alleged) penalties in an aggregate amount of approximately R2 billion in respect of alleged sizing and quality issues with the coal supplied to (and accepted by) Eskom between 1 March 2012 and 31 May 2015. This letter came as a complete shock to OCM and I felt that the decision by Eskom to impose the penalties was completely unreasonable because, while there was a purported contractual basis for these penalties, we had been discussing them with Eskom for a number of years and they knew that OCM did not believe

they were legitimate, and that OCM accordingly disputed them. Moreover, as set out above, Eskom was fully aware of the precarious financial position of OCM and the impact that these penalties would have on OCM, and the consequent risk that the imposition of these penalties would have on Eskom's security of supply. A copy of the letter is annexed hereto marked "**CE10**".

43. The manner in which the penalty provisions of the CSA worked meant that penalties could potentially be set off against the price at which coal was supplied to Eskom by OCM, with the effect that OCM could be required to supply coal at R1 per tonne. The alleged penalties were therefore a matter of serious concern to OCM and made BR proceedings very likely.

The First Oakbay Offer (2)

44. Shortly afterwards, on 25 July 2015, OCM and OCH signed a confidentiality and non-disclosure agreement with Oakbay pursuant to which OCM and OCH provided Oakbay with high level information concerning OCM. The reason for providing this information despite the fact that the R2 billion penalty was likely to lead to an imminent BR process was simply to maintain a potential option for keeping the Mine operational, albeit that OCH and OCM knew this would be an option for the BR practitioners (the "**BRPs**") to pursue in the event that BR proceedings were commenced (i.e. on the basis that the BRPs would assume control of OCH and OCM). A copy of the confidentiality and non-disclosure agreement is annexed hereto marked as "**CE11**".

The commencement of BR proceedings and subsequent discussions between the BRPs and Eskom

45. On 31 July 2015, the boards of directors of OCH and OCM resolved to commence voluntary BR proceedings in respect of each of OCM and

OCH. The decision to place the business under BR was driven by the fact that, in addition to OCM being required to sell all coal produced below cost, it now had to contend with an alleged R2 billion penalty and the prospect of supplying coal to Eskom for effectively R1 per tonne.

46. The BR proceedings commenced on 4 August 2015, from which point OCH and OCM were under the management control of the BRPs.

47. Relations with Eskom continued to deteriorate following the commencement of BR. By way of illustration, at the end of July 2015 Eskom withheld payment for no justifiable reason in an amount of approximately R58 million for coal which OCM had delivered that month. This was despite a letter addressed to the BRPs, dated 14 August 2015, in which Eskom confirmed that it would make payment. Payment was then refused again at the end of August 2015 for coal delivered that month (this time, the amount in issue was approximately R34 million). In fact, these payments were eventually made in June 2016, when Tegeta Exploration and Resources Proprietary Limited ("**Tegeta**") (a subsidiary of Oakbay and the purchaser of OCM referred to below) had become the owner of the Mine.

48. Following their appointment on 4 August 2015, the BRPs identified the CSA as the key issue causing OCH's and OCM's financial hardship. The BRPs' main objective was to avoid a liquidation process and, accordingly, they requested a meeting with Eskom with a view to reaching an agreement which would avoid liquidation. However, Eskom refused to meet with the BRPs.

49. On 20 August 2015, the BRPs suspended the supply of coal by OCM to Eskom, which I understood to be an attempt to mitigate OCM's losses. The BRPs also provided Eskom with an interim proposal for the supply of coal at this time. A copy of the BRPs letter to Eskom is annexed hereto

marked "**CE12**".

50. After the BRPs had ceased the supply of coal to Eskom, Eskom requested a meeting with the BRPs. The BRPs and I arranged to meet with Mr Molefe and the then Group Executive: Technology of Eskom, Mr Matshela Koko ("**Mr Koko**"), on 3 September 2015. However, when we arrived at Eskom's premises, Mr Molefe and Mr Koko insisted that the BRPs remain outside, and I accordingly met with them alone.

51. At this meeting, Mr Molefe insisted that I restore the supply of coal to Hendrina. I explained to Mr Molefe that it was the BRPs who had ceased the supply of coal and that any decision to recommence supply was theirs. In my position as a representative of Glencore (as opposed to on behalf of OCH and/or OCM, which were under the control of the BRPs), which would need to fund any recommencement of supply to Hendrina, I further explained to Mr Molefe that Glencore could only financially support OCM to recommence supply if Eskom undertook a commitment to negotiate with OCM in good faith. Mr Molefe agreed that Eskom would engage in good faith negotiations with OCM and I accordingly undertook to speak to Mr Glasenberg after our meeting regarding Glencore providing further funding to OCM to allow it to continue supplying Eskom.

52. I spoke to Mr Glasenberg on the same day, and Glencore agreed to provide further funding in light of Eskom's undertaking to engage in good faith negotiations. On this basis, the BRPs agreed to recommence the supply of coal to Eskom.

53. I contacted Mr Molefe shortly after speaking to Mr Glasenberg and advised him that Glencore would provide further funding for OCM, and that the BRPs had agreed that OCM would recommence the supply of coal to Eskom, during a negotiation period, at a price of R150 per tonne which was the CSA price, with payment to be made within 7 days of

receipt of coal, subject to Eskom committing to negotiating with OCM in good faith. The 7-day requirement was a necessity from the BRP's point of view because Eskom had withheld payment for the previous deliveries, causing further hardship. This was agreed and this interim arrangement was extended several times during the course of the BR. On this basis, OCM recommenced supplying coal to Eskom.

54. However, Eskom did not engage in any further negotiations, despite OCM providing significant information to Eskom to demonstrate its precarious financial position (see paragraph 61 below).

The Second Oakbay Offer

55. On 10 September 2015, OCM received a non-binding indicative offer from Oakbay (the "**Second Oakbay Offer**") for the acquisition of OCM as a going concern, for consideration of R1.00 and with a commitment to fund OCM's continuing operations, including working capital and fulfilment of its obligations for the remainder of the CSA. A copy of the Second Oakbay offer is annexed hereto marked "**CE13**".

56. The BRPs responded to the Second Oakbay Offer in writing on 17 September 2015, requesting clarification regarding certain matters (for example, financing and environmental liabilities) and noting that they were not yet formally considering a sale of OCM but that, if an offer were made which might represent the best option for rescuing OCM, it would be considered. At this time, I understand that the BRPs' preferred option remained reaching a sustainable agreement with Eskom. A copy of the BRPs' letter is annexed hereto marked "**CE14**".

57. On 21 September 2015, Oakbay responded to the BRPs' letter, noting, *inter alia*, that they were confident that Eskom's consent to Oakbay acceding to the CSA would be forthcoming and that KPMG had been retained as Oakbay's advisers for the potential sale. A copy of Oakbay's

letter is annexed hereto marked "**CE15**".

58. The following day, 22 September 2015, President Jacob Zuma announced that he would appoint Mr Mosebenzi Zwane ("**Minister Zwane**") as Minister of Mineral Resources from 23 September 2015.

The BRPs' First Long-Term Proposal to Eskom

59. At the same time that they were engaging with Oakbay, the BRPs were also seeking to engage with Eskom. On 17 September 2015, the BRPs submitted a proposal (the "**BRPs' First Long-Term Proposal**") to Mr Koko for the long-term supply of coal to Eskom. Similar to the proposal submitted to Eskom by OCM prior to the BR (i.e. the Fourth Addendum, see paragraph 27 above), the BRPs sought to agree an increase in the price paid by Eskom in return for security of supply after 2018. In submitting this proposal, the BRPs sought to commence the negotiations that Mr Molefe and Mr Koko had agreed to pursue in return for recommencement of the supply of coal. During this period, Eskom requested and the BRPs provided significant financial information to Eskom regarding the financial position of OCM. Much of this information had been previously provided to Nedbank and Basis Points Capital (see paragraph 26 above). A copy of the BRPs' First Long-Term Proposal is annexed hereto marked "**CE16**".

60. On 22 September 2015, the BRPs confirmed the terms of an Interim Agreement with Eskom, which included no sizing or quality specifications (despite Eskom having repeatedly raised complaints regarding sizing and quality), no penalty provision, and Eskom agreeing to engage with OCM in good faith.

61. About a week later, on 30 September 2015, CDH, on behalf of Eskom,

advised the BRPs that Eskom had considered the BRPs' First Long-Term Proposal and was not willing to entertain it. They further advised that any discussion and negotiation concerning a new price for coal would only be entertained closer to 2017 and that the penalties would have to be settled immediately in full. This was a clear breach of the 3 September 2015 agreement to engage in good faith negotiations and OCM advised Eskom of its disappointment in a letter dated 5 October 2015. CDH's and OCM's letters are annexed hereto marked "**CE17**" and **CE18**", respectively.

The Phembani Offer

62. As a result of Eskom's unwillingness to engage further with OCM, the BRPs and Glencore considered further options, one of which was for Phembani Group Proprietary Limited ("**Phembani**"), a minority shareholder of OCH, to acquire OCM.

63. Following engagements with representatives of Phembani, Phembani made an offer to OCH to acquire its shares in OCM on 7 October 2015. The BRPs advised Oakbay on the same day that they had received an offer for the shares in OCM from a third party which the BRPs considered to be more favourable, on the whole, than the Second Oakbay Offer. The BRPs further advised that the third party had requested that OCM engage exclusively with it and that the BRPs would therefore not be able to progress discussions with Oakbay in relation to the Second Oakbay Offer nor permit Oakbay to proceed with its due diligence. A copy of Pembani's offer is annexed hereto marked "**CE19**".

64. On 9 October 2015, the BRPs and Phembani signed a non-disclosure agreement. A copy of the non-disclosure agreement is annexed hereto marked "**CE20**".

65. However, shortly after the conclusion of the non-disclosure agreement,

Phembani requested a meeting with me and explained at that meeting that Eskom had informed them that it would not consent to Phembani acceding to the CSA. This position was confirmed in writing much later in a letter to the BRPs received on 11 February 2016. It appears from that letter that the reason why Eskom refused to engage with Phembani was that Phembani indicated it would seek to renegotiate the CSA. A copy of the letter to the BRPs is annexed hereto marked "**CE21**".

The resumption of discussions with Oakbay

66. As a result of Eskom's rejection of Phembani as a purchaser of OCM, the BRPs informed Oakbay, in mid-October 2015, that they were in a position to engage further with Oakbay in negotiations for the acquisition of shares in OCM.

67. On 20 October 2015, the BRPs, representatives of Glencore (Mr Blankfield and me), representatives of Oakbay (including Mr Ajay Gupta ("**Mr A Gupta**"), Mr Ashu Chawla ("**Mr Chawla**"), Mr Varun Gupta, Ms Ronica Ragavan ("**Ms Ragavan**") and Mr Nazeem Howa ("**Mr Howa**")), together with Mr Nic Mathews and Mr Jacobs (of KPMG) met at the Guptas' home in Saxonwold, Johannesburg for the purpose of discussing the Second Oakbay Offer. It was noted that the proposed sale was of the shares in OCM only and the BRPs indicated that they needed an assurance from Oakbay that Oakbay would fund OCM for the duration of OCM's BR. It was agreed that Oakbay would continue with its due diligence. Messrs Blankfield and Van den Steen (one of the BRPs) met KPMG separately after this meeting to discuss the structure of a possible transaction.

68. On 23 October 2015, the BRPs confirmed to Oakbay that they were willing to proceed with the negotiation for the sale of the shares in OCM to Oakbay but that agreement needed to be reached regarding certain

transaction parameters. The BRPs advised that only OCM was for sale and that the purchase consideration of R1.00 did not include OCH's interest in the Richards Bay Coal Terminal, which was owned by Optimum Coal Terminal Proprietary Limited ("**OCT**"). The BRPs gave Oakbay until 30 November 2015 to conduct a due diligence on OCM and to execute definitive agreements for the transaction. The BRPs further advised Oakbay that it would need to assume all of OCM's liabilities.

69. Oakbay commenced with the due diligence (which included a site visit) of OCM, and KPMG attended to most of the due diligence work.

70. At that time, OCM and Glencore considered that it would be in their best interests to proceed with the proposed Oakbay transaction, because Eskom was not prepared to negotiate with OCM, Eskom would not consent to an assignment of the CSA to Phembani, and the proposed Oakbay transaction would enable OCM to continue operating and to supply Eskom. As regards the proposed consideration of R1.00, in view of the heavily loss-making CSA, the low export price of coal, the debts guaranteed by OCM and the security held over OCM's assets, Glencore considered this to be reasonable.

71. On 12 November 2015, Oakbay, OCH and OCM concluded a non-binding Term Sheet (the "**Oakbay Term Sheet**") for the proposed acquisition of OCM by Oakbay. The Oakbay Term Sheet recorded that the transaction was subject to due diligence and certain other conditions, including Eskom's support for the transaction and the release of OCH from all its obligations in respect of the CSA. A copy of the Oakbay Term Sheet is annexed hereto marked "**CE22**".

The meeting with Mr Raphela and the expansion of the proposed transaction

72. During November 2015, I was contacted by Mr Joel Raphela ("**Mr**

Raphela"), the Deputy Director General ("**DDG**") of the Department of Mineral Resources (the "**DMR**"), who requested that I meet with him at Melrose Arch, Johannesburg. At that meeting, Mr Raphela indicated that the sale of all of OCM, OCT and Koornfontein Mines Propriety Limited ("**Koornfontein**") (another subsidiary of OCH) should be considered, as opposed to just OCM (which was the deal currently on the table). While it was not unusual for the DMR to take an interest in transactions in the mining industry that were subject to their approval, I did find it surprising that Mr Raphela appeared to have detailed knowledge of the negotiations with Oakbay.

73. A meeting was called with Eskom on 24 November 2015 in order to update them regarding the discussions with Oakbay. The meeting was attended by Mr Blankfield on behalf of Glencore, the BRPs, Oakbay (represented by Mr Howa, Mr Chawla and Ms Ragavan) and Eskom (represented by Mr Koko, Suzanne Daniels, Edwin Mabalane and Ayanda Nteta), and was chaired by Mr Koko. Mr Blankfield advised the meeting that Oakbay was conducting a due diligence and that funding had been secured for OCM for the duration of Oakbay's due diligence period, so as to ensure continuity of coal supply to Eskom during that period. Mr Koko responded by saying that Eskom expected OCM to honour the CSA until 2018 and that Eskom would not waive any penalties. A copy of the minutes of the meeting is annexed hereto marked "**CE23**".

74. Mr Koko further stated that Eskom would not provide consent to any transaction with Oakbay unless the transaction extended beyond OCM to include all assets of the OCH Group, including OCH's interest in the Richards Bay Coal Terminal and Koornfontein. Mr Koko required confirmation by the end of that weekend as to whether this would be acceptable. Mr Koko's stated reason for insisting on a sale of OCH's interest in the Richards Bay Coal Terminal and Koornfontein was that,

without such a sale, OCM would not be a viable business. Mr Koko's position had some merit, but I noted it was the same message that I had received from the DMR earlier that month. Since a transaction with Oakbay appeared to be the only option at that stage, Glencore and OCM/OCH agreed to engage further with Oakbay in respect of a transaction for all assets of OCH.

Initial contact from Minister Zwane's office

75. On 24 November 2015, Mr Glasenberg received a call from a representative of Minister Zwane's office, who said that Minister Zwane would be visiting Switzerland and would like to meet with Mr Glasenberg. It is not unusual for Ministers and Ambassadors to engage with Mr Glasenberg having regard to the nature of Glencore's international operations.

76. A meeting was scheduled between Minister Zwane and Mr Glasenberg in Switzerland on 1 December 2015. There was no indication to Mr Glasenberg of the purpose of the meeting.

The Third Oakbay Offer

77. On 25 November 2015 (i.e. prior to the meeting with Minister Zwane), Mr A Gupta, on behalf of Oakbay, briefly met with me to convey an offer to acquire the shares held by OCH in OCM and other subsidiaries of OCH, for the purchase consideration of R1 billion (the "**Third Oakbay Offer**").

78. For context, all of OCM's assets were pledged as security and the corresponding debt would need to be settled as part of any deal. As a result, the proposed consideration of R1 billion would have left a shortfall of approximately R1.5 billion that Glencore would have needed to fund.

79. Glencore considered the Third Oakbay Offer but was not prepared to fund the significant shortfall – as a result, the offer was declined.

80. At a meeting held on 26 November 2015, I informed Mr A Gupta that the offer had been declined. At that stage, OCM remained in BR and therefore, in the absence of a sale or some other solution, the BRPs would have had no option but to place OCM into liquidation.

The Section 54 Notices

81. At 14h00 on that day, a notice was issued by the DMR to the Koornfontein mine pursuant to section 54 of the Mine Health and Safety Act 29 of 1996 ("**Section 54 Notice**"). That Section 54 Notice ordered the withdrawal of employees from the underground mine and termination of the use of certain equipment. A copy of the Koornfontein Section 54 Notice is annexed hereto marked "**CE24**".

82. In the subsequent four days, three further Section 54 Notices were issued to other mines in which Glencore had an interest: the Wonderfontein Colliery, the Tweefontein Opencast Mine and the Goedgevonden Colliery. Copies of these Section 54 Notices are annexed hereto marked "**CE25**", "**CE26**", and "**CE27**", respectively.

83. The reasons provided for the suspensions, as set out in the Section 54 Notices, included the following representative examples:

83.1. "*An operator for Excavo mining mini truck not having license and checklist with him while operating.*"

83.2. "*Safety belt was not used by the Excavo mining truck operator…*"

83.3. "*…operator's seat was not adjusted and there were engine oil leaks…*"

83.4. "*Four dump trucks found without first aid kit…*"

83.5. "*Wheel Loader 2 with cracked windscreen since 21 November*

2015."

84. In light of these alleged issues, Glencore considered the Section 54 Notices to be unduly harsh and disproportionate, particularly in their demands for a complete cessation of all mining operations.

85. It is not common for multiple Section 54 Notices to be issued to a single operator so close in time, and they were accordingly of serious concern to Glencore.

86. In addition, inspectors from the DMR conducted inspections at certain of Glencore's mines, including over the weekend (which was itself unusual).

87. Glencore was of the view that the Section 54 Notices had been issued and the inspections ordered for the purpose of pressurising Glencore in respect of Optimum. It was not clear to me at the time what the exact purpose of the pressure was, but I suspected that it was a warning to Glencore that there would be consequences for Glencore were it to allow OCM to go into liquidation and therefore that it must support the offer that we had at the time, which was the Third Oakbay Offer. What the Section 54 Notices also appeared to signal was that the DMR was prepared to jeopardise Glencore's other mines in response to how we were handling the Optimum negotiations.

88. The Section 54 Notices were ultimately lifted between 30 November and 9 December 2015, at a significant cost to the business.

The decision to continue funding and terminate the business rescue proceedings

89. On 29 November 2015, after Glencore/OCH had declined the Third Oakbay Offer and had received the Section 54 Notices, the Glencore team held a telephone conference to consider its options regarding OCM, which at that stage consisted of letting the BRPs put the Mine into

liquidation (i.e. by withdrawing the funding being provided by Glencore) or committing to provide further funding to keep the Mine operational so that the BRPs could take it out of BR.

90. Glencore's decision was, in part, informed by its analysis of the Optimum business, which indicated that the additional cost of continuing to fund and operate OCM over its remaining mine life compared to the Third Oakbay Offer was approximately R1.1 billion, and which included a number of risky and uncertain assumptions which could have resulted in that amount increasing.[1]

91. However, despite the high costs of continuing to fund OCM, Glencore decided that the collateral damage of putting OCM into liquidation (for example, the impact on the Mine's employees and Glencore's other businesses) would have been too great. We therefore decided to provide further funding commitments to allow the BRPs to terminate the BR proceedings, following which OCM would have continued operating the Mine in the ordinary course of business.

The meetings on 1 and 2 December 2015

92. On 1 December 2015, following the decision by Glencore to continue funding OCM, a meeting was held at Eskom's offices, attended by Mr Koko (representing Eskom), Mr Piers Marsden (representing the BRPs), Mr Blankfield and myself (representing Glencore), at which we conveyed that the Third Oakbay Offer had been rejected, that Glencore would continue to support OCM, and that both OCM and OCH would be discharged from BR. We asked Mr Koko whether he was happy with the decision. Mr Koko replied to the effect that of course he was happy, as

[1] It was this analysis that formed the basis of the decision a few days later to sell the Mine, which I detail at paragraph 100 below.

OCM would be honouring the CSA. He conveyed the message to Mr Anoj Singh (Eskom's Chief Financial Officer) as we left the meeting.

93. A meeting was also held that day between the BRPs, Mr Blankfield and the consortium of banks who held funding in OCM, at which the BRPs and Mr Blankfield informed the banks that Glencore had rejected the Third Oakbay Offer and was considering how to take OCM out of BR, although the possibility of a transaction with Oakbay remained if they improved their offer.

94. At or about the same time as the Eskom meeting, the meeting between Mr Zwane and Mr Glasenberg took at place at the Dolder Hotel in Zurich. I understand that the meeting was also attended by Mr Salim Essa ("**Mr Essa**"). Mr Glasenberg had not met Mr Essa before and did not know who he was. When he asked who Mr Essa was, he was told that he was an advisor to Minister Zwane.

95. I understand that Mr Glasenberg asked Minister Zwane about the Section 54 Notices but that Minister Zwane did not engage with him on this issue, instead noting that he wished to use the meeting to discuss Optimum.

96. I also understand that Mr Glasenberg informed Minister Zwane that Glencore was willing to provide sufficient funding to have OCM and OCH discharged from BR and that OCM would continue supplying Eskom with coal, but that Glencore would also be open to a sale at an appropriate price, and as long as it was acceptable to the BRPs. Minister Zwane responded by saying that he was sure Glencore could reach a deal with the Gupta family.

97. When Mr Blankfield and I left the meeting with Eskom and were in the parking area at Eskom, Mr Glasenberg contacted me to inform me that Minister Zwane had informed him that Mr Tony Gupta ("**Mr T Gupta**")

wished to meet with him on 2 December 2015 in Switzerland to discuss a potential transaction, and that he wanted me to join him at the meeting. I immediately travelled to Switzerland to attend the meeting on 2 December 2015.

98. There were essentially three parts of the meeting on 2 December 2015, which also took place at the Dolder Hotel:

98.1. The first part of the meeting commenced mid-morning and was attended by Minister Zwane, Mr Essa, Mr T Gupta, Mr Glasenberg and me. It was opened by Minister Zwane, who noted the importance of securing employment at the Mine, expressed concern that the Mine should not enter a liquidation process and stated that the best outcome would be for Glencore and Oakbay to reach a deal.

98.2. Mr Zwane then left the meeting, following which Mr T Gupta and Mr Glasenberg discussed the Third Oakbay Offer. After negotiation of the terms of a potential transaction, a purchase price of R2.15 billion was agreed (i.e. over double the amount of the Third Oakbay Offer).

98.3. The third part of the meeting was held over lunch. Shaun Teichner (Glencore's General Counsel) joined to discuss the principal terms of the transaction and the implementation process (regulatory approvals, documentation etc.). It was noted that the proposed transaction would need the approval of the BRPs, given that they were in control of OCH and OCM. Mr T Gupta also spoke about the rehabilitation trust funds. At that stage, the rehabilitation trust funds for OCM were invested in equity instruments. This was the Glencore Group's policy at the time on the basis that equity instruments provided the best long-

term return and, as a large multi-national, Glencore could withstand short-term volatility. Mr Gupta indicated that the purchasing entity could not assume the volatility risk and therefore he requested that OCM convert the rehabilitation trust funds into cash equivalents prior to signature of the sale agreement in order to mitigate the market risk of holding them in equity instruments. At the time, we thought that this seemed reasonable and did not raise any concerns because the funds would remain in the trust and be governed by the Trust Deed and relevant DMR regulations.

99. The principal terms of the acquisition of shares held by OCH in OCM and its other subsidiaries were orally agreed at the meeting in Switzerland on 2 December 2015.

Glencore's rationale for the transaction

100. Glencore was satisfied with the purchase price of R2.15 billion for the shares held by OCH, which required Glencore, *inter alia*, to contribute R400 million to release the banks' security. Glencore considered this to be an appropriate price based on its analysis of the OCH business undertaken at the end of November 2015 (which indicated that the future cost of continuing to fund OCM was higher than R400 million). Therefore, while it was clear that pressure was brought to bear on Glencore to sell the Mine, Glencore ultimately entered into a transaction that made commercial sense. Obviously, had Eskom engaged with OCM in 2015, the situation could have been avoided and a long-term solution for both Eskom and OCM could have been agreed.

Conclusion of the transaction

101. As was noted at the meeting on 2 December 2015, the BRPs also needed to approve the transaction, which they subsequently did.

Glencore and the BRPs instructed attorneys Werksmans, Johannesburg (who had acted as legal advisors to the BRPs) to commence drafting agreements for the acquisition by Oakbay or its subsidiary, Tegeta, of OCH's shares in its subsidiaries. The process involved intensive further negotiation, discussions and drafting in order to finalise suitable terms for the transaction. Ultimately, on 10 December 2015, a written Sale of Shares and Claims Agreement (the "**Sale Agreement**") was concluded between OCH, Tegeta, Glencore International AG and Oakbay.

102. On 6 January 2016, the BRPs confirmed the sale of OCH's shares and requested regulatory consent to the transaction from the DMR.

103. The conditions precedent in the Sale Agreement were fulfilled on 8 April 2016 and the transaction was implemented.

104. On 31 March 2016, the BR plan of OCH was published and a notice to this effect was sent to all affected persons, notifying them of the meeting to vote on the BR plan. The BR plan was ultimately approved on 8 April 2016.

105. In the week beginning 4 April 2016, I received a telephone call from Mr Essa advising that Tegeta was short of an amount of R600 million for the purposes of payment of the purchase price. He requested that Glencore fund the shortfall of R600 million and said that Oakbay would get Eskom to pay the first R600 million from coal sales to Glencore. Glencore declined this request. At a meeting on 11 April 2016, Mr Marsden (one of the BRPs) was advised by Mr Howa that Tegeta was R600 million short and Mr Howa requested that Mr Marsden approach the consortium of banks requesting a bridging loan in an amount of R600 million in order to finance the shortfall on the purchase price. Mr Marsden arranged a meeting with the consortium of banks, whereafter Mr Marsden advised Mr Howa that the consortium of banks was not

prepared to finance the shortfall of the purchase price.

106. The closing meeting for the Sale Agreement was held at the offices of Werksmans Attorneys, Johannesburg on 15 April 2016, at which the shares in OCH's subsidiaries were formally delivered to representatives of Tegeta. The transaction accordingly closed on 15 April 2016.

107. OCH was discharged from BR on 15 April 2016 and OCM was discharged from BR on 31 August 2016.

CLINTON MARTIN EPHRON