



EXHIBIT U 18

**SUZANNE MARGARET
DANIELS**



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

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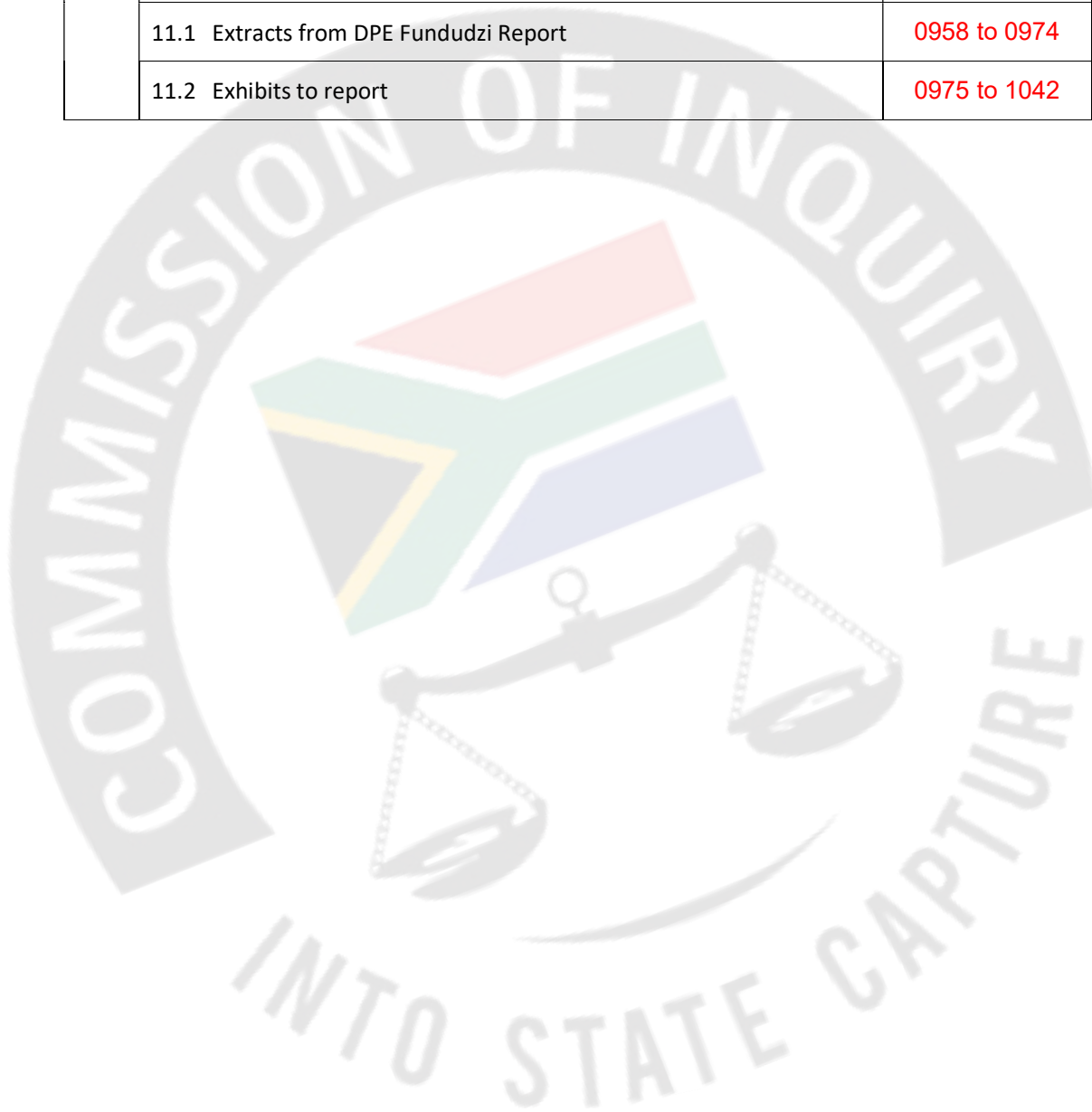
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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

AFFIDAVIT

I, the undersigned

SUZANNE MARGARET DANIELS

Do hereby state under oath in English that:

1. I am an adult female with ID 6908230280081.

My contact details are:

Cell: 082 580 7832

E-mail: suzanne.daniels@icloud.com

2. The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
3. My qualifications include, Bachelor of Arts (B.A), Bachelor of Laws (LL.B) and Postgraduate Diploma in Law.



MY EMPLOYMENT HISTORY AT ESKOM

4. I began my career at Eskom on 1 May 2006 as a Chief Legal Adviser in Generation Primary Energy, Contracts Section. This business unit was part of the Generation Division at the time headed by Ehud Matya.
5. I became Acting Contracts Manager, Primary Energy in April 2007 and during this period I was accountable for the articulation, promotion and execution of a contract advisory and risk management approach in the fuel procurement executed by the Primary Energy Division.
6. I was permanently appointed to the role of Senior Manager: Contracts (Coal, Water and Gas) in April 2008 until January 2010 when I moved to the office the Managing Director, Primary Energy Division.
7. I was appointed Senior Manager, Office of the Group Executive in 2011 and served under Dan Marokane, Kannan Lakmeharan, and Matshela Koko respectively.
8. Subsequently, I was transferred to the Office of the Chairman on 11 April 2015.
9. I was appointed Group Company Secretary on 1 October 2015 and held this position until 27 July 2017 when the current interim board of Eskom accepted my resignation as Company Secretary. The duties of the Company Secretary are set out in section 88 of the Companies Act, 2008 as amended.
10. It is important to note, I attended board meetings and board subcommittee meetings as company secretary and not as a director, hence I would have no



voting rights. My role was to record the proceedings of the meeting and produce a record thereof in the form of minutes. While part of the role required that I advise the board on compliance with regulatory and statutory requirements, this role was located within the legal and compliance department and thus my role was limited to adherence to the Companies Act and the Memorandum of Incorporation.

11. Upon the departure of the General Manager: Legal and Compliance, I was requested by the Group Chief Financial Officer and Group Chief Executive to caretake the role of Acting head of legal with effect from 1 September 2016 and thus I fulfilled a dual function of Company Secretary and Acting Head of Legal and Compliance for the period until 27 July 2017.
12. In hindsight, at the time it made sense to assume both roles as the guiding principle was that as an officer of the company, I had to act in the best interests of Company. For a period of time I exercised duty of care in these roles and executed both to the best of ability. This is evidenced by the successes Eskom enjoyed in Court and other regulatory forums. On the Company Secretary, various initiatives such as improving the quality of minute taking and record keeping and/or the entire capacity decision making and verification.
13. While this principle is theoretically sound as stated in the textbooks, it became problematic for me as this led to clashes with the then Interim Chief Executive, Matshela Koko and also caused disquiet at Board and Exco level. This dual role demands a higher order leadership for it to function optimally to achieve its natural objectives.
14. As it became untenable for me, which ultimately impacted the span of my operations, I formally advised the Board that I wished to take up the role of Head



of Legal and Compliance in March 2017 and would resign as Company Secretary.

15. Due to leadership instability at the time, this became a formal reality only in July 2017.

THE SUSPENSION OF THE FOUR EXECUTIVES

16. At the time of the suspension of the four executives, I held the position of Senior Manager; Office of the Group Executive (Group Technology & Commercial). I reported to Matshela Koko, in his capacity as Acting Group Executive. (Dan Marokane, had been moved to Group Capital).
17. My first knowledge of the impending suspension of the four executives was on **10 March 2015**. In my parliamentary testimony I surmised that this was the 9th March but evidence shown to me by the Zondo investigation team shows that this meeting took place on the 10th March.
18. As I have testified in Parliament, I received a call from Matshela Koko in the afternoon wherein he instructed me to meet him at Melrose Arch. I was at Megawatt Park at the time and packed up for the day and went to meet him there. He did not give any indication of the reason for the meeting at Melrose Arch and I did not ask any detail.
19. I was questioned at Parliament as to why I would have heeded such a call from Matshela Koko. To put it into context, he was my direct superior at that time and I had no reason to suspect anything out of the ordinary. We had spent quite a bit of time working together on the Westinghouse legal challenge to Eskom awarding the Koeberg Steam Generator contract to AREVA that my perception of him at



the time was one of a fastidious, loyal and principled Eskom executive.

20. I waited at JB Rivers for just over an hour when Matshela Koko called to ascertain my whereabouts. I confirmed that I was at JB Rivers and he came to meet me there. He paid the bill and he instructed me to follow him. We walked across the road to a nearby office complex. We took the elevator to the first floor and then he led me to an office at the corner of the building.
21. We entered the offices (I could not see any plaque on the outside of the office). We were greeted by a receptionist and Koko instructed me to hand my mobile to the receptionist. We proceeded to enter a mini boardroom and waited for someone to join us. I asked Koko what was the purpose for meeting at this place. He gestured that I should be patient.
22. As we were chatting, a gentleman walked into the boardroom and introduced himself as Salim Essa (Essa), adviser to Minister Brown. I was quite puzzled. A few pleasantries were exchanged and it was then that Essa asked me *"What is the procedure to be followed if one wanted to suspend someone at Eskom?"* I was quite taken aback and looked at Koko enquiringly. He nodded and I took that as an indication that I could answer Essa.
23. My response was that one could not suspend someone at a whim and needed a very good reason to do that. I explained the process as I understood it and pointed out to Essa that I did not work in the Industrial Relations ("IR") section. Therefore, my knowledge of labour law was high level.
24. He seemed to accept this and then proceeded to tell me that in the upcoming days, four (4) executives at Eskom would be suspended, namely, Tshediso Matona, Tsholofelo Molefe, Dan Marokane and Matshela Koko. I looked at Koko



in shock and he appeared to have knowledge of this as his demeanour remained composed.

25. Essa proceeded to tell me that there would be an investigation by an independent firm into the affairs of Eskom. I was flabbergasted at this point, I was not sure if I was to believe this man as he had sketched the scenario to me in front of one of the impacted parties.
26. I cannot recall how the meeting ended but I was excused and Koko accompanied me out of the building. I was quite perturbed at what I had heard and I do not recall speaking to him at the time.
27. On my way home I called a friend of mine to ask him about Essa. My words were *"I met this man called Salim Essa, can he do what he says he can?"*. My friend responded, *"in all probability, yes"*.
28. Thereafter, I received a call from Dr Guenon, the Head of the Southern region for AREVA at the time.
29. My next message I sent was to Dan Marokane ("Mr Marokane"). I sent him a text as it was his day off. He responded by saying that he will pop by my house as he was in the area. He arrived later that afternoon and I told him what had transpired in the afternoon. Mr Marokane indicated that he was aware of the rumours that were circulating about their impending suspensions and that he would relay what I had told him to the other two parties, namely Mr Tshediso Matona and Ms Tsholofelo Molefe.

30. Just to give context, as an employee at the SOC Eskom, I was quite used to the amount of political interference and lobbying behind the scenes which took place. However, I had not been exposed to this level of "behind the scenes" influence by a third party as I was on this day. This level of interference would continue to be the hallmark of the period from 2015 up until I eventually departed from Eskom in 2018.
31. The day after this meeting, I had arrived at work just after 9h00 and Matshela Koko was frantically calling me. He asked me about my whereabouts and also why I was talking to Rustum Mohamed and the French. Rustum Mohamed was the friend I had spoken to, and we have been friends for more than 20 years, so I was quite shocked that Koko knew about this call and also the call from Dr Guenon. I had asked Dr Guenon to call me when I was back in the office. This was the first suspicion that I had that my mobile phone was bugged, as Koko could relate to me verbatim who I had spoken to. I was alone in my car at the time of making the call and receiving the call from Dr Guenon.
32. Koko called me in quick succession that morning as he wanted to see me rather urgently. He was agitated and his stated reason for this was that he suspected that he was going to be suspended.
33. I was rather tense by that time and told him that I did not see the logic for him being agitated, as he was clearly privy to what was happening in the Boardroom at the time.
34. There was a Board meeting scheduled for that day and it was generally a tense atmosphere on the executive floor. I was not present at these meetings as I was not the Company Secretary at the time but I have read the minutes of the meetings:

35. The minutes clearly indicate that at a meeting with the Board of Directors of Eskom Holdings SOC Limited ("the Board") on **11 March 2015**, the Honourable Minister of Public Enterprises, Ms Lynne Brown, raised a number of concerns with the Board in respect of the following:
- 35.1. Information that Eskom was sharing with the War Room was deemed to be unreliable and misleading in some respects;
 - 35.2. Load shedding continued to occur with alarming regularity;
 - 35.3. Issues relating to reports of retrenchment and voluntary separations could not continue;
 - 35.4. A forensic enquiry into matters affecting the business operations of the company may be needed;
 - 35.5. The interest rates and borrowing terms negotiated by Eskom in the market appear to be unfavourable to it;
 - 35.6. Appears to be inequities in the coal price purchases negotiated;
 - 35.7. Perception of manipulation of the load shedding process;
 - 35.8. Lack of planning in diesel purchases;
 - 35.9. Breaches of security in the bugging of board rooms and leaking of information;
 - 35.10. Lack of transparent reporting to the Shareholder. Copy of the minutes of the meeting is attached hereto marked "**Annexure SMD1**".

36. Following on the meeting with the Honourable Minister of Public Enterprises, the Board proceeded to deliberate on the issues raised by the Minister and the most optimal manner in which to begin to address the issues which confronted the Company.
37. A number of issues were deliberated and debated upon flowing from the concerns raised by the Honourable Minister and the Board finally resolved that:
- 37.1 An inquiry be instituted into the affairs of Eskom and that the duration of the inquiry should be three months;
 - 37.2 The Audit and Risk Committee ("ARC") shall take custodianship of the inquiry and that the People & Governance Committee ("P&G") and other committees assist where necessary and report to the Board. The ARC was mandated to draft the Terms of Reference;
 - 37.3 The key executives be put on suspension for the duration of the inquiry;
 - 37.4 The Corporate Plan and the Borrowing Programme be deferred until further notice; and
 - 37.5 Management must institute an investigation into the bugging of the Boardroom and report to the Board on their findings and recommendations. Copy of the minutes is attached hereto as "**Annexure SMD2**"
38. A meeting of the People and Governance Committee ("P&G") was convened immediately after the Board meeting to deal with the decision to suspend key executives for the duration of the enquiry.

39. P&G identified the key executives to be put on suspension for the duration of the enquiry as:
- 39.1 Tshediso Matona, Chief Executive Officer;
- 39.2 Tsholofelo Molefe, Financial Director;
- 39.3 Dan Marokane, Group Executive: Group Capital;
- 39.4 Matshela Koko, Group Executive: Technology and Commercial.
40. I do not have a copy of these P&G minutes, however, I mention them in the subsequent report that I prepared for the then Minister of Public Enterprises, Ms Lynne Brown on the matter.
41. These executives were then called into the meeting individually and were informed of the Board's decision to launch an enquiry. They were further advised of the Board's view that their presence could hamper the said enquiry. The 4 executives were suspended on **11 March 2015**.
42. On **13 March 2015**, I was called to a meeting with Dr Pat Naidoo (Dr Naidoo), a Board member and Chairperson of the Board Recovery & Build Program Committee. At that stage one of my duties was the coordinating of and liaison with the Board on procurement matters.
43. At this meeting Dr Naidoo enquired what the process would be to appoint an independent consultant as the Board had acquired the services of one Mr Nick Linnell ("Mr Linnell") as an adviser to the Board. This was not a formal meeting as it was only him and the meeting coordinator for the Build Recovery & Build Program Committee present in the room.

44. I explained the process to Dr Naidoo and the options as to how the Board could go about it. It did involve putting out an RFQ/RFP for the services. It did however appear that the Board had already engaged the services of Mr Linnell as an adviser to the Board.
45. He spoke of the Board wanting to initiate an independent fact-finding exercise which he described as an "Eskom Deep Dive".
46. My impression proved to be correct, as I would later be called upon to cancel the contract between Eskom and Mr Linnell. I attach a letter from Mr Linnell addressed to the Chairperson of Eskom which set out the interactions with the Board on the matter marked "**Annexure SMD3**". I also attach an email which I received from Mrs Venete Klein which confirms that the Board had in fact engaged the services of Mr Linnell. A copy is attached marked "**Annexure SMD4**".
47. On **9 April 2015**, the Acting Chairman of the Board, Dr Ben Ngubane, called Mr Leo Dlamini ("**Mr Dlamini**") and I to his office and informed us that I would be transferred to the Chairman's office and that Leo would have to be transferred elsewhere in the organisation.
48. Dentons was appointed to conduct the enquiry late April, as the appointment was confirmed by the Board Audit and Risk Committee on **20 April 2015**.
49. The Eskom Board meeting of **23 April 2015** discussed the interface between the WAR ROOM, that was being led by the Deputy President at the time, Cyril Ramaphosa, and the Dentons Review. Copy of the minutes of the meeting is attached marked "**Annexure SMD5**".

50. The Chief Executive was instructed to develop the framework of interaction with the WAR ROOM. It was at this meeting that he outlined the maintenance strategy to stop load-shedding. He also emphasised that should Eskom be able to achieve this, the purpose for the WAR ROOM would be obsolete.¹ The Acting Chief Executive at that time was Brian Molefe.
51. The meeting proceeded to discuss the removal of one of the directors, Mr Norman Baloyi, and confirmed that the removal had been approved by the Minister of Public Enterprises.
52. It was at this meeting that Thomson Wilks, a firm of attorneys not on the Eskom panel, was approved to review Eskom's Memorandum of Incorporation and that it was made clear that they were advising the Board in respect of the suspension of the four executives and the attendant matters thereto.
53. Mr Matona's challenge to his suspension at the CCMA was discussed, as well as options for the treatment of his suspension. Already at this point, his reassignment to another post in government was being considered by the Minister of Public Enterprises and the changing of the status of suspension to special leave.
54. The Board emphasised that this would not alter the fact that he would remain on suspension. Dr Ben Ngubane and Mr Romeo Khumalo ("Mr Khumalo") were mandated to meet with Mr Matona on **29 April 2015** to discuss the matter of his suspension. At this point, it was clear that the Board was not really considering the option of the return of the executives, contrary to their public utterances.

¹ An indication of the "us and them" stance that the Board took against the institutions of government.

SETTLEMENT MEETINGS WITH SUSPENDED EXECUTIVES

55. It was further clear that the exit of the executives was the ultimate aim, as the Board reiterated that the Dentons Review would continue. It was a separate enquiry and its outcomes were deemed independent of the four executives. The Board at this stage already anticipated that the executives would resign to avoid charges.
56. I was tasked with coordinating the meetings of the executives and the Board during this time. I attended some of the meetings to take notes and keep Dr Ngubane apprised of proceedings.
57. The first meeting that I attended regarding one of the suspended executives was on **4 May 2015** where Mrs Venete Klein, Mr Romeo Khumalo and Dr Ben Ngubane met with Ms Tsholofelo Molefe. This meeting took place at the Protea Hotel, Midrand. The introduction of the meeting by Mrs Klein set the tone: she advised Ms Molefe that the Board had mandated the delegation, that is her, Mr Khumalo and Dr Ngubane, to interact with the executives and the question was *"How do we amicably find a solution?"*.
58. Ms Molefe highlighted to the Board members present that there was a clear contradiction to what had been communicated to them and what was reported in the media. She emphasised that in the eight weeks since her suspension she had not had any communication from the Board or a response to her correspondence. She had enquired as to what was the position of the Board at that point in time.
59. At this point Mr Khumalo very directly conveyed to Ms Molefe: *"Without prejudice and reserving the rights of Eskom, the terms of reference for the review were developed by the Audit and Risk Committee and that this was a separate discussion."* He further went on to say, *"Can we find a way of amicably parting ways? The parties would like to avoid the legal wrangle on each side. Would you*

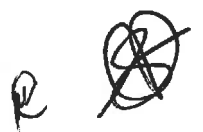
consider a managed parting of the ways? Would you be open to this discussion and also the public management thereof?"

60. Ms Molefe responded that *"Eskom had already appointed lawyers in the matter and that it put them at an unfair advantage. ...The trust issues are so deep so it would be something I would consider."* She further requested time to appoint legal representatives and time to consider the proposal. She also stressed that her professional integrity had been impugned by her suspension and that her integrity as a chartered accountant was critically important to her.
61. Mr Khumalo confirmed that the delegation would put a "without prejudice" offer on the table. He emphasised that the Board would work with her to manage her exit. It was agreed that a formal offer would be put to Ms Molefe by the end of that week.
62. In-between these meetings, a meeting with Brian Molefe, also took place at the Protea Hotel where the Board members present briefed him on their top priorities as set out in Minister Brown's correspondence of 22 April 2015 and which he needed to attend to as a matter of urgency. These were the top priorities:
- 62.1. Board position on tariff re-opener;
 - 62.2. weekly reports on the Dentons Enquiry;
 - 62.3. short term deliverables of the appointed interim executives;
 - 62.4. report on servicing and treatment of the World Bank loan;
 - 62.5. issue of bugs in the main boardroom.
63. I do not have a copy of the correspondence dated 22 April 2015.

64. The delegation subsequently met with Mr Tshediso Matona on the same day. Mr Khumalo opened the discussion and emphasised that at that stage there was no commitment to a specific alternative role in government, but that it would be considered. He emphasised that Mr Matona's *"court action did not sit well with the powers that be"*. There appeared to have been prior discussions that I was not privy to.
65. Mr Khumalo then proceeded to outline the framework of a proposal to Mr Matona. He stressed that Eskom was committed to managing the messaging together with Mr Matona so that his dignity and credibility, as well as the credibility of the Board, remained intact. The financial proposal included a payment by Eskom to the Government Employees Pension Fund to secure Mr Matona's full benefit as a government employee, since he had been at Eskom for a relatively short time. It was confirmed that Eskom and the Department of Public Enterprises were working together to secure the full benefit, to have it approved and reinstated. The prospect of another role in government was also mooted. Mr Matona requested that a formal proposal be tabled and that a further meeting be set up.
66. The second meeting with Ms Molefe took place on **7 May 2015** where an offer was tabled to her. She undertook to consider it.
67. It must be noted that I do not include these details in my testimony to cause harm to the individuals involved, but to give this Commission a sense of the careful orchestration of events on the part of the Eskom Board to ensure that the identified persons would not return to Eskom.
68. The Board met with Matshela Koko on **11 May 2015** and the tenor of this meeting was dramatically different from the previous two I had sat in. The Board was represented by Mrs Venete Klein and Mr Zethembe Khoza.



69. Unlike the previous two meetings, Mr Koko was given time to express his sentiments on the issue of his suspension quite in length. He waxed lyrical – “*I don’t understand*” and “*shocked and surprised*” permeated his speech and the now legendary “*Eskom is in my veins*” was part of his rendition of his position at that moment.
70. He also portrayed his relationship with the previous chairperson, Mr Zola Tsotsi, as acrimonious and he attributed this acrimonious relationship as the reason for him finding himself on suspension. He went at great lengths to impart to the Board members that they had been misled and that he “would not make it difficult for the Board” if the board says “you don’t fit”, he would accede and leave Eskom.
71. Mr Khoza thanked him for his submission and Mrs Klein started her conversation with an opening question of “*Could you fully trust this Board again?*” Once again Koko emphasised that he believed that the reason for his present situation was the acrimonious relationship he had with Mr Tsotsi which led to acrimony between him and the previous Board. At this point Mrs Klein then asked “*Could you come back and work with this Board?*” Mr Koko retorted that he had “*horror stories relating to Zola Tsotsi*” and not the current Board. Mrs Klein thanked him for his honesty and took note that he had said “*I will come back to Eskom*”. She emphasised that this confirmed that the trust element was intact and that Koko was prepared to sit it out and wait. She confirmed that she respected what he had told them and thanked him for being open and frank.
72. I was not privy to the discussions with Mr Dan Marokane, but he had informed me that he was liaising with the Board at the time through his attorneys and that there was correspondence on more than one occasion that had not been replied to by the chairperson of the Board.



73. The Board delegation met on **19 May 2015** and I was in attendance. Mrs Klein opened the discussion by emphasising the need to find settlement with the parties and *"clear the decks"*. She also confirmed that the *"Shareholder has approved to get rid of the people and make the necessary concessions if it sorts out the problem"*. She stressed that *"the priority is to get the people off and away"*. The meeting further discussed the various settlement arrangements as the "Minister had a ceiling of R12 million to negotiate" and the guiding principles were i) full cost to company, up to twelve months, ii) payment of tranche 8, iii) payment of tranche 9; iv) contribution to legal costs and v) communication plan around the suspended executives. The settlements with Mr Marokane and Ms Molefe were mentioned as those that needed to be finalised.
74. I was then asked to prepare a Brief to the Minister from the Chairman on the status of the suspended executives. A copy of the briefing document is annexed hereto marked **"Annexure SMD6"**.

DENTONS REVIEW

75. As already indicated, I was not a witness to the Board meetings of March 2015 referred to above. My knowledge stems from reading the minutes of the meetings.
76. Eskom records reflect that at a meeting with the Board on **11 March 2015**, the Honourable Minister of Public Enterprises, Lynne Brown, raised a number of concerns with the Board in respect of the issues already listed above.
77. A copy of the minutes is already attached marked **"Annexure SMD1"**.
78. Following on the meeting with the Honourable Minister of Public Enterprises, the Board proceeded to deliberate on the issues raised by the Minister and the most

optimal manner in which to begin to address the issues which confronted the Company.

79. A number of issues were deliberated and debated upon flowing from the concerns raised by the Honourable Minister and the Board finally made certain resolutions already specified above.
80. A copy of the minutes is already attached marked "**Annexure SMD2**".
81. As already stated, a meeting of the People and Governance Committee ("P&G") was convened immediately after the Board meeting to deal with the decision to suspend key executives for the duration of the enquiry, and the executives were identified as already explained.
82. I was not part of the procurement process which resulted in the appointment of Dentons. This was handled by senior managers in procurement and the General Manager Legal at the time, Neo Tsolanku.
83. The first presentation to the Board by the Dentons Team was on **27 May 2015**. It stressed the preliminary nature of the feedback, as they were only six weeks into the investigation.
84. The feedback detailed the mixed messaging that Dentons was receiving from the Board and the Shareholder in the understanding of the brief:
- 84.1 The Minister of Public Enterprises described it as a "deep dive".
- 84.2 The Eskom Board instruction is "Tell us what is wrong and we will fix it".
- 84.3 Audit and Risk Committee shifts between "investigate all executives" and "investigate suspended executives".

85. The feedback at this stage highlighted the following:

85.1 Information provided by the EXCO was not complete;

85.2 Poor performance of Eskom generation plant;

85.3 Delays in new build decisions leading to unrealistic timeframes;

85.4 High cost of primary energy (cost of coal);

85.5 Diesel purchasing handled incorrectly;

85.6 Financial challenges;

85.7 Anecdotal references to influence over procurement exerted by the executives.

86. These anecdotal references mentioned Matshela Koko in the main and the various allegations were described as obtained from witness interviews across the organisation. This detail did not make its way into the final reports.

87. I am able to say this as I received a copy of the initial drafts where Matshela Koko was heavily implicated in tender manipulation and was described as running the organisation by means of strategically placed proxies. Descriptions of specifications being tailored for specific companies, decisions of lower committees overturned, etc were provided by the various witnesses.

88. These details did not make it into the official records of Eskom as it was decided by the Board that it would be destroyed. This is recorded in the Board minute of 14 August 2015 where it states “... *concern was expressed with regard to the collection and destruction of initial reports. The Company Secretary was expected to take the necessary steps to ensure that all original reports were collected in exchange for the final reports. In view of this concern, the Chairman of P&G, Ms V Klein undertook to ensure that all reports were returned to her within 7 days for them to be destroyed*”.
89. A copy of the minutes is attached hereto marked “**Annexure SMD7**”.
90. Mrs Klein emphasised that the Board needed “to find a way for the Minister to dissociate herself in the public space” and that the inquiry should be perceived as a “Board Initiative”. The Minister failed to take a definitive stance on the matter throughout and this led to often conflicting positions and created a fracas at operational level.
91. Copies of the Dentons Reports as formally provided to me are attached hereto marked “**Annexure SMD8**” and “**Annexure SMD9**”.

T-SYSTEMS

92. I was not directly involved in this matter but I have discovered the following in my notes from the meeting of the day.
93. The matter of the IT infrastructure and outsourcing to T-systems was discussed at a Board Tender Committee (BTC) meeting on 28 February 2015.



94. It was at this BTC meeting that the change of business strategy in relation to the IT Infrastructure was presented by Sean Maritz, acting CIO at the time.

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

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

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

[Signature]

Signature of Deponent

17 / 8 / 2020

Date

I HEREBY CERTIFY that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn before me at PRETORIA on the 17 day of August 2020²⁰¹⁹, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

[Signature] KB DINTWE Captain

COMMISSIONER OF OATHS





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 HUVU 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



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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:



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- 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;



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- The issue of directors' liability may need to be reviewed in light of some of the risks which are coming up e.g. environmental risk;
- With regard to the War Room and the Board subcommittees, the Minister undertook to respond to the queries in a few days' time;
- The Minister raised a concern that the reports on Duvha and Majuba have not been provided and that the DPE is therefore in the dark as to what is happening there.
- With regard to the investigation, it was submitted that it should not be a long drawn-out exercise and a report (even if it is a preliminary one) must be given within 3 months;
- Board representation in the War Room can be done by means of only one member- not all the chairpersons of committees;
- 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



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- It was noted that there is a high likelihood that the Corporate Plan does not address the critical issues confronting Eskom.

10. CLOSURE

There being no further issues to discuss, the meeting closed at 11h44.





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**MINUTES OF THE ESKOM BOARD 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	Interim Chief Executive (“Interim CE”)

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



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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



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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;



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- 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 THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS.

CHAIRMAN: _____ **DATE:** _____





14th April 2015

Acting Chairperson
Dr Baldwin Siphon Ngubane
Eskom SOC
Megawatt Park
PO Box 1091
Johannesburg
2001
South Africa

Dear Chairperson

APPOINTMENT OF COORDINATOR OF THE ESKOM INQUIRY

On the 11th March I appeared before the Eskom board and was endorsed by that body to coordinate the enquiry announced that day by the board.

Shortly thereafter the then Chairperson of the board, in the presence of other members of the board announced publically that the board had appointed me to coordinate the inquiry.

Later that afternoon I was introduced to the Eskom executive committee by two members of the board (Ms Mabude and Mr Naidoo) as having been appointed by the board to coordinate the inquiry. At that meeting the board members asked the executive to provide me with proposals for inclusion in the terms of reference (an indication of the board mandate).

Ms Mabude further introduced me to Molefi Nkhabu, Senior General Manager: Assurance and Forensic Office of the Chief Executive and the three of us discussed the approach, the communication between me and IA.

On the 13th March Mr. Naidoo, a member of your board wrote to the Board Recovery and Build Programme Review Committee (BRBPR) secretary asking that I be invited to their next meeting. In that communication he noted that I was the "specialist advisor" to the "Eskom Recovery: Independent Fact Finding Enquiry". I note that you were also copied on one of those emails referring to my attendance at that meeting.

Pursuant to that I receive written instruction to provide proposed terms of reference document to Ms Mabude. This I subsequently drafted and distributed as instructed.

CT&A Project Management (Pty) Ltd; Company Reg No. 99/15942/07; Vat No: 4430183535
Company Registered Office 22 Melkhout Crescent | Platteklouf 3 | 7500
Office 0861 140 141; Fax 086 617 5117
Postal Add PO Box 15813 Panorama |7506
Directors M Green; N Linnell

On Wednesday the 18th I met with Ms Mabude, together with the then chairperson and discussed the proposed media release and the terms of reference. At the conclusion of this meeting Ms Mabude requested that I present the draft terms of reference to the subcommittee appointed by the board to oversee the inquiry. I thereafter received an official emailed invitation to attend that meeting to be held on Thursday 19th.

Subsequently I wrote to Ms Mabude requesting her further instructions with regard to my role. I received neither an acknowledgement nor reply.

To this point, at no stage was there any suggestion that I had not been properly appointed by the board and it is clear from the above that the board and I acted on the basis that the board had properly appointed me. To the contrary my appointment was openly and repeatedly recognized and endorsed by members of your board.

I have since read in various news reports that the board has stated that the former Chairperson had appointed me improperly and that the board had “terminated” my appointment. The spokesperson for Eskom is also reported to have stated that the board had asked me to “step aside”. I have not received any communication from the board in this regard.

In this regard (reference to an improper appointment), it is reported that the board charged the former Chairperson with misconduct in having appointed me without due process. It is also reported that the board subsequently accepted the chairperson’s response to these charges and it is axiomatic that the charges were withdrawn and no finding was made that I was improperly appointed.

It is clear from written correspondence and public statements that the board appointed me to fulfil this role. It is now also apparent from media reports that the board has since allegedly terminated that appointment.

In the circumstances I would be grateful if you would advise me of the position of the board with regard to my appointment and if my services have, as publically stated, been summarily terminated how the Board would like me to account for my services rendered.

Yours sincerely



Nick Linnell
DIRECTOR

SMD4

Wednesday, April 18, 2018 at 8:35:15 AM South Africa Standard Time

Subject: A note that I made on the Z.Tsotsi's final presentation to board**Date:** Sunday, 19 April 2015 at 15:57:14 South Africa Standard Time**From:** Venete Klein**To:** Suzanne Daniels, Ben Ngubane**Priority:** High

Chairman – 30/3/2015 – Presentation

1.1 – Procured services of Nick Linnell – 9/3 special board meeting convened –

Reason for enquiry – board aware of the state of affairs in the business – Financial position & Generation

Mr Linnell – did employ Mr Linnell – suggested that he could help with the enquiry

Meeting of 11/3 – Nick made a presentation –

Up to that time the board did not apt Mr Linnell

Board delegated its powers to P&G – should have engaged with whom ever

P&G met after the board mtng

Was Minister consulted on the enquiry.

The board asked for the Minister to address them on the enquiry

Is there a contract with Mr Linnell/ no payment made to Linnell

*** Was not chairs responsibility to apt

P&G –

*****P&G asked Mr Linnell to draft the suspension letters

This is the responsibility of P&G

Linnell did work at risk

1.2 Media statement – Minister called & said that a public statement must be put out

The media was saying that the Chair would lead the enquiry

The focus was to respond to the Ministers request

Asked Nick to assist with drafting of the document

In Nicks mind he was advising the board, he made some suggestions – viz retired judge etc

Chair said that he advised that the board to signoff

Also sent to the Ministers office – simultaneously *****

Wanted the board views ***** but was not asked it was for info

2 Media statements – someone leaked the document –

People & Governance asked to work on a statement ***** took the statement & made changes

When that was done Leo cleaned it up – in the interim RC – it would be useful if a media specialist look at it.

Met with Happy, who finessed the statement.

Happy came & supported at the media briefing.

Agreed who would be present for media briefing – VK & ZK

***** completely unrelated media briefings*****

Directors Conduct – Eskom into disrepute – believes that he

Enquiry was agreed to by the board

The actions leading up to the enquiry is what put the enquiry at risk
Never did he go on a limb and do something.

He only recommended Linnell

The media statement was a directive from the Minister

1.5 Believes that it is not in the interest that we have a public spat

***** why all the media hype including slating the board*****

2nd set of info –

1.1 – Neglected & Derelict –

Mr Linnell has confirmed that he has no expectation from Eskom & that he worked at risk
Anything else that you want to say to the board?

Venete Klein

CDSA

Eskom Board Member





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**MINUTES OF THE ESKOM BOARD MEETING 02-2015/16 HELD ON 23 APRIL 2015
HORSESHOE 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
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IN ATTENDANCE

Mr W Venner	Committee Secretary
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1. War Room Update

The update on the War Room was tabled for information, details of which had been circulated to members.

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



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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.

Resolved that:

1. the update on the War Room is noted;
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;

SMD6



Suspension of Executives

For the attention of:

The Honourable Ms Lynne Brown, MP

Minister of Public Enterprises

4 June 2015

STRICTLY CONFIDENTIAL

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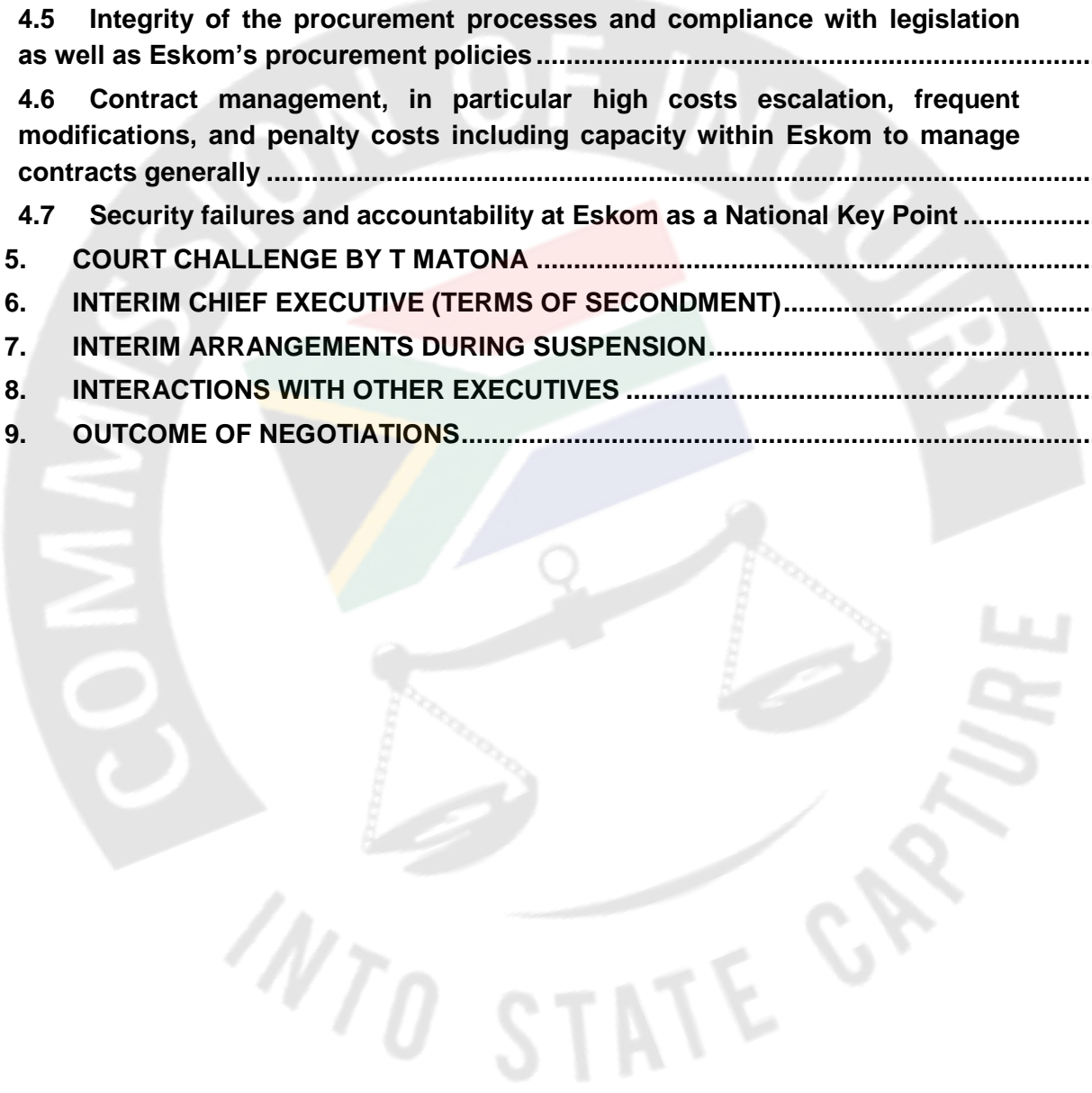
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1. INTRODUCTION

In an informal meeting with the Board of Directors of Eskom Holdings SOC Limited ("the Board") on 11 March 2015, the Honourable Minister of Public Enterprises raised a number of concerns with the Board in respect of the following:

- Information that Eskom was sharing with the War Room was deemed to be unreliable and misleading in some respects;
- Load shedding continued to occur with alarming regularity;
- Issues relating to reports of retrenchment and voluntary separations could not continue;
- A forensic enquiry into matters affecting the business operations of the company may be needed;
- The interest rates and borrowing terms negotiated by Eskom in the market appear to be unfavourable to it;
- Appears to be inequities in the coal price purchases negotiated;
- Perception of manipulation of the load shedding process;
- Lack of planning in diesel purchases;
- Breaches of security in the bugging of board rooms and leaking of information;
- Lack of transparent reporting to the Shareholder.

2. BOARD RESOLUTIONS OF 11 MARCH 2015

Following on the meeting with the Honourable Minister of Public Enterprises, the Board proceeded to deliberate on the issues raised by the Minister and the most optimal manner in which to begin to address the issues which confronted the company.

A number of issues were deliberated and debated upon flowing from the concerns raised by the Honourable Minister and the Board finally resolved that:

- An inquiry be instituted into the affairs of Eskom and that the duration of the inquiry shall be three months;
- The Audit and Risk Committee ("ARC") shall take custodianship of the inquiry and that the People & Governance Committee ("P&G") and other committees assist where necessary and report to the Board. The ARC is mandated to draft the Terms of Reference;
- The key executives 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.

A meeting of the People and Governance Committee ("P&G") was convened immediately after the Board meeting to deal with the decision to suspend the key executives for the duration of the enquiry.

3. TERMS AND CONDITIONS OF SUSPENSION

P&G identified the key executives to be put on suspension for the duration of the enquiry as:

- 1) Tshediso Matona, Chief Executive Officer
- 2) Tsholofelo Molefe, Financial Director
- 3) Dan Marokane, Group Executive: Group Capital
- 4) Matshela Koko, Group Executive: Technology and Commercial

These executives were then called into the meeting individually and were informed of the Board's decision to launch an enquiry. They were further advised of the Board's view that their presence could hamper the said enquiry.

P&G, under the chairmanship of Zola Tsotsi, then gave each executive the opportunity to provide the committee with any motivation that they may have had in order to persuade the P&G that their presence would not hamper the enquiry.

After this was done, the said executive was asked to recuse himself/herself so that the committee could members could apply their minds and make a final decision on the said suspension.

In the case of each executive respectively, the P&G decided that the reasons presented were not strong enough and proceeded with the suspensions in order to give effect to the board's decision to proceed with the enquiry in an unfettered manner.

4. FACT FINDING FORENSIC ENQUIRY

Following a resolution taken by the Board of Directors of Eskom Holdings SOC Ltd ('the Board') at a properly constituted meeting on 11 March 2015, a forensic fact finding enquiry ('the Enquiry') into the status of the business and challenges experienced by Eskom, was instituted.

The Board envisaged that, upon completion, this enquiry would provide it with an independent view of reasons for the following:

- The poor performance of Eskom's generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Eskom's financial challenges
- Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
- Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.
- Security failures and accountability at Eskom as a Key National Point.

Suspension of Executives

The Board seeks to obtain an independent and unfettered view regarding the credibility and the correctness of information that Eskom's Executive Management ("EXCO") provides in their reports relating to the key areas identified.

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.

Pursuant to its resolution, the Board delegated the authority to institute this enquiry to its Audit and Risk Subcommittee ("ARC"), with the assistance of the other Board subcommittees where necessary and applicable.

The scope of the enquiry is as follows:

4.1 The poor performance of the generation plant

- 4.1.1 The state of the generation plant and the manner in which the fleet is managed with reference to and in relation to best practice.
- 4.1.2 Whether the underlying causes for the state of the fleet are known, and the actions taken in response. In particular, the increase in the UCLF ("Unplanned Capability Loss Factor").
- 4.1.3 the impact of the strategies, tactics and plans to address the decline in the capacity of the fleet to ensure the security of supply in terms of their design and application in practice in the last 24 months.
- 4.1.4 The underlying reasons for any load shedding by Eskom in the recent two years.
- 4.1.5 The maintenance philosophy and regime implemented by Eskom in the last 12 months and any enhancements thereto in the last 12 months in relation to the required UCLF.
- 4.1.6 Whether the most recent reports on the state of the generation fleet have been prepared on a consistent basis with other reports in the last 12 months, and that the reports were correct in terms of validity, accuracy, completeness and timeliness of information.
- 4.1.7 Appraisal of the pricing of maintenance contracts commissioned by Eskom and the monitoring of performance of these contracts by Eskom.

4.2 Delays in bringing the new generation plant on-stream, including cost overruns

- 4.2.1 The current status of the new generation plant and the project management practices designed to bring the generation plant into commissioning stage on time and within budget;

Suspension of Executives

- 4.2.2 Whether the project and contract management philosophies and practices implemented by Eskom compare favourably with international best practices;
- 4.2.3 Whether the lessons learnt from previous delays and costs overruns have been documented, communicated to relevant stakeholders and institutionalized to prevent recurrence;
- 4.2.4 Whether the underlying causes for cost overruns and delays in completing new generation plans are known, disclosed, and the actions taken in response to enhance the likelihood that the projects would be delivered in time and within budget;
- 4.2.5 Whether the measures that have been taken to ensure that the organization is likely to deliver all these projects within the current targeted timelines and financial budgets, and whether any significant constraints beyond the control of management have been identified which require special intervention;
- 4.2.6 Whether the reports from EXCO with regard to the status of the new build are consistent with underlying reporting.

4.3 High Cost of Primary Energy (Nuclear, Coal, Diesel, Liquid Oils and Water)

- 4.3.1 The primary energy costs currently incurred by Eskom and whether they are commercially supportable;
- 4.3.2 Whether the underlying causes for increase in primary energy costs are known, reported and commercially supportable;
- 4.3.3 Whether the strategies and tactics adopted by Eskom to procure primary energy (Nuclear, Coal, Diesel, Liquid Oils and Water) are commercially supportable, in particular the use of *ad hoc* Diesel suppliers;
- 4.3.4 The forecasting model for the use of diesel.

4.4 Eskom's Financial Challenges

- 4.4.1 The current cash flow position of Eskom and the methodology and models used for cash flow management;
- 4.4.2 Whether the cash flow status of Eskom has been reported consistently with available contemporaneous information;
- 4.4.3 The recent costs incurred as a result of the financial instruments that form the nucleus of the borrowing programme, the process that led to their adoption, and the existence of other viable and cost effective financial instruments that could have been pursued as alternatives;
- 4.4.4 Establish whether the interest rates attached to the financial instruments that form the nucleus of the borrowing programme are commercially supportable under the circumstances.

4.5 Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies

- 4.5.1 The procurement policy, processes and procedures designed by Eskom in relation to the Constitution of the Country, other relevant key legislation and key governance protocols, including best industry practice;
- 4.5.2 Whether the procurement policy and related Eskom policies including but not limited to conflict of interest and the processes to deal with non-compliance, are consistently adhered to. Also, establish whether in instances where transgressions are identified, appropriate sanctions are applied;
- 4.5.3 Whether the procurement processes are effective to ensure that Eskom obtains the best quality products and services at the best price.

4.6 Contract management, in particular high costs escalation, frequent modifications, and penalty costs including capacity within Eskom to manage contracts generally

- 4.6.1 Contract management policy, in relation to its strategic focus, procedures and resources. Are the policies consistently applied to safeguard the organization from failures to enforce its rights and counterparty claims?
- 4.6.2 Whether the design of the contracts (fit for purpose) is appropriate with regard to contract terms;
- 4.6.3 Whether there is a defined modification approval and monitoring process which is adequate and effective. Further, to also establish reasons as to why contract modifications often result in increased costs and delays;
- 4.6.4 Whether there exists a contract performance monitoring system, in the maintenance of the Generation fleet.

4.7 Security failures and accountability at Eskom as a National Key Point

- 4.7.1 Eskom's strategies/plans with regard to safeguarding of Key National Points.
- 4.7.2 Whether there is any reason why the persistent information leaks are not being arrested? If they are or have been dealt with, whether there has been a sanction imposed upon the responsible people.

The enquiry shall be concluded within a period of three (3) months.

The conclusion(s) and recommendations(s) in the report will be final and will be tabled at the Audit and Risk Subcommittee and at the Board.

5. COURT CHALLENGE BY T MATONA

Tshediso Matona applied to the Labour Court, Johannesburg for an order to set aside his suspension and allow him to return to work. This application was brought on an urgent basis and was opposed by Eskom.

At the same time, Mr Matona had lodged an unfair labour practice dispute with the Commission for Conciliation, Mediation and Arbitration ("CCMA").

The Labour Court found that there was no basis for urgency and dismissed the application in this regard. It nonetheless found in favour of Mr Matona in respect of procedural fairness of the suspension and referred the matter to the CCMA for proper handling of the issues prior to it being heard at the Labour Court.

6. INTERIM CHIEF EXECUTIVE (TERMS OF SECONDMENT)

During this time, one of the Board members acted as Interim Chief Executive with immediate effect on 11 March 2015 and subsequently, Brian Molefe has been seconded to Eskom from Transnet as Interim Chief Executive. As per the Secondment Agreement between Transnet and Eskom, the duration of secondment is until July 2015.

7. INTERIM ARRANGEMENTS DURING SUSPENSION

Acting arrangements were approved by the P&G Committee and the following executives were appointed:

- Edwin Mabelane (Acting Group Executive: Technology and Commercial);
- Nonkululeko Veleti (Acting Finance Director);
- Abram Masango (Acting Group Executive: Group Capital);
- Zethembe Khoza (Interim Chief Executive).

8. INTERACTIONS WITH OTHER EXECUTIVES

Aside from Mr Matona, the executives have, in various ways, approached the Company and have indicated that they are amenable to a settlement being made in terms of which they would resign from their positions and accept an exit package;

The Board considered the issue and delegated the Acting Chairman, Dr B Ngubane, Ms V Klein and Mr R Kumalo to enter into negotiations with the four suspended executives around their exit from the Company and matters related thereto.

The authorization provided for:

- i) The Acting Chairman, Dr B Ngubane, Ms. V Klein and Mr. R. Kumalo were authorized to enter into exit negotiations with each of Mr. T. Matona, Ms. T Molefe, Mr. M Koko and Mr. D. Marokane;

Suspension of Executives

- ii) That any settlement should be within the following parameters:
- The financial package to be negotiated shall not exceed a maximum amount of up to 12 months' total package;
 - Any benefits due to the affected executives as per the standard conditions of employment shall be implemented according to the relevant Eskom policies and procedures;
 - Settlement agreements shall set out the terms and conditions of the exit and include the relevant provisions relating to confidentiality.
- iii) That the Chairperson, People and Governance Committee, be authorised, with the power to delegate further, to take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary or related thereto.

9. OUTCOME OF NEGOTIATIONS

To date, the Board subcommittee has successfully concluded negotiations with Tshediso Matona and Dan Marokane, their parting having been made public through agreed media releases. Initial discussions have been had with Tsholofelo and Matshela but not concluded as at date of this report.

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	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	

**EXTRACT FROM THE FINAL MINUTES OF THE ESKOM BOARD IN-COMMITTEE MEETING
09-2015/16 HELD ON 14 AUGUST 2015 AT THE ESKOM RESEARCH, TESTING AND
DEVELOPMENT BOARDROOM, ROSHERVILLE FROM 09H00**

STRICTLY CONFIDENTIAL

PRESENT

Dr B Ngubane	Chairman
Ms C Mabude	Member
Mr Z W Khoza	Member
Ms V Naidoo	Member (telecon)
Ms V J Klein	Member
Ms N Carrim	Member
Dr P Naidoo	Member
Mr MV Pamensky	Member (telecon)
Ms M Cassim	Member (telecon)
Mr A Singh	Acting Chief Finance Officer

APOLOGIES

Mr R Kumalo	Member
Mr B Molefe	Acting Chief Executive
Mr M Phukubje	Company Secretary
Mr W Venner	Board Secretary

IN ATTENDANCE

Ms C Reddy	Committee Secretary
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1. DENTON'S REPORT

The Chairman of the Audit and Risk Committee ("ARC"), Ms M Cassim, having considered and analysed the Denton's report, reported on the outcome. She explained that the detailed reported was broken down as per the committee's terms of reference. It was found that the report was substantiative enough and reflected mainly internal control issues that can be allocated and monitored by the relevant committee.

It was recommended that:

- The final report be considered and released to management for unpacking in order for corrective measures to be developed and monitored via the various governance committees.

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- The internal and control issues should be dealt with by the ARC.
- Management should develop a thorough work plan and table the actions with timelines to the respective governance committees.
- Once these action timelines were in place, the head of Assurance and Forensics (A&F) should track and report on the status of the workplan to ARC.
- The relevant governance committee together with management should implement the necessary actions to monitor the recommendations with a report to ARC.
- A&F should focus on the inefficiencies that would be followed up by the external auditors.

The timeframes recommended in the Denton report were considered and it was agreed that management would be allowed to take measures and develop timeframes for inclusion in the workplan within two weeks. Members took cognisance that Denton's had concluded their investigation earlier than the timeframe, based on the request from the Board that was in response to the instruction from the Minister. Board was requested to take into consideration the curtailment and subsequent e-mails from Denton's and the chairman of ARC. Following a brief discussion and considering that there were no major issues highlighted in the report following the investigation requested by the minutes, Board was satisfied that measures were in place to sufficiently deal and strengthen the control environment.

Members considered the media expectation with regard to the outcome of the Denton's investigation and supported that the report be released to the Minister with a covering letter from the Chairman of Board articulating the next steps. Copies of the final report would be delivered to the members, GCE, CFO and external auditors. However, concern was expressed with regard to the collection and destruction of initial reports. The Company Secretary was expected to take the necessary steps to ensure that all original reports were collected in exchange for the final reports. In view of this concern, the Chairman of P&G, Ms V Klein undertook to ensure that all reports were returned to her within 7 days for them to be destroyed.

Management was given two weeks to develop a workplan broken down for each committee and for the relevant committee to come up with timelines and report to the ARC. The acting CFO accepted the proposal and undertook to address the recommendations and allocation in the report in consultation with the ARC chairman.

The Chairman thanked and commended both the previous and the current Chairman of ARC, Chairman of P&G and the members for their sterling job and team work in analysing the Denton's report.

RESOLVED that:

- 6.1 The Denton's report should be released to the Minister of the Department of Public Enterprises under with a covering letter from the Chairman of the Board articulating the next steps;
- 6.2 The report should be released thereafter to the Members of Board, Acting Chief Executive Officer and Chief Finance Officer and External Auditors;

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- 6.2.1 the Company Secretary should ensure that all initial reports are collected and destroyed in exchange for the receipt of the final Denton report;
- 6.2.2 it is noted that the Chairman of People and Governance, as in 6.2.1 above ensure all reports are returned to her within 7 days and destroyed;
- 6.2.3 the Chairman of ARC is to authorise the report as in 6.2 above to be released to board members by close of business of even date (14 August 2015);
- 6.3 Assurance and Forensics in consultation with Management should develop a workplan with a breakdown for each Board committee to influence timelines; and
- 6.4 the Audit and Risk Committee should monitor the workplan including the inefficiencies in the Control Environment and reports to Board on the status of recommendations stipulated in the Denton’s report.



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

**SUPPLEMENTARY AFFIDAVIT IN SUSPENSION OF EXECUTIVES AND
DENTONS REPORT**

I, the undersigned

SUZANNE MARGARET DANIELS

Do hereby state under oath in English that:

1. I am an adult female with ID 6908230280081.

My contact details are:

Cell: 082 580 7832

E-mail: suzanne.daniels@icloud.com

2. The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
3. The Commission has provided me with a copy of the affidavit of Mrs Venete Klein, dated 2 March 2020, together with the annexures thereto, and has requested me

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to respond to the averments made therein insofar as they relate to me. I do so in this affidavit, after having had the opportunity to peruse Mrs Klein's affidavit, especially in regard to the suspension of Eskom's four executives and the Dentons Report.

SUSPENSION OF THE FOUR EXECUTIVES

4. At the outset, I am quite astounded at how Mrs Klein seeks to distance herself from what was happening at Eskom at the time and at how she downplays the pivotal role that she played in the suspension of the executives and in the management of their exit.
5. Further, it is quite duplicitous of Mrs Klein to seek to cast an aspersion on me in the manner that she does and at the same time underplay the central role that she played in the unfolding events as Acting Chairperson of the People and Governance Committee ("P&G Committee") and key member of the Board delegation appointed to deal with the exit of the executives.
6. I note that Mrs Klein fails to mention that she held that position of Acting Chairperson of the P & G Committee at all material times of the decision-making process to exit the executives. Her roles and dates are once again obfuscated to create a veneer of removal for herself.
7. In respect of her inferences in paragraphs 41-43 as they relate to me, my response is as follows:
 - 7.1. Except for the instructions that I received from Mrs Klein and Dr Ngubane in relation to matters pertaining to the suspended executives, I did not work with anyone inside or external to the organisation at the time.

- 7.2. I stand by my testimony in Parliament, save for the correction of the date, on meeting Mr Salim Essa in Melrose Arch for the first time on 10 March 2015.
- 7.3. It would be a considerable stretch that the very next day I would be working in cooperation with him and at the same time be removed from interacting with her and the Board thereon.
- 7.4. On Mrs Klein's own version of events, the Board decided to suspend the executives on 11 March 2015 and it would be far-fetched for me to have been in such a position on 10 March 2015 to know the details which were to unfold.
- 7.5. Looking at the purported metadata, I cannot offer an explanation as to why it bears my name save to say that it was the Eskom letterhead format that I utilised as a template.
- 7.6. I do not have those files in my extensive records which I have made available to the Commission and to the various law enforcement agencies investigating matters relating to Eskom and the filing protocol does not follow my standard protocol. Accordingly, I would question the authenticity thereof.
- 7.7. As I will testify, she played a central role in driving the discussions with the suspended executives and had I drafted those letters in cahoots with Mr Salim Essa as she alleges, it would have been done so with her full knowledge and on her instruction as a member of the P&G Committee who assisted Mr Tsotsi in communicating to staff members about the suspensions.
- 7.8. Her attempt at underplaying her role in the suspensions should be seen for the blatant misrepresentation that it is. As she persists with the arms'

length posture throughout her affidavit, it certainly casts doubts on her capability to have performed her duties as a director, despite her CV contents.

7.9. She took the lead in explaining to the Group Technology and Commercial management team, of which I was a part, why Mr Matshela Koko and the other executives were suspended, immediately after the meetings.

7.10. From the records of Eskom, she played a central role in the suspension of the executives and for her to claim ignorance of the role of someone like Mr Essa, is improbable and should be rejected with contempt.

8. As events unfolded, there was no hearing that the executives attended as they were called into the meeting individually and were informed of the Board's decision to launch an enquiry. They were further advised of the Board's view that their presence could hamper the said enquiry. The four (4) executives were suspended on **11 March 2015**.

9. I repeat that Mrs Klein played a pivotal role in driving the exit of the executives as can be seen from paragraph 72 of my main affidavit. Her use of language such as *"clear the decks"* and that the *"Shareholder has approved to get rid of the people and make the necessary concessions if it sorts out the problem"* while at the same time stressing that *"the priority is to get the people off and away"*, speaks to an active role in driving of the events rather than that of a remote director which she seeks to portray.

DENTONS REPORT

10. In paragraph 84 of her affidavit, Mrs Klein once again seeks to deliberately mislead the commission by attempting to paint the picture that I acted in isolation from the Board on the matter of the Dentons report
11. Mrs Klein mentions three reports in her exposition and I note that she once again fails to be honest with the Commission and does not mention the original report of which she oversaw the destruction of. I set out the formal recordal of her role as custodian of the destruction of the original Dentons Report as set out in the minutes of Eskom and in paragraph 88 of my original affidavit.
12. What Mrs Klein fails to provide the Commission with is the context in which the redacting of the Report took place, with the full knowledge of the Board.
13. In and during late January 2017, Eskom was confronted with media queries by the former investigative journalist Sikonathi Mantshantsha who was preparing to write a series of articles on the Dentons Report and at the same time, the Democratic Alliance ("the DA") announced that it would be launching an application in terms of the Public Access to Information Act ("PAIA"). I will refer to this as the "PAIA Application".
14. It was this PAIA Application that prompted the Board to consider the convening of a press briefing to set the record straight from its standpoint. This was convened for 7 February 2017.
15. In the run up to this event, the Board met to discuss its strategy for releasing the documents.

S-J



16. In my capacity as Acting Head of Legal and Compliance, I was tasked with checking what Eskom's legal rights and obligations were in regard to the release of the report in terms of PAIA and in addition as there were a few more applications in addition to that of the DA that were received during this time.
17. I was also tasked with liaising with Dentons to obtain a full set of the Reports that they had on file and received same on 1 February 2017. The file consisted of the following:
 - 17.1. Two copies of the final report;
 - 17.2. Two copies of the interim report;
 - 17.3. One copy of the executive summary of the draft preliminary report; and
 - 17.4. Two management presentations to the Eskom Board.
18. Eskom engaged the services of Ledwaba Mazwai Attorneys and Advocate A Bham SC to advise on the various press demands for Eskom to make available the Dentons report and also the PAIA applications.
19. I communicated the preliminary legal view to the Board, which included Mrs Klein and was instructed to prepare a briefing for the Minister Lynne Brown. This briefing is dated 5 February 2017 and I sent it via email. In the aforesaid correspondence, I set out the preliminary legal view, subject to senior counsel's sign off. It explains the rationale for redacting the necessary parts prior to release.
20. The legal advice provided by counsel was formally set out in an email and comprehensive legal opinion dated 6 February 2017. This legal advice was communicated to the Board members in preparation for the media briefing of 7 February 2017.

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21. On the morning of 7 February 2017, I was instructed by the Chairman of the Board, Dr Ngubane, that I would need to explain the rationale for the redacting of the Dentons Report at the briefing and the program for the media briefing was amended.
22. Once again, Mrs Klein is misleading this Commission by omitting the true chronology of events and their content. I would not have been in a position to release the information to the Minister and/or the public had the Board not had sight thereof. As a pivotal role player in the suspension of the executives and the management of information in relation to the contents of the Dentons Report, it would be highly improbable that she was not aware of the legal advice provided and the decision to act thereon.
23. Her attempts at obfuscating the truth is part of the diversionary tactic she has adopted since her testimony in Parliament and now before this Commission, to limit focus on the pivotal role that she played in getting the three executives "off and away" and her role in ensuring that the original Dentons Reports were to be destroyed. It is important to note that she makes no mention whatsoever of this in her statement to this Commission.

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

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



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

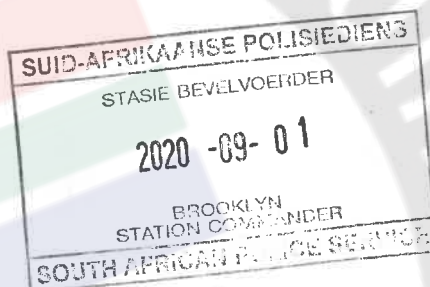
Bauiels
Signature of Deponent

1 | 9 | 2020
Date

I HEREBY CERTIFY that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn before me at Brooklyn SAPS on the 01st 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.

S. J. Ngobeni
7174254-6

COMMISSIONER OF OATHS



Submission prepared by: Suzanne Margaret Daniels
Group Executive: Legal and Compliance
Eskom Holdings SOC Ltd
08 November 2017

PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES

Oversight Inquiry into Governance, procurement and financial sustainability of Eskom

A. Introduction

1. I, the undersigned, Suzanne Margaret Daniels, hereby set out my factual narrative relating to my experience at Eskom as the Group Company Secretary from 1 October 2015 and subsequently as the Group Executive, Legal and Compliance from 27 July 2017.
2. I am an adult female attorney and conveyancer, born and raised in Cape Town and currently residing in Gauteng.
3. This guideline is prepared with the purpose of informing the Portfolio Committee on Public Enterprises on the specific topics I have been invited to give evidence on and assist it with its enquiry into "state capture".
4. Over the past few months, information relating to the extent of 'state capture' has been reported by the media and other individuals who have stepped forward.
5. The facts set out in this document are within my personal knowledge, unless the context indicates to the contrary. They are to the best of my knowledge and belief both true and correct.
6. To the extent that I rely on information furnished to me by others, I have provided the necessary documentation.

Employment History at Eskom

7. I began my career at Eskom on 1 May 2006 as a Chief Legal Adviser in Generation Primary Energy, Contracts Section. This business unit was part of the Generation Division at the time headed by Ehud Matya.
8. I became Acting Contracts Manager, Primary Energy in April 2007 and during this period I was accountable for the articulation, promotion and execution of a contract advisory and risk management approach in the fuel procurement executed by the Primary Energy Division.
9. I was permanently appointed to the role of Senior Manager: Contracts (Coal, Water and Gas) in April 2008 until January 2010 when I moved to the office the Managing Director, Primary Energy Division.
10. I was appointed Senior Manager, Office of the Group Executive in 2011 and served under Dan Marokane, Kannan Lakmeeharan, and Matshela Koko respectively.
11. Subsequently, I was transferred to the Office of the Chairman on 1 April 2015.
12. I was appointed Group Company Secretary on 1 October 2015 and held this position until 27 July 2017 when the current interim board of Eskom accepted my resignation as Company Secretary. The duties of the Company Secretary are set out in section 88 of the Companies Act, 2008 as amended.
13. It is important to note, I attended board meetings and board subcommittee meetings as company secretary and not as a director, hence I would have no voting rights. My role was to record the proceedings of the meeting and produce a record thereof in the form of minutes. While part of the role required that I advise the board on compliance with regulatory and statutory requirements, this role was located within the legal and compliance department and thus my role was limited to adherence to the Companies Act and the Memorandum of Incorporation.
14. Upon the departure of the General Manager: Legal and Compliance, I was requested by the Group Chief Financial Officer and Group Chief Executive to caretake the role of Acting head of legal with effect from 1 September 2016 and thus I fulfilled a dual function of Company Secretary and Acting Head of Legal and Compliance for the period until 27 July 2017.

15. In hindsight, at the time it made sense to assume both roles as the guiding principle was that as an officer of the cOmpany, I had to act in the best interests of Company . For a period of time I exercised duty of care in these roles and executed both to the best of ability. This is evidenced by the successes Eskom enjoyed in Court and other regulatory forums. On the Company Secretary, various initiatives such as improving the quality of minute taking and record keeping and/or the entire capacity decision making and verification.
16. While this principle is theoretically sound as stated in the textbooks, it became problematic for me as this led to clashes with the then Interim Chief Executive, Matshela Koko and also caused disquiet at Board and Exco level. This dual role demands a higher order leadership for it to function optimally to achieve its natural objectives.
17. As it became untenable for me, which ultimately impacted the span of my operations, I formally advised the Board that I wished to take up the role of Head of Legal and Compliance in March 2017 and would resign as Company Secretary.
18. Due to leadership instability at the time, this became a formal reality only in July 2017.
- Circumstances Leading to my Suspension*
19. When this current board took over which was styled as an Interim board by Minister Lynne Brown, my overall role within the Company became increasingly untenable.
20. The first bullet was launched when, on the instructions on the Interim Board Chairperson, Zethembe Khoza, the Chief Audit Executive, Molefi Nkhabu prepared a board submission wherein he recommended disciplinary action against me.
21. This was unknown to me as I was not provided with the opportunity to make input into the findings of such investigation.
22. I only picked this up as I was preparing for the meeting, and immediately brought it to the attention of my Board Secretary, Mrs Annamarie van der Merwe, and insisted that we prepare a formal written response to the allegations set out in the submission prepared by the Chief Audit Executive. The letter was addressed to Mr Sathie Gounden, the Chairman of the Audit and Risk Committee.

23. Mr Nkhabu, upon receipt of the written correspondence from the board secretary and I, offered a haphazard response in email and indicated that he had made a mistake and apologized.
24. We did not accept the apology as the allegations were quite serious, yet vexatious in nature and ought to have been addressed accordingly via the same committee, which did not happen.
25. To this date, this matter has not been resolved, notwithstanding Mr Nkhabu's pseudo apology. No formal acknowledgment nor action from Mr Gounden has been received to date by either Mrs Van Der Merwe or me.
26. Subsequently I was advised of the investigation on my team building exercise which was also spearheaded by the current interim Board Chairperson, Zethembe Khoza. It is common cause that this allegation found its way into my subsequent notice of suspension on 2 October 2017.
27. On 2 October 2017, I received a Notice of Intention to Suspend on a set of allegations which was hand delivered to my house in the evening by Mr Johnny Dladla, Interim Group Chief Executive at the time.
28. I submitted representations on Thursday 5 October 2017 at 9h00 to the then IGCE, Johnny Dladla, as was stipulated in paragraph 6 of the notice.
29. However, on 6 October 2017, I received a Notice of Suspension dated 6 October 2017, wherein the newly appointed Interim Group Chief Executive ("IGCE") Sean Maritz, refers to my written representations of 4 October 2017 and confirms that he has considered same.
30. On the basis of those representations, Sean Maritz decided to confirm my suspension with pay pending the finalization of an investigation and/o disciplinary action into the allegations of misconduct against me, yet the allegations are 100% different to what was put to me on 2 October 2017.
31. The correspondence sets out the basis for the decision and also the terms of my suspension.
32. Therefore the suspension itself is highly irregular.
33. It is for this reason that I have referred the matter of my unfair suspension to the CCMA which I have requested to be expedited based on the public interest at play herein.

34. At the same time I was emailed a Notice to Attend Disciplinary with Annexure "A" setting out the Alleged Misconduct/s. The date, time and place of the hearing was TBC and this Notice was also signed by Sean Maritz, the newly appointed IGCE on 6 October 2017.
35. At the core of these allegations regarding misconduct is the allegation that: *"Whereas you prepared a report for the Minister dated September 2017, which report contains various matters of concern. After perusal of this report and after further relevant information were obtained, issues were identified which could warrant disciplinary proceedings being instituted against yourself. It would thus be in the interest of yourself and Eskom that through an interrogative process of disciplinary proceedings, questions be answered relevant to the report and the information received."*
- B. Convening of Board Tender Committee of 11 April 2016 at 21h00*
36. My instruction to convene this meeting came from Zethembe Khoza, Chairperson of the Board Tender Committee at the time.
37. This call was around 19h30 on the evening of the 11th April 2016 to my mobile. I had actually missed the call as I was home having dinner with my family when I heard the phone ringing in my study. I stepped away from the dinner table to return Mr Khoza's call. The reason why I can be so specific as to the details is that I have had the opportunity to examine my phone records for the date in question.
38. Mr Khoza informed me that it was necessary to convene a BTC meeting for that evening and that the item to be discussed was the emergency coal supply to Arnot Power Station.
39. I questioned the efficacy of having a meeting at that late hour as the scheduled BTC meeting was due to take place on the 13th April 2016 which was a mere 48 hours away. To the best of my knowledge the emergency had been declared a while back and it would really not make a difference for the station. I also informed him that I had no documentation at hand to distribute to members.
40. Notwithstanding my comments, Mr Khoza instructed me to continue as this was a request driven by the operations. This conversation lasted approximately four and a half minutes according to my telephone records for that day.

41. Subsequent to this conversation I received a submission via email at 19h51 from Edwin Mabelane who was the Chief Procurement Officer at the time, with a request to convene a meeting to discuss the Emergency Supply to Arnot Power Station.

42. For easy reference, I set out the timeline of events in the Table below.

Table 1

DATE	TIME	EVENT
11 April 2016	19h51	Email request from CPO to COSEC for Special BTC with regard to Arnot Emergency Supply
	19h56	COSEC confirmed to Chairman, BTC that meeting will take place at 21h00
	20h00	COSEC prepared document for distribution and set up teleconferencing facilities
	20h15	Meeting invite to BTC members sent by COSEC with submission attached Invitees: Zethembe Khoza, Nazia Carrim, Viroshini Naidoo, Chwayita Mabude, Edwin Mabelane, Ayanda Nteta, Matshela Koko
	20h19	SMS messages sent to all BTC members
	20h30	COSEC confirmed to executives that teleconference is set up for 21h00
	20h53	Ms Viroshini Naidoo sent an email to the COSEC and copied invitees containing 7 questions. Closing sentence: "This matter has been in the public domain so I need to know everything possible has been done to get the best deal for Eskom."
	21h04	The meeting commenced at 21h04 with all members of the BTC connected telephonically. Mr Mabelane and Ms Nteta joined the discussion.

DATE	TIME	EVENT
12 April 2016	21h10	Ms Visroshini Naidoo sent through further questions via email.
	21h32	Meeting closed
	21h36	Email request from Ms Naidoo to COSEC to have the minutes ready for sign off by Wednesday
	21h38	COSEC undertook to have it ready
	21h45	Email from Ms Viroshini Naidoo to Mr Zethembe Khoza re matters coming to the BTC so late
	15h50	Receipt of responses to matters arising from meeting of the 11th by the COSEC
13 April 2016	17h27	Responses from CPO and team emailed to the CFO by the COSEC
	9h00	CFO confirmed the securities from Tegeta Resources. No further questions were raised by Ms Viroshini Naidoo. Minutes of 11 April 2016 were approved at this meeting

43. On December 8 2015, at the instruction of the then chairman of the Board, Dr Ben Ngubane, I collated documentation to be circulated to members of the Board via email requesting their approval or non approval.
44. The submission was titled "Urgent Request to approve the Pre-Purchase of Coal from Optimum Coal (Pty) Ltd".

45. As this matter was of a financial and investment nature, I convened a meeting of the Board investment and Finance Sub-Committee ("IFC") on 9 December 2015.
46. Mr Mark Pamensky, the then Chairman of the IFC recused himself from the meeting due to his conflict of interest as declared.
47. Dr Pat Naidoo was elected by the members to act as chairperson for this particular meeting. Members present at this meeting were Mrs Venete Klein and Mr Zethembe Khoza and the three members constituted a quorum for the IFC.
48. Anoj Singh and I were in attendance as the Group CFO was the coordinating official and I acted as secretariat for the meeting.
49. The discussion of the meeting was as set out in the minutes of the meeting of 9 December.
50. The members resolved that: "It is recommended that the Board approve the transaction as set out in the submission to the Board relating to the pre-purchase of coal from Optimum (Pty) Ltd."
51. This recommendation was conveyed to the Board members as the Round Robin documentation was circulated.
52. By 9 December 2015, my office had received unanimous approval bar, for Mr Pamensky who recused himself and Mr Molefe who was off sick.
53. The full resolution was as follows:
- 53.1. The request from the Department of Mineral Resources is hereby noted;
- 53.2. The Group Chief Executive, together with the Group Executive for Generation and Chief Financial Officer, are hereby authorised to negotiate and conclude a pre-purchase of coal agreement with the proposed owners of OCM (coal supplier);
- 53.3. This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively, as and when necessary;
- 53.4. 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.

54. On 10 December 2015, Ms Caroline Henry, Senior General Manager (Treasury) prepared a Memorandum addressed to the Chief Financial Officer, Anoj Singh, the subject matter whereof was: : "Guarantee in favor of Tegeta Exploration and Resources Proprietary Limited ("TER")"
55. This memorandum set out the rationale for the issuance of a guarantee in favor of TER and sought approval for:
- 55.1. The CFO to approve the issuance of a guarantee in favor of TER;
- 55.2. The CFO to approve ABSA as a counterpart to issue the guarantee;
- 55.3. The CFO to approve the counterpart investment concentration limit excess for ABSA for the duration of the guarantee.
56. This was approved by the CFO on the same day and it was subsequently processed by Ms Henry.
- D. Optimum Arbitration
- E. Retirement Arrangements - Mr Brian Molefe
57. I have been requested to provide a chronology outlining the sequence of events relating to the reinstatement of Mr Brian Molefe ("Mr Molefe") as the Group Chief Executive Officer ("GCE") of Eskom Holdings SOC Ltd.
- Chronology of Events
58. Mr Molefe was appointed as the Eskom acting GCE from 17 April 2015 to 30 September 2015.
59. On 16 October 2015, Dr Ngubane addressed a letter to the Minister of Public Enterprises, Minister Lynne Brown ("the Minister") setting out a proposal in respect of Mr Molefe's remuneration for her consideration and approval. The letter stated that the benchmarks reflected that the current remuneration as paid by Transnet, to Mr Molefe was below the statistical measurements. On that basis, Dr Ngubane proposed a suitable guaranteed remuneration package taking into account the cited benchmarks.
60. On 1 November 2015, the Minister approved the total guaranteed remuneration to be paid to Mr Molefe with effect from the date of his appointment.³ The Minister advised that it was her view and that of Cabinet that the period of employment be stipulated as five years, subject to annual performance reviews.

The Minister further indicated that she awaited receipt of the draft employment contract and performance agreement.

61. On 9 November 2015 Dr Ben Ngubane ("Dr Ngubane") made a formal offer of employment to Mr Molefe, Mr Molefe acknowledged receipt of the letter on 11 November 2015.⁴ Mr Molefe was appointed as the GCE with effect from 1 October 2015.
62. On 18 November 2015, Mr Anton Minnaar of Eskom requested Mr Solly Ntsibande of the EPPF to calculate the potential cost to the business unit should Mr Molefe take early retirement.
63. On 20 November 2015, Mr Ntsibande calculated that the cost of early retirement at the age of 55 years would cost R 15 387 189.75 and the cost of early retirement at age 63 would be R 25 731 519.12.⁶
64. On 25 November 2015, Dr Ngubane directed a letter to the Minister. In this letter, Dr Ngubane outlined Mr Molefe's history of having served in numerous high ranking South African organisations at an executive level to stabilise and ensure the future sustainability and performance of those organisations. Dr Ngubane further indicated that due to the nature of those engagements and the short term contractual obligations, Mr Molefe had not been able to benefit from the growth opportunity of a single pension fund. Dr Ngubane consequently proposed the following material contractual stipulations to bridge this gap and requested the Minister to approve the proposed contractual stipulations:
 - 64.1. Regardless of Mr Molefe's age after the five-year termination date, he be allowed to retire from Eskom's service on the basis that he is aged 63.
 - 64.2. That the penalties prescribed by the EPPF for retirement prior to age 63 be waived.
 - 64.3. That Eskom carries the cost of such penalties (to be paid over to the EPPF).
 - 64.4. In the event that Mr Molefe's contract is not extended beyond the 5-year termination date, he will be allowed to subscribe to any other SOC or government pension fund.
 - 64.5. The Minister did not respond to Dr Ngubane's letter date 25 November 2015. However, this matter was discussed at a meeting of 23 February 2016 set out below.
65. On 9 February 2016, a meeting of the Eskom People and Governance Committee was held to discuss executive early retirement at the age of 50.

66. I attended a meeting of 23 February 2016 with Minister Brown. Dr Ngubane and Mrs Klein in Cape Town whereat Mr Molefe's proposed pension arrangement was discussed between the parties. Minister brown indicated that she would not oppose the pension proposal but the it must be submitted to her in writing so that she can deal with it it expeditiously. We indicated to her that correspondence had been sent to her office in a letter dated 25 November 2015. Confirmation of the cabinet decision in relation to the tenure of Mr Molefe's contract of employment needed to be obtained by Minister Brown.
67. The Minutes of the People and Governance Committee meeting of 9 February 2016, refer to and note the discussion relating to the conclusion of Mr Molefe's employment contract, with particular reference to "... 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." This was followed by a request for "... the Eskom Rules to be amended in respect of executive directors with fixed-term contracts to make up the shortfall in years, waive the penalties and refund the Pension and Provident Fund the actual costs relating to additional service.
68. The People and Governance Committee resolved that:
- 68.1."1. The current Eskom Pension and Provident Fund (EPPF) rule that employees may proceed on retirement from age fifty with ten years' service remains applicable.
- 68.2.2. in cases where Executive Director's (appointed on fixed-term contracts) decide to take retirement and there is a shortfall regarding the EPPF ten years' serve rule, Eskom shall –
- (i) bridge the gap to make up for the ten years;
 - (ii) waive penalties applicable to early retirement;
 - (iii) refund EPPF actual costs for additional services added, plus penalties applicable to early retirement".
69. Subsequent to the resolution, Eskom and Mr Molefe concluded the Executive Employment Contract on 7 March 2016 which recorded, inter alia that:
70. Mr Molefe commenced employment with Eskom as its GCE with effect from 1 October 2015;
- 70.1.it was a fixed-term contract expiring on 30 September 2020;

70.2. Mr Molefe would be a member of the EPPF, subject to its rules.

71. Mr Molefe's contract of employment was entered into three months before the 2016 Memorandum of Incorporation was adopted. At the time of concluding the employment contract between Mr Molefe and Eskom the 2014 Memorandum of Incorporation was in operation.
72. On 2 November 2016, the Public Protector published her report into the "State of Capture" which made observations against a number of persons, including Mr Molefe.
73. On 3 November 2016, Mr Molefe answered questions from journalists on the Public Protector Report.
74. During 8 to 10 November 2016 (approximately two to three days before Mr Molefe issues a public statement that he is leaving Eskom), Mr Molefe met with the Minister and indicated his intention to step down as Eskom GCE. The Minister described his departure as a resignation during the meeting.
75. On 11 November 2016, Mr Molefe wrote a letter to Dr Ngubane applying for early retirement in terms of the EPPF rules as read with the resolution of the People and Governance subcommittee dated 9 February 2016. Mr Molefe indicated that his last day of service would be 31 December 2016.
76. On 11 November 2016, Mr Molefe issued a statement stating that "I have in the interest of good corporate governance, decided to leave my employ at Eskom from 1 January 2017."
77. On 11 November 2016, Eskom issued a media statement confirming that Mr Molefe has stepped down as Eskom GCE.
78. On 11 November 2016, the Minister issued a statement stating that Mr Molefe had resigned as the Eskom GCE.
79. On 21 November 2016, the People and Governance Committee discussed the terms of Mr Molefe's request for early retirement and approved the request, in principle.
80. On 24 November 2016, Dr Ngubane addressed a letter to Mr Molefe confirming that his application for early retirement was approved in terms of rules 28 and 21.4 of the EPPF Rules and the Board resolution of 9 February 2016. Dr Ngubane further confirmed that penalties would be waived and the potential service to age 63 was granted.

81. On 30 November 2016, the Minister released a media statement that she had approved the appointment of Mr Matshela Koko ("Mr Koko") as Eskom's Acting GCE effective from 1 December 2016.
82. On 31 December 2016, Mr Molefe left Eskom's employment and on 23 February 2017 took up a position as a Member of Parliament for the African National Congress.
83. On 31 December 2016, Eskom issued Molefe with a certificate of service. The certificate notes the reasons for termination as early retirement.
84. On 18 February 2017 the EPPF sends a letter to Mr Molefe welcoming him to the EPPF. The letter stated that the benefits to be paid to Mr Molefe were calculated in terms of the rule of the EPPF.
- Reinstatement of Mr Molefe
85. On 16 April 2017, the Sunday Times published an article indicating that Eskom had paid Mr Molefe a pension pay-out of R30 million.
86. On 19 April 2017, Eskom represented by Dr Ngubane, Ms Klein, Mr Minnaar and I attended a meeting with the Minister to discuss concerns relating to the "pension pay-out" referred to in the media article. The Minister instructed Eskom to to meet with Mr Molefe and re-evaluate the "pension payment".
87. On 23 April 2017, the Minister issued a media statement indicating that she has declined Mr Molefe's pay-out of R30 million and that she had instructed Eskom to reconsider the issue of the pension and consider a reasonable pension pay out.
88. On 24 April 2017, the Eskom Board met in order to consider and deliberate upon the issues raised by the Minister. On 25 April 2017, a meeting was held with the Minister to discuss suggested options pursuant to the Board meeting of 24 April 2017.
89. On 28 April, Eskom received legal advice relating to the payment of pension benefits to Mr Molefe. Eskom was advised, inter alia, that the early retirement agreement was legally impermissible as it was impermissible for Mr Molefe to take early retirement at the age of 50 in terms of the EPPF rules.
90. On 2 May 2017, the Eskom Board met and considered the legal advice received and concluded that the approval of Mr Molefe's application for early retirement could not be implemented. The Eskom Board therefore decided to rescind the approval and restore status quo prior to the approval of Mr Molefe's application for early retirement.

91. On 3 May 2017, Eskom wrote a letter to Mr Molefe stating that the Eskom Board had engaged the Minister and had resolved to rescind its resolution to approve his early retirement. The letter called upon Mr Molefe to resume his duties as the Eskom GCE.³
92. On 3 May 2017, I sent an email to Mr Ntsibande of the EPPF enquiring about the amounts that had been paid to Mr Molefe as well as the dates when such payments were made. I further enquired about the process required to reverse the transactions between Eskom and the EPPF.
93. On 5 May 2017, Mr Ntsibande responded to my email and stated that a lump sum of R7 792 767.91 had been paid to Mr Molefe and that pension payments of R124 228.95, R59 804.67, R63 703.67 and R73 908.07 had been paid to Mr Molefe respectively during January, February, March and April.
94. On 9 May 2017 the Minister met with the Eskom Board. The Board explained that pursuant to legal advice received the approval of Mr Molefe's application for early retirement was legally impermissible and the Board had resolved to rescind the agreement that culminated from that approval.
95. On 11 May 2017, the Board addressed a letter to Mr Molefe advising him that Eskom had resolved to rescind its decision to grant him early retirement and requested him to report for duty.
96. In consequence of the resolution to rescind the purported approval of the early retirement request, Mr Molefe and Eskom concluded a reinstatement agreement on 11 May 2017. The reinstatement agreement provided for Mr Molefe's employment.
97. contract to continue on its terms and for Mr Molefe to resume his duties in terms of his employment contract. Mr Molefe also agreed to repay amounts received by him pursuant to his purported "early retirement". The parties also agreed, in clause 7 that the period between 1 January 2017 and 15 May 2017 be treated as unpaid leave.
98. On 11 May 2017, the Board wrote a letter to the Minister informing her that it had resolved to rescind the early retirement agreement and to reappoint Mr Molefe as the Eskom GCE. The Board enclosed the reinstatement agreement.
99. On 12 May 2017 the Minister issued a media statement in which she confirmed that Mr Molefe would be reinstated as the Eskom GCE and that she was satisfied with the re-evaluation process and recognised the merits in the proposal, on the proviso that it is legal.

100. On 15 May 2017, Mr Molefe reported for duty in terms of the reinstatement agreement. Litigious Proceedings in respect of Mr Molefe's reinstatement
101. On 15 May 2017, the Democratic Alliance ("DA") brought an urgent court application in the Pretoria High Court against the Minister, Eskom and Mr Molefe challenging the legality of Mr Molefe's reinstatement.
102. On 17 May 2017, I directed a letter to Mr S Luthuli of the EPPF, in which I requested the EPPF to stop making any further pension payments to Mr Molefe. The letter recorded that Eskom and Mr Molefe had agreed to a reversal of his early retirement. I asked Mr Luthuli to confirm the following:
- 102.1. that in accordance with the reinstatement agreement, the period from 1 January 2017 to 14 May 2017 will be regarded as unpaid leave;
- 102.2. that the EPPF will not disburse pension payment funds to Molefe consequent on his approved application for early retirement;
- 102.3. that the EPPF will reinstate Mr Molefe's membership of the Fund as from 15 May 2017;
- 102.4. the EPPF inform Mr Molefe of the amount of money that he is required to repay to the EPPF; and
- 102.5. the EPPF would advise Eskom as to the date it will refund to Eskom the amount disbursed by it in respect of Mr Molefe's early retirement.
103. On 17 May 2017, Eskom filed a notice of intention to oppose the application by the DA.
104. On 19 May 2017, the Economic Freedom Fighters ("EFF") brought an application against Eskom, the Minister and Mr Molefe challenging the legality of Mr Molefe's reinstatement. The EFF sought further relief declaring the Eskom Board to have breached their fiduciary duties owed to Eskom. The EFF sought an order requiring the Minister to remove the Board. The EFF has recently stated that it will not pursue the relief sought relating to the Board, in the light of the Eskom Board having been reconstituted.
105. On 22 May 2017, Solidarity brought an application against Eskom, the Minister, Mr Molefe and other Eskom board Members in which it, inter alia, challenges the legality of Mr Molefe's reinstatement. Solidarity seeks an order requiring the National Director of Public Prosecutions to investigate the conduct of the Eskom Board and Mr Molefe.

106. On 22 May 2017, Eskom filed an answering affidavit to the applications brought by the DA and EFF. On 2 June 2017, Eskom filed a supplementary affidavit which served as a supplementary answering affidavit to the EFF and DA application and an answering affidavit to the Solidarity application.

Minister Brown's Directive to the Board of Directors

107. On 31 May 2017, the Minister issued a directive to the Eskom Board instructing it to rescind its decision to reinstate Mr Molefe as GCE.

108. On 2 June 2017, the Eskom Board met and passed a resolution giving effect to the Minister's directive.

109. On 2 June 2017, I addressed a letter to the EPPF advising it that pursuant to a resolution of the Board as per the Minister's directive, Mr Molefe was no longer in Eskom's employ. The letter further stated that Mr Molefe was not entitled to any pension fund payments since he was not entitled to any early retirement benefits pursuant to the rules of EPPF. The EPPF was requested to confirm that it will not make any payments to Mr Molefe in relation to his purported early retirement and that it would refund to Eskom the amount which Eskom paid to it in relation to Mr Molefe's purported early retirement. The EPPF was also requested to reimburse Eskom the amount already paid to Mr Molefe upon receipt of the money from Mr Molefe.

110. On 2 June 2017, Eskom directed a letter to Mr Molefe in which it notified Mr Molefe of the Minister's directive of 31 May 2017 and Eskom's decision to give effect to that directive.

111. On 5 June 2017, Mr Molefe brought an urgent application out of the Labour Court against Eskom and the Minister requesting the court to declare that the decision by Eskom is unlawful and void ab initio and seeking a reinstatement of his position as Eskom GCE.

112. On 6 June 2017, Eskom, the Minister and Mr Molefe agreed that Mr Molefe would not be required to render his services at Eskom pending the determination of the Labour court application.

Correspondence From Various Bodies and Other Matters

113. On 6 June 2017, the Minister received a letter from Advocate Rory Voller a commissioner at the Companies and Intellectual Properties Commission (CIPC). The email records that the CIPC was in possession of an Eskom Board meeting minute of 29 November 2017, which reflected that Mr Molefe had resigned as Eskom GCE. The CIPC had various queries for the Eskom Board relating to the position Mr Molefe held, in the light of his return to Eskom on 15 May 2017.
114. On 7 June 2017, Mr Luthuli addressed a letter to me confirming receipt of the letters dated 17 May 2017 and 2 June 2017 respectively and that Mr Molefe's pension has been suspended pending legal advice and consideration of the matter.
115. On 8 June 2017, Ms Daniels responded to the CIPC letter and stated that the minute of 29 November referred to by the CIPC was a draft minute which had not been approved by the Board.
116. On 5 June 2017 the EFF applied to the Labour Court to intervene as interested parties in the application brought by Mr Molefe, the DA similarly applied for leave to intervene on 7 June 2017.
117. On 15 June 2017 Eskom filed an explanatory affidavit in which Eskom set out details surrounding the implementation of the Minister's directive and stating that Eskom abides by the decision of the Labour Court.
118. On 15 June 2017, the Minister has filed an opposing affidavit.
119. On 15 June 2017, Mr Luthuli of the EPPF addressed a letter to Ms Daniels. Mr Luthuli stated that the EPPF proposed that Eskom be reimbursed as follows:
120. A refund to Eskom on receipt of a competent court order;
121. Mr Molefe repay Eskom the amount which is owed by him; and
122. Mr Molefe and the EPPF attend to obtaining a refund from SARS which refund, if granted, be paid to Mr Molefe or Eskom as case may be.
123. On 4 July 2017, the Labour Court determined that Molefe's application should be stayed pending the determination of the EFF and DA applications in the High Court.
124. The DA, EFF and Solidarity applications will be heard in the High Court during 29 November to 1 December 2017.

F. Corporate Governance Matters

125. The State of Capture Report released by the then Public Protector, Advocate Thuli Madonsela, put the role and the responsibility of the board of directors as the accounting authority in terms of the PFMA and other legislative prescripts under scrutiny.

G. McKinsey/Trillian

126. My approach to this matter has been to set out the facts as I know them and thereafter take specific questions as necessary.

127. It is common cause that payments to McKinsey and Trillian were made in 2016 and 2017 under two contracts which had been entered into in 2015 (the First Contract, dated September 2015) and 2016 (the Second Contract, dated January 2016) between Eskom and McKinsey. There are no separate contracts with Trillian for this period.

First Contract

128. The First Contract was for the provision by McKinsey of consulting services to Eskom for a period of six months.

129. The Eskom Acceptance Letter is dated 29 September 2015 and it is addressed to Alexander Weiss and Vikas Sagar of McKinsey re "notification of acceptance for the provision of consulting services".

130. It is signed by Matshela Koko, Group Executive: Technology and Commercial and signed by Alexander Weiss of McKinsey on 29 September 2015.

131. From 30 October 2015 to January 2016 McKinsey issued eight invoices to Eskom of approximately R80 million, incl. VAT to Eskom under the First Contract.

132. Trillian Management Consulting (Pty) Ltd issued an invoice (referenced as MC01) to Mr Anoj Singh which appears to be related to the First Contract on 31 January 2016 for R26 900 000 excl. VAT. It appears that this invoice was sent to Eskom on 12 February 2016.

133. The invoice itself doesn't reference the First Contract directly.

- 134.The supporting document provided by Trillian to Mr Anoj Singh dated 12 February 2016 under cover of which the invoice was apparently sent states that it is for "the support of the CFO office on the Eskom Procurement Turnaround and Defined Benefit Obligations." It gives certain bullet points regarding the services performed under each and states that a detailed report will be available on 15 February 2016 regarding this.
- 135.McKinsey issued a letter to Eskom dated 9 February 2016 authorising Trillian to invoice Eskom directly for work performed pursuant to the First Contract. This was however subject to McKinsey confirmation of the amounts claimed and work done. There is no indication in the documentation that McKinsey provided this confirmation regarding MC01.
- 136.This invoice was signed for payment by Prish Govender and Edwin Mabelane on 8 April 2016.
- 137.The invoice dated 31 January 2016 was paid on 12 April 2016. Upon payment, it was recorded on the Eskom SAP system as being paid under the First Contract and Trillian was indicated as a sub-contractor to McKinsey under the First Contract.
- The Second Contract*
- 138.The Second Contract was entered into on 7 January 2016 between Eskom and McKinsey, signed by Dr. Alex Weiss (McKinsey) and Edwin Mabelane (Eskom).
- 139.It is called a "Service Level Agreement". It however also appears to be called the "Master Services Agreement" in certain documents. It authorized approximately R540 million in down-payments.
- 140.The process to conclusion of this contract began in 2015.
- 140.1.On 6 July 2015, the Board Tender Committee provided a mandate to negotiate with McKinsey to develop the current Top Engineers Programme into an Internal Consulting Unit.
- 140.2.It is important to note that the BTC decision was obtained via round robin and the round robin resolutions were signed by:
- 140.2.1.Ms Viroshini Naidoo on 6 July 2015
- 140.2.2.Ms Nazia Carrim on 3 July 2015
- 140.2.3.Ms Chwayita Mabude on 6 July 2015

140.2.4.Mr Zethembe Khoza

141.During August and September 2015 there was a series of discussions between the Procurement Manager responsible for the transaction and the PFMA office (part of Group Compliance) on the applicability of the deviation request to National Treasury was required when dealing with a risk based consulting contract such as the McKinsey one was. **Group Compliance specifically advised that a deviation application was required and that if an award was made before a deviation was granted by National Treasury, then the expenditure would be irregular.**

142.It was then that the First Contract appears to have been entered into for the provision of professional strategic consulting services for ad hoc support on urgent finance and strategy work, at a contact value not exceeding R98 770 024.08 excl. VAT and travel and subsistence.

143.The Board Tender Committee (BTC) authorized the entry into the "Top Consultants" Contract on 21 October 2015. There is no contract value directly associated with the BTC approval for this contract. This is what is then termed the Second Contract.

144.Payments by Eskom to Trillian and McKinsey under the Second Contract total R 1,593,155,413.01 (R 1,028,592,499.72 to McKinsey and R 564,562,913.29 to Trillian) they were made between August 2016 and February 2017.

145.The next time this matter comes before the BTC is on 21 June 2016 whereat it approves the cancellation of the McKinsey 'risk based process' and for the costs to be negotiated and finalised, Eskom then cancel's the contract and notifies McKinsey.

146.In this presentation I list the meetings that I consider critical for the execution of the McKinsey Trillian matter. They include, amongst others,

146.1.Board meeting of 29 November 2016

146.2.BTC of 13 December 2016

Board Meeting of 29 November 2016

147.Zethembe Khoza, Chairperson of the BTC at the time, raised the issue of Trillian at this meeting of the board of directors on 29 November 2016 in regard to the press reports that were out at the time.

148. At this meeting, the then Group Chief Financial Officer, Anoj Singh, provided his understanding of the background to the matter and mentioned the BTC approval provided for engagement with McKinsey which had the authority to subcontract and in exercising that authority, had subcontracted to Trillian.
149. He clearly stated that payments were made to both McKinsey and Trillian although management had revisited the MSA (Master Services Agreement) with McKinsey and raised its concerns over procurement on a single source basis.
150. The MSA with McKinsey had subsequently been terminated.
151. Whilst it was correct that Eskom did not have a direct contractual relationship with Trillian, the company had been subcontracted to McKinsey and work done by Trillian had to be paid for.
152. The GCFO further stated that Trillian had also undertaken work for Eskom in respect of assessing risks and it was providing assistance with the EFC matter.
153. In conclusion, it was noted that the relationship with McKinsey had been terminated, the MSA had been cancelled and provisions had been made for any final outstanding payments owing.
154. Mr Khoza was comfortable with the explanation provided by the GCFO as he raised no further issues.
155. The Board also appeared comfortable with the explanation provided by the GCFO. The non-executive directors in attendance at this meeting were Dr Ben Ngubane, Mrs Venete Klein, Ms Chwayita Mabude, Dr Pat Naidoo and Mr Zethembe Khoza.
- Report to Minister Brown in re the Procurement of Services and Payments to McKinsey and Trillian ("46 hour Report")
156. I wish to emphasise that my actions in the matter of preparing and submitting the Report on Procurement of Services and Payments to McKinsey and Company Africa (Pty) Ltd and Trillian Capital Partners (Pty) Ltd ("Report") were undertaken in good faith at all times and in accordance with the instruction from the Audit and Risk Committee.
157. At the meeting of the Board on 29 August 2017, whereat I had presented, at the request of the Interim Group Chief Executive at the time, Johnny Dladla, I set out a summary of the key findings of the exercise undertaken by Bowmans and set out the recommendations for the way forward. This was captured in a

memorandum dated 29 August 2017 which I had prepared and the remedies set out therein were supported by David Unterhalter SC in a formal written opinion.

158. At this meeting, the compilation and verification of the content of the Report was delegated to the Audit and Risk Committee due to the Acting Chairman's and Acting Group Chief Executive's imminent departure to China on Eskom business.

159. I was then tasked to update the memorandum that I had prepared and also structure same as per the discussion between the Acting Chairperson and Minister Brown in preparation for the submission to the Minister on 1 September 2017 on the issues, more specifically a letter that arrived on 31 August 2017 requesting Eskom to clarify payments to Trillian and provide the report by no later than 1 September 2017.

Structure of the Report

160. The structure of the said Report was informed by the email instruction from the Acting Chairman to Mr Dladla and Mr Gounden, the text whereof is set out below for easy reference, together with the discussion at the Board meeting.

161. The discussion at the Board meeting was based on my Memorandum dated 29 August 2017, titled "Alleged Irregularities in connection with the Procurement of Services from McKinsey and Company Africa (Pty) Ltd".

162. It was on the strength of this Memorandum of 29 August 2017 and the discussion at the meeting, that the email of the Interim Chairman of the Board was premised,

163. Having regard to all of the above, the Report which I compiled in a very short time, was constructed as follows:

163.1. Background (which recorded all the governance related deliberations from the outset of the engagement with McKinsey)

163.2. Internal Audit on MSA Procurement Process (which set out the exercise undertaken by Eskom's internal audit function in respect of the procurement process)

163.3. Assessment by Oliver Wyman (which described the work undertaken by the Oliver Wyman)

163.4. Legal Review (which set out the contents of the review undertaken by Cliffe Dekker Hofmeyer, amplified as a consequence of the recommendations contained in the Oliver Wyman Report) ;

163.5. Payments made by Eskom to McKinsey and Trillian (which set out the chronology of payments and how they were given effect to by Eskom)

163.6. Oliver Wyman/Eskom Holdings SOC Ltd (which set out the legal matter which arose between the parties and required of Eskom to issue a correction to the media)

163.7. Response and Actions (which set out the actions which have been undertaken by the company in response to the findings of the exercise by Bowmans and the forensic investigation by G9.)

163.8. Annexures attached to this Report were:

- A Letter from Eskom to McKinsey dated 19 February 2016
- B Letter from McKinsey to Eskom dated 25 February 2016
- C Draft Memorandum Top Engineers Programme Review, Memorandum from Molefi Nkhabu – Senior General Manager (Assurance and Forensic) to Anoj Singh (Group Chief Financial Officer)
- D Oliver Wyman Draft Preliminary Report dated 9 December 2016
- E Oliver Wyman Report dated 15 December 2016
- F Draft Settlement Letter as prepared by CDH for Eskom with detailed drafting notes and comments for Eskom's consideration dated 15 February 2017
- G Memo from CDH to Eskom dated 17 February 2017 setting out chronology of events with specific comments relating to the risk based service level agreement concluded between Eskom and McKinsey
- H Memo from Eskom to CDH dated 20 February 2017 setting out a response to the CDH Memorandum of 17th February 2017
- I Memo from CDH dated 28 February 2017 setting out updated chronology of events with specific comments relating to the risk based service level agreement concluded between Eskom and McKinsey
- J Letter from McKinsey to Eskom dated 30 March 2016 advising Eskom that "McKinsey's interactions with Trillian have now been terminated with confirmation having been sent to Trillian".
- K First Contract between Eskom and McKinsey
- L Letter from McKinsey to Eskom dated 9 February 2016 providing "Authorisation to pay Subcontractor Directly"
- M Second Contract between Eskom and McKinsey
- N Letter from Trillian Capital Partners to Eskom requesting that "Eskom reviews the terms of the risk based contract and reimburse it as per the contractual arrangements, in order for it to close out the contract.
- O Letter dated 23 August 2017 from Adams and Adams to Eskom
- P Media reply as provided from the Office of the CFO dated 7 July 2017
- Q Correction letters from Eskom to the journalists dated 25 and 28 August 2017 respectively

- R Interim report back to Eskom Holdings SOC Limited on an investigation of alleged irregularities in connection with the procurement of services from and payments to McKinsey and Company Africa (Pty) Ltd and Trillian Capital Partners (Pty) Ltd dated 2 August 2017
- S Eskom Assurance and Forensic Department "The Trillian Investigation" dated 21 August 2017
- T Submissions to the Board Tender Committee and Exco Procurement Subcommittee
- 22 June 2015
 - 6 July 2015
 - 8 October 2015
 - 9 June 2016
 - 8 August 2016
 - 12 December 2016

164. The Report was sent out on the 31 August 2017 to the Audit and Risk Committee Members for perusal and review and to be discussed at the special meeting convened that day.

Audit and Risk Committee 31 August 2017

165. While the meeting was scheduled for an hour, I took members through a page turn of the Report as prepared. Edits were suggested and these were incorporated by me.

166. The updated Report as per the instruction of the Audit and Risk Committee was circulated by me via email and the Company Secretary had been provided with a complete Report consisting of the Report and its annexes for copying and distribution to the members.

167. Members had requested hard copies and as the Report consisted of 29 pages and 25 annexes. I assume that the time lapse between the meeting and the receipt of the full pack may have been 5 days. The Company Secretary would need to verify same. I confirm that I had emailed the Report to the members, minus the annexes, some of which they had obtained as part of the earlier deliberations but a more complete set was provided in the hard copy edition.

168. It is also important to note that the Report, as prepared by me, was checked by Bowmans, Cliffe Dekker Hofmeyer and Oliver Wyman to ensure that I had depicted the facts insofar as it pertained to the respective entities correctly. Their comments were incorporated and signed off by the respective representatives.

169. Mr Gounden, as Acting Chairman and Chairman of the Audit and Risk Committee, signed off the cover letter and the pack for delivery to the Director General, Department of Public Enterprises as per the instruction received from Minister's office. It does beg the question of whether Mr Gounden was fully apprised of the import of Minister Brown's statement as it would mean that he acted without authority too as Minister Brown stated in her media statement that the Report was not signed by the Chairman.

Meeting With Minister Brown, 15 September 2017

170. Minister Brown met with the IGCE and IC on 15 September at OR Tambo International.

171. Upon his return to the office, Mr Dladla was clearly upset and interrogated me as to exactly when I undertook the legal review, the response to the 4 issues raised by the Minister.

172. I responded that the legal review was commenced on 5 December 2017 when Prish Govender sent me a request to review documents and that I had prepared a pro forma response for consideration upon request of the Acting Group Chief Executive, Thava Govender on 13 September 2017.

173. It was further concerning to read in the statement issued by the Department of Public Enterprises that Minister Brown indicated that the Report contained "glaring gaps" while Her subsequent supplementary questions were limited to four issues, of which I had prepared a draft response for consideration and suggested the attachments thereto.

174. I prepared a detailed Memorandum subject "Minister Brown's Media Release of 15 September 2017" to the Acting Group Chief Executive at the time, Johnny Dladla, dated 17 September 2017 setting out the information necessary to address issues raised insofar as it pertains to the activities for which I am accountable and responsible. This Memorandum also set out a detailed response to the bullet no 4 as contained in the first statement issued at 19h18.

175. To date, I have not had any formal feedback whatsoever on the documents submitted which were prepared to assist the Board to respond to the supplementary questions by the Minister, although I understand that a different report was sent to the Minister **in addition to** the one which I prepared.

H. Conclusion

In the final analysis, my conclusion is:

176.The wrongful actions uncovered were as clever as it was brazen.

177.My professional expertise was unwittingly exploited to accomplish personal vested interests against Eskom.





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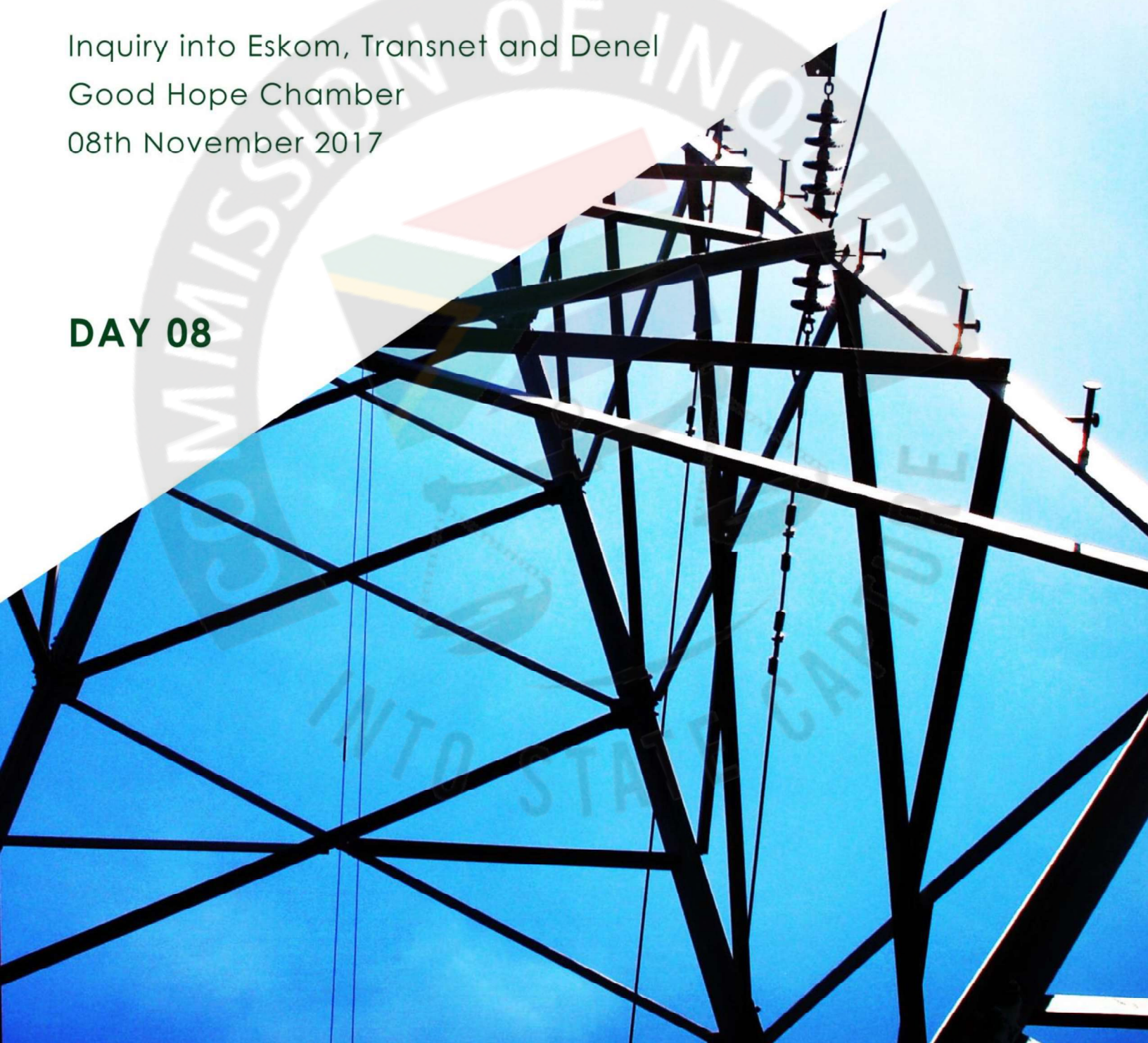
public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES

Inquiry into Eskom, Transnet and Denel
Good Hope Chamber
08th November 2017

DAY 08



08th November 2017 – Parliament RSA

Honourable Gordhan - You used the word stretch twice.

Ms L Mnganga-Gcabashe - Stretched?...

[O mike conversation inaudible]

Ms L Mnganga-Gcabashe - Oh no... [Laughter]... Ok no, no. I meant we can stretch our legs and then when we, in few minutes we'll resume and we'll go up to 14:30 because we have already been far from the house, thank you, bye.

[03h12:27 - END OF AUDIO]

[03h25:36 - END OF DISK 01]

[00h00:05 - START OF DISK 02]

Ms L Mnganga-Gcabashe - Good afternoon- [sound problem no audio until 00h00:10].... when I did welcome all our guests and thank you for your presence Ms Daniels. Members we are going to have an interaction with Ms Daniels. Ms Daniels, I'm going to read an oath... I think you've indicated that your preference... the preference?...

Unidentified Speaker - Oath, oath.

Ms L Mnganga-Gcabashe - Oath. Your preference is oath, I'm told and you agree, you have agreed. Thank you. At the end you respond as you were taken through with the second page, thank you.

"In accordance with section 16 of the Powers, Privileges and Immunities of Parliament and Provincial Legislature Act 2004, as a witness to this oversight enquiry, please be informed that by law you are required to answer fully and satisfactorily all the questions lawfully put to you or to produce any document that you are required to produce in connection with the subject matter of the enquiry, notwithstanding the fact that the answer or the document could incriminate you or expose you to criminal or civil proceedings or damages. You are, however, protected in that evidence given under oath or affirmation before a house or a committee may not be used against you in any court or place outside parliament, except in criminal proceedings concerning a charge of perjury or a charge relating to the evidence or documents required in these proceedings. Please be aware that in terms of section 17 (2) of the Powers, Privilege and Immunities of Parliament and Provincial Legislature Act, a person who wilfully furnishes a house or a committee with information or makes a statement before it which is false or misleading, commits an offence and is liable to a fine or to imprisonment for a period not exceeding 2 years. You are required to take an oath that the evidence that you are about to give is truthful. You have already chosen. Please proceed ma'am.

Ms Suzanne Daniels - I swear that the evidence I shall give shall be the truth, the whole truth and nothing but the truth so help me God. My name is Suzanne Margaret Daniels and today is the 8th of November 2017.

Ms L Mnganga-Gcabashe - Thank you very much ma'am. Advocate it's your turn now to lead us. Thank you.

[00h03:07]

Advocate Vanara - Thank you Chair. Ms Daniels we have some precious. I would like us to start with the purchase and sale of the shares and rights in Opium Coal Holding by Tegeta. I would like us to deal with the, firstly the prepayment, we'll then deal with the guarantee that Eskom instructed Absa Bank to give to

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the bank of Tegeta in relation to the transaction and the third aspect that I want to deal with in relation to this transaction is the 2.1 billion rands that was levied against Glencore.

With respect to the prepayment there was a meeting at night on the 11th of April 2016 can you share with the committee one; who convened this meeting? At what stage of the day was this meeting confirmed...or convened? And what was the agenda on, of this meeting, and what was the resolution?

Ms Suzanne Daniels - Mr Vanara just as a clarification, I was Group Company, and members of the committee, I was Group Company's secretary at Eskom from the 1st of October 2015 to 27 July 2017 and I was acting head of legal and compliance from the 1st of September 2016 to the 27th of July 2017 when my appointment as group executive for legal and compliance became permanent. So at the time of this convening of the meeting I held the position of Group Company's secretary and the responsibility to convene the meeting was mine. To give you the background, who... so in terms of the administrative requirements I would have convened the meeting. I received, who... at what stage did I receive that instruction? It was approximately at 7:30 that evening that I received a call from Mr Zethembe Khoza who was the board tender committee chairperson at the time. I remember the time because I've actually had the time to check my telephone records... at that time my phone was in my study and I was having dinner so I was at home. He said to me the... I actually missed the call so I had to call him back, he said to me that I need to arrange a meeting for that evening and the item that was going to be discussed was the emergency coal supply to Arnot Power Station.

[00h07:07]

I actually questioned the efficacy of having a meeting at that late an hour, as I, at the time that he called me I had actually received no documentation for that meeting if it were to happen that evening and also that barely 48 hours later we were going to have a scheduled board tender committee meeting on the 13th of April. I raised these issues with him, his response was the operations required the meeting because there was an emergency and I actually said to him that to the best of my recollection I, you know, as I attend all board and board committee meetings to the best of my recollection at the time the emergency was actually declared about 3 months ago so there really was no, you know, there was no, it didn't really meet the requirements of the emergency. He still persisted and then I arranged the meeting. I received the documentation for the meeting at 19:51 that evening it came from Mr Edwin Mabelane who was the chief procurement officer at the time and he requested... [Fixing mike]... oh it's my computers, like that? Ok. He requested that I convene the meeting and that I circulate the documentation. What I then did was, you know, it now it was about just before 8 o'clock, so I confirmed to the Chairperson that I have received documents, that would be Mr Zethembe Khoza, and that given that members had to still read through the documentation my suggestion was that we do this at 9 o'clock.

[00h09:19]

I was actually hoping that Minister, that the directors would not be available, but I called each one of them and I sent an SMS as well which was my practice to, you know, I mean it was the evening. I sent the...I prepared the document for distribution there was a submission in the standard prescribed format that we have and then there was what is called a 'modification report' which is, you know, the reason why the procurement team motivated for modifying those particular contracts. There were two suppliers it was Umsimbithi and Tegeta. I sent that out in PDF format, the meeting invite went out at quarter past 8 that evening and the invitees were Zethembe Khoza, Nazia Karim, Viroshini Naidoo, Chwayita Mabude, Edwin

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Mabelane, Ayanda Nteta, who was the primary energy executive at the time, and Matshela Koko. I followed that up with the SMS messages. Ms Mabude was the only... Ms Chwayita Mabude was the only one who let me know that she would be joining the meeting later. This was a telephonic conference so I set up, you know, the Telkom setup and then at 8:30 that evening I conferred with the executives namely Mr Mabelane, Ms Nteta and Mr Koko that the meeting would take place at 9 o'clock. During that time Ms Naidoo, Viroshini Naidoo sent an email to me which set out a number of questions. I have, I will provide you with those, that evidence. It was questions regarding the contract or the submission in front of us and her closing sentence was; "this matter has been in the public domain so I need to know everything possible has been done to get the best deal for Eskom." I forwarded those questions to the CPO which is chief procurement officer, please excuse Eskom has lots of acronyms, and I, to the CPO and Ayanda so that they can answer and the meeting commenced at about 9:04 that evening. The resolution from that meeting... I just need to get... if can, if you indulge me 2 minutes I'll get my leg out. [Switches on mike]

[00h12:17]

[00h13:19 - RESUMES]

So the resolution to that meeting was as follows; "The addendum to the short-term coal supply agreement between various suppliers and Eskom to be concluded to extend the supply of coal from various sources to Arnot Power Station for up to a further 5 months and or such period as may be requested by the supplier but no later than 30 September 2016. The Chief Financial Officer is hereby authorised to approve the basis for prepayment to secure the 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. 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."

Advocate Vanara - The prepayment in respect of Tegeta, how much did it amount to? The, sorry not the, it's not a prepayment it's the, what do you call it?

[On mike answer inaudible]

Ms Suzanne Daniels - My apologies [Laughter]... if I remember correctly it was about 500 and... here! I've got the amount. 659 million, 558 thousand, 79 rand and 38 cents.

Advocate Vanara - To the best of your knowledge, was this amount of money paid by Eskom to Tegeta?

Ms Suzanne Daniels - Yes it was, I prepared the security, security arrangements and the share certificates that were provided for the transaction came from Tegeta.

Advocate Vanara - Are you aware that part of that amount of money was paid as part of the purchase price of the Optimum Coal Holding?

[00h16:02]

Ms Suzanne Daniels - Yes, I became aware of that in the public protector's report, the previous public protector Advocate Madonsela, and what struck me as quite coincidental was that that was the exact amount to the extent that was paid.

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Advocate Vanara - We've received the evidence from Mr Piers Marsden was one of the business rescue practitioners of Opium Coal Mine. He is on record that the amount that Eskom paid did not go to the business rescue practitioners. Are you aware of that?

Ms Suzanne Daniels - Well based on the agreements that I drew up, yes it did not go to Opium, it went to Tegeta... directly.

Advocate Vanara - Is it also correct that on the 11th or just before the full purchase price got to be paid on the 14th of April 2016, Tegeta were not the owners of Opium Coal Mine but they had the right to own the mine subject to the payment of the full purchase price but at the time they were not the owners of the mine?

Ms Suzanne Daniels - That is correct. The business rescue proceedings were finally wound up around August of, pardon me, of that same year. So I think it, the court order was handed down on the 31st of August 2016.

Advocate Vanara - In your view as company secretary, the payment of Eskom indirectly, which went to the purchase price of the mine, did it have any legal basis?

Ms Suzanne Daniels - I think from our side the legalities were sort of murky and that is, that gave the opportunity. In the primary energy environment there is usually this practice amongst suppliers who have more than one source that they can, you know, transport coal between each other and it's not the first time. But in this instance what is striking and what actually makes this of dubious... well, you know, what makes this very doubtful is that this is the exact amount that was claimed to be the shortfall.

[00h19:22]

Advocate Vanara - There's evidence before the committee from Mr Piers Marsden that Mr Salim Essa on the 11th in the morning round about 10 had a meeting with him and requested him as the business rescue practitioners to approach the Consortium of Banks who were the major creditors of Opium Coal Holding for a 1.6 billion loan. He subsequently went to meet with the banks and the response the banks gave to him, which he subsequently conveyed to Mr Salim Essa, was that the bank declined to provide the loan. You clearly had not been satisfied that the meeting in the evening of the 11th was convened. Do I understand your testimony to be correct?

Ms Suzanne Daniels - That is correct.

Advocate Vanara - Did you find it, do you not find it strange that on the same day in the evening the message yet to be communicated to you by Mr Zethembe Khoza calling for a special BTC meeting?

Ms L Mnganga-Gcabashe - A request that we pause a little bit advocate. Members please, the lunch has arrived. Please help yourselves, I thought we'll be able to break but I'm afraid I don't want to disturb the interaction between the advocate and our respondent or the participant. If you don't mind just, please quietly. Can you agree on that? Thank you very much, you may proceed ma'am. Thank you. If I disturb you, I think you; I'll request him to repeat a question for you. Did you get the question ma'am?

Ms Suzanne Daniels - Yes I did. I just want to...

Ms L Mnganga-Gcabashe - OK.

Ms Suzanne Daniels - ... clarify for members before they break. There are, actually the 1.6 billion guarantee is something different and that happened in December 2015. What we dealing with the 659 million is the 11th

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of April prepayment, so they are two different, I don't want you to confuse the two. So I can start, I mean after they've gone their lunch, I can explain to you the 1.6 billion guarantee or we can finish this one and then because that is the sequence in which they happened.

[O mike question inaudible]

Advocate Vanara - No, no, no, it's fine. I think I'm the one who's confusing you. It's not the 1.6 billion that gets to be the subject matter of the meeting of the 11th actually it's the 600 million and that is what we shall be busy with, yes. We'll come back to the 1.6 billion and I'm sorry for that confusion.

[00h23:29]

Ms L Mnganga-Gcabashe - It looks like they've agreed that they don't, they'll just quietly but it looks like they need a break. Advocate do you mind if we break? Ok members just say 10 minutes, 10 minutes thank you.

[00h23:48 - BREAK]

[00h23:54]

Ms L Mnganga-Gcabashe - We are about to continue with this session.

[00h24:01 - BREAK]

[00h25:04]

Ms L Mnganga-Gcabashe - Thank you very much members, thank you very much. Advocate would you like to remind the, our guest your, your question, your previous question? Where we ended, would you like to do so? Please proceed.

Advocate Vanara - No I think she's well competent to respond.

Ms L Mnganga-Gcabashe - It's up to you ma'am? Thank you.

Ms Suzanne Daniels - I will, I will have to ask the Honourable case presenter to please repeat it. [Laughter]

Ms L Mnganga-Gcabashe - That's fine.

Advocate Vanara - We shall on the prepayment. There's testimony before the committee by one of the business rescue practitioner's that on the 11th at 10 there was a meeting between himself and Mr Salim Essa, and at that meeting Mr Essa informed him there was a shortfall of 600 million on the purchase price. He asked him to approach the Consortium of Banks who were the major creditors of Opium Coal Holding for a 600 million loan. At 3 o'clock he, the business rescue practitioner, had communicated back to Mr Salim Essa informing him that the banks had turned down the loan application. So we now know that on the 11th the purchasers of the Opium Coal Holding required 600 million. My question to you is you had reservations about this special BTC meeting. It's called same day that there's this response to Mr Salim Essa. Do you, so the question to you is, I understand you had these... reservations which you confirmed. Now that I'm giving you this information that you didn't know, that I assume you didn't know, does it re-enforce your concerns for this special board meeting, board tender committee meeting?

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Ms Suzanne Daniels - I can confirm for you that I did not know about the meeting between the business rescue practitioner and Mr Essa of that day. And yes it does then re-enforce my concerns and actually validates them.

Advocate Vanara - So common sense must therefore dictate to us that after the banks had declined the 600 million loan, Mr Salim Essa or somebody powerful enough to influence BTC to sit and to source the shortfall. Is that a far-fetched hypothesis?

[00h28:57]

Ms Suzanne Daniels - In my review and based on the facts that I have in front of me, you learnt at the time and post that I think it's a, it's a fair and reasonable inference to make.

Advocate Vanara - We know now in terms of the public protector's report, which has not been challenged at least in respect of this specific allegation that the then group chief executive Mr Molefe had been in telephonic conversations with certain individuals who happen to be the owners of Tegeta. Have you read the public protector report? And are you familiar with this portion of evidence in her report?

Ms Suzanne Daniels - Yes, I am very familiar with the public protector's report, so as my team and I provided the responses to the public protector in the first instance and we took council on Eskom's approach to the recommendations in the report, so yes I am. In regard to Mr Molefe's telephone calls that came as a total surprise to us, it wasn't one of the questions. We didn't have answers when, I can tell you that Mr Molefe was quite surprised by that and I asked him for his telephone records so that we can verify that. As I sit here I have not received them.

[00h31:02]

Advocate Vanara - I have no reason at least until now not to believe what the public protector says in her report and therefore I must accept that Mr Molefe, based on the public protector's report, could possibly have arranged or been influential in the arrangement of the meeting of the 11th of April 2016 through, of course, the chairperson of the board tender committee.

Ms Suzanne Daniels - Based on what I know as, you know, what happened at the time and based on what has subsequently come out in the media etc, I am convinced that there must have been some undue influence as it would be very unusual for me to get a phone call from the chairman of the BTC to arrange a meeting for that day at such a late hour.

Advocate Vanara - And had this meeting sat on the 13th of April, the board tender committee meeting. If it had sat on the 13th of April 2016, given that we now know through the business rescue practitioner the due date for the payment of the full purchase price was the 14th of April. Would Eskom have been able to transfer the 600 million to Tegeta so that Tegeta could pay by due date, which is the 14th of April, would that have been possible?

Ms Suzanne Daniels - No, it would not have been possible because as you will see from the evidence that you have that there were conditions to the decision. I also had to put in place the security arrangement and that took some time. It now makes sense as to why I was allowed to be excused from the meeting of the 13th to go and finalise the agreement because the actual payment took place on the 13th of April.

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Advocate Vanara - So given what you had to do from the 11th and effecting the payment on the 13, if the meeting had taken place on the 13th of April as scheduled, it would have meant that you would have only been able to effect payment after the 14th. Is it correct?

Ms Suzanne Daniels - That is correct.

[00h34:13]

Advocate Vanara - Can we then move to the second aspect which is the guarantee and I, I must remind the meeting that you had graciously so furnished us with a document that guides us through your testimony and I think we're on page 7 of the document which is the convening of the board tender committee meeting in December 2015 to consider the 1.6 billion guarantee which was later referred to the finance committee for a decision. Can you take the committee through the proceedings of that meeting?

Ms Suzanne Daniels - Yes I'll do that. At the outset I just want to clarify it was not a board tender committee meeting, members, it was a round robin resolution of the full board that I had to prepare, and that's why you will see there I receive that instruction from the chairman of the board at the time Dr Ngubane and I collated the documentation to be circulated to members. Once again the title of this submission was the 'urgent request to approve the repurchase of coal from Opimum Coal Pty Ltd. As this matter was actually one of a financial and investment nature, I had recommended that there was an IFC meeting prior to the resolution being concluded, and therefore we, I'm sorry an IFC meeting is an investment and finance committee meeting which is a subcommittee of the board, and that meeting took place at 8:30 on the morning of the 9th of December. It was once again a telephonic meeting due to the time of year. And the meeting and the submission to the board consisted of the submission document, the letters from the Department of Mineral Resources, the response to the director general of mineral resources and, and then my covering note would set out what the resolution was required and then all the signatures that I collated. So, for members who were not familiar, when you do round robin resolutions you need at least 75% of the members to approve and it will only be ratified at the next board meeting, but at the time of the decision is taken you can give effect to that decision, ok. So at the IFC meeting which was called Mr Mark Pamensky, who was then the chairperson of the investment and finance committee, recused himself due to his conflict of interest as declared. He was a director of Oakbay Investments at the time. Dr Pat Naidoo was elected to chair the meeting and members who were present at this meeting were Mrs Venete Klein and Mr Zethembe Khoza and these three members constituted quorum for the meeting. Anoj Singh and I were in attendance as the Group Chief Financial Officer was the coordinating official and I acted as the secretariat for the meeting. The discussion of the meeting was as set out in the minutes.

[00h38:38]

And I shall provide you with the copy of that Mr Vanara. The members resolved that it is recommended that the board, that the board approve the transaction as set out in the submission to the board relating to the pre purchase of coal from Opimum Pty Ltd. This recommendation was conveyed to the board members as the round robin documentation was circulated. I then sent an email saying this is the recommendation from the IFC. By the end of that day my office had received unanimous approval bar for Mr Pamensky who had recused himself and Mr Molefe who was on sick. With your indulgence I will read you the entire resolution.

The full resolution was as follows: "The request from the Department of Mineral Resources is hereby noted. The group chief executive together with the group executive for Generation and Chief Financial Officer are hereby authorised to negotiate and conclude a pre-purchase of coal agreement with the proposed owners of

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Op mum Coal Mine. This agreement shall be subject to the necessary regulatory approvals having been obtained by Eskom and the supplier respectively as and when necessary. 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.” I then... [Interrupted]

Advocate Vanara - Sorry, just, just on the resolution. Why would the negotiations for this pre purchase of coal agreement be with the proposed owners and not the business rescue practitioners?

Ms Suzanne Daniels - ... I'm not sure if, I'm really not sure why that happened. I will have to look at the motivation. I can, I can give you the, if there was any rationale but from what I have in front of me the, that wasn't the rationale.

Advocate Vanara - Ok you may proceed.

[00h41:16]

Ms Suzanne Daniels - I think just to give members context. This is a letter written to the director general at the time, I'm not sure if he's still the director general Dr Thibedi Ramontja at the Department of Mineral Resources and it comes from Matshela Koko, the group executive general manager, and it is dated 6th of December 2015. The headline is; “Op mum Coal Mine Propriety Limited coal supply to Hendrina Power Station.” As you may be aware Eskom has been involved in the 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 sort constructive engagement between the parties. From Eskom's perspective it was expected that as a Glencore operation, Op mum Coal Mine would enjoy far more support than the conditional funding for limited time periods that was on offer. Op mum 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 2000 megawatts 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.

[00h43:06]

At the latest meeting of the parties, the business rescue practitioners together with the Glencore representative indicated that Op mum is being rescued and it, that it would honour the contract in its current form with no amendment. They further advised that they will follow the contract route to process the Eskom claim of 2.2 billion. They made it very clear that they are not insisting on the extension of the Koorfontein coal supply contract with Eskom, they insisted that the extension of Koorfontein 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 Op mum displays for the impact that the threats of liquidation has on the precarious balance of electricity supply and commercial viability. As a Glencore operation, Op mum surely cannot be perceived to be acting in the national interest.”

It's a rather long letter I just, that sort of gives you the motivation and then in parallel; “... you are aware that we have similar challenges at Arnot Power Station.” Ok; “... 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 Op mum by mid December 2015. The risk of security of supply for Hendrina, Koma and Arnot

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Power Station is of such key national interest that we thought it appropriate to bring it to your attention. The 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 certainly going forward. I would request your assistance in this regard. Should you require any further information please do not hesitate to contact me. Yours sincerely. Matshele Koko, Group Executive General Manager.

[00h45:30]

So this is, this was part of the submission and then the group executive...the director general responded in the following way; "Having regard to the above," which is the letter, "and the intervention required from the Department. We would like to advise as follows. In respect of Hendrina Power Station the department will prioritise 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 1.7 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 to 2018 and for driving transformation, we would like to propose that consideration be made for some prepayment to be made for up to 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 times, thereby averting any national crisis that we as South Africa can ill afford."

[00h47:27]

Advocate Vanara - I, due to time pressures particularly the documentation that we have, we the committee, would at its own pleasure interrogate the documents. But I want us to quickly go to paragraph 54 of your statement...oh...on page 9.

Ms L Mnganga-Gcabashe - Advocate, we still have more time, we'll join a little bit later the house, you can continue, relax, thank you.

Advocate Vanara - Thank you Chair. Can we just go to what happens after the board's resolution, which you deal with on page 9 par 54?

Ms Suzanne Daniels - Right, so on the 10th of September...oh, my apologies, the 10th of December Ms Caroline Henry, the senior general manager for treasury in... we have a treasury department in Eskom and she was the treasurer at the time; she prepared a documentation. I'm not privy to the...pardon me...not privy to the discussions that happened between Caroline and Anoj on that, but because of that I would work closely with her on issuing of guarantees and share related transactions, she then provided me with a copy of the memo that she prepared. So what she asked is because what the approval did was say that we were going to get layout R1.6 billion in cash to Optimum, which she did not feel was the appropriate manner in which to do it. So she prepared a note which said that she would ask the Chief Financial Officer to approve the issuance of a guarantee in favour of Tegeta Exploration and Resources, and to approve a counterparty investment concentration limit excess for ABSA for the duration of the guarantee. Cause from what I understand it then exceeded our borrowing limits and whatever limits we have. Her reasoning for this at the

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me was that, in order to provide Tegeta payment certainty and shield Eskom from recovery of the funds in the case of the conditions precedence are not met and Eskom contracted to issue a performance guarantee. So what she was asking was that instead of laying out the cash, can we please issue a guarantee in this regard. But this would have required, the guarantee was for 3 months it was for 1.68 1 million 1 billion 680 thousand... sorry, and her recommendation was that the CFO approve the issuance of a guarantee in favour of Tegeta, the CFO approve Absa as a counterparty to issue the guarantee and the CFO approve the counter investment concentration limit access for ABSA for the duration of the guarantee. And this was approved by Anoj Singh as Chief Financial Officer on the 10th of December 2015.

Advocate Vanara - What was Mr Anoj Singh's delegation of authority limit?

[00h51:41]

Ms Suzanne Daniels - In terms of the resolution of the board he was authorised to take all the necessary steps to give effect to the above, including the signing of any documentation. In this particular instance with the issuing of a 1.6 billion guarantee we would have required PFMA approval.

Advocate Vanara - Ok, but I'm still asking the question, surely the board can't take a resolution authorising an official to act ultra vires, would you agree with me?

Ms Suzanne Daniels - I agree with you. In the issuing of the financial statement they ought to have...I mean, the financial instrument, they ought to have been made aware our materiality framework is 1.5 billion and anything over that 1.5 billion needs approval. So in this instance while the guarantee was probably a better commercial transaction, it was still irregular.

Advocate Vanara - Thus my question, what was Mr Anoj Singh's delegation of authority?

Ms Suzanne Daniels - I don't have the specifics, as Ms Tsholofelo told you earlier that it's quite a detailed document. So I will let you have it, but even if he had the authority, given the materiality framework we would have had to apply for permission from the Minister.

Advocate Vanara - And are you aware that the Minister's permission was sought and obtained in this regard?

[00h53:36]

Ms Suzanne Daniels - No, it wasn't.

Advocate Vanara - And, you mentioned that the cash was not...or the other general manager, Miss Caroline Henry, was not comfortable with the cash payment but was more comfortable or at least recommended the performance guarantee.

Ms Suzanne Daniels - Yes, she states that in the memo that she provided, because from what I can deduce her instruction was obviously to make sure that the money is available.

Advocate Vanara - Now we have the...and of course this one, this guarantee then facilitates that Tegeta gets, the bank issues... Absa issues that guarantee on instructions of Eskom to take to the Bank of Baroda in favour of Tegeta. Am I correct?

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Ms Suzanne Daniels - Apologies, I don't know if it went to the Bank of Baroda, because well from the documentation it's in favour of Tegeta. What I do recall is that we had to work to get it done that day, and Matshela Koko personally took the original guarantee. I don't know where he took it to.

Advocate Vanara - There's evidence before the committee that the...then this guarantee facilitated the 1.6 payment towards the purchase price. So we've got the 1.6 now, we've got the 600 + million, there's also evidence before the committee that Eskom paid Trillian monies and Trillian contributed to the purchase price, that you might not know about, or do you have any knowledge about that?

[00h56:10]

Ms Suzanne Daniels - The monies that were paid to Trillian, yes, I do have knowledge of that as I am the author of the infamous the 48hour report to Minister Lynne Brown. And there was a series of payments between 2016 and 2017, which amounted to about 564 million...interrupted

Advocate Vanara - ... ok, we'll deal with those a bit later when we deal with the relationship between Trillian and McKinsey and Eskom.

Ms Suzanne Daniels - Ok. I wasn't aware about the contribution to this transaction until the public protector's report.

Advocate Vanara - Are you aware of a concept called OPM, in other words a company uses, Other for 'O', Peoples for 'P', 'M' Money to conduct a business.

Ms Suzanne Daniels - Yes I am. Prior to joining Eskom I was an attorney in commercial practice and I've used some of these guarantees to do that. Yes, so I am aware.

Advocate Vanara - This particular transaction we just discussed now, if the 1.6 billion was facilitated by Eskom, the 600 million came from Eskom and a portion of the purchase price came from Trillian, who happened to have been paid under very dubious circumstances, also by Eskom. Do we see this OPM concept at play here?

Ms Suzanne Daniels - From all the evidence that I had at the time, what I know now from the media and other reports this is definitely a case of OPM. While the guarantee was in place until the 31st of March and while the CPs were not fulfilled, at all the relevant times it would have appeared to any investor that Opium actually had the financial resources to buy the mine.

Advocate Vanara - The #guptaleaks; there is an email from Mr Mark Pamensky who was a board member at Eskom, and I do appreciate that he recused himself at the meeting because of the potential conflict of interest, but what disturbs me in particular is the email that I've seen, and of course Mr Pamensky will get an opportunity to come and respond, but the email suggest that from inside the board he was communicating with people at Oakbay regarding the sale of the mine. Are you aware of such an email?

Ms Suzanne Daniels - Yes, I am aware of that email and it really shocked me when I read about it, as I did not relate it to the 1.6 billion rand penalty...I mean, pre-purchase. I actually related it to, because if you look at the timing of that email, it actually relates to the resolution of the penalty. So that was the defining moment for me as to why, and we'll get to that as to why, that deal went the way that it did. And it was an absolute...it was really a devastating moment for me.

[01h00:39]

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Advocate Vanara - I introduced that because we are to get to exactly the mine. And I would like us...I'd like you to take the committee through this mine. My understanding is that, and there's evidence before the committee, that I'm amongst over challenges Glencore experienced financially, their financial situation of Optimum Coal Holding and its subsidiaries was exacerbated by challenges it had in relation to Optimum Coal mine. And over and above that Eskom had levied a 2.1 billion mine which related to some of the regulatory contraventions and quality of coal. Can you take the committee through what Glencore's position was and what Eskom's position was on the mine vis-à-vis the mine, and how the position changed drastically when Tegeta became the owners of the same mine.

[01h02:19]

Ms Suzanne Daniels - Mr Vanara I'm at a slight disadvantage because I left primary energy in 2011, so I'm not close to what happened then. I became involved in September 2016 as the acting head of legal, and also when Optimum came out of business rescue I would then have to deal with the arbitration and the subsequent legal proceedings. So I can give you an account of what I did from that, if that's in order.

Advocate Vanara - That's in order Ma'am.

Ms Suzanne Daniels - So the first thing that I did, you know, is ask for what had happened. I think for context, the 2.2 billion was a mine from 2012 to date, so we actually were dealing with a historical issue. During the time that Glencore was engaged in a cooperation agreement with Eskom, from my reading of the documents that were made available to me, there was a period where Glencore and Eskom were negotiating future contracts, existing contracts as a portfolio. They entered into a cooperation agreement and in terms of this agreement the implementation or the exercise of penalties was stayed so that people could find a solution. And I think one of the solutions that the parties were hopeful of finding is how to deal with the penalties. The reason summons was issued is to stay prescription on the matter because you can see the claim arose in 2012 and we were now in 2016, so part of it had already dissipated. Summons was issued at the time prior to business rescue. In terms of the contract between Eskom and Optimum, arbitration is the way to sort matters of this nature out in the first instance. I was actually involved in an arbitration with Optimum when I was at Primary Energy, so it has a, you know, it is a quick way to deal with matters.

[01h04:52]

And in this instance what I asked for was all the reports, what had been done to date, the rationale for the 2.2 billion, and I was presented with a spreadsheet. Now the spreadsheet spanned the time and what I noticed was that there were various amounts, you know, it wasn't consistent. My first question to the primary energy team and the lawyers was how did you arrive at this 2.2 billion, and I call a meeting cause I was quite familiar with the Optimum agreement based on my experience it was actually the first matter I dealt with at Eskom when I start there, because BHP Billiton had ceded the contract to another party so I knew the contract quite well. I also...when we...the previous time when we had to negotiate the qualities, the very penalty regime that was in place I was part of the negotiation team that did so. So the numbers that I was seeing and the manner in which it was calculated were not in line with that methodology. So I wanted to know how did they get to it, what considerations etc. When I had the meeting with the team it consisted of the Finance Group, the contract manager, the coal supply manager and the legal team. And my question was simply, 'how did you get to 2.2 billion?' I was quite shocked at the answer. The answer that came back was, 'no this is not actually 2.2 billion.' And anybody who knows me and who has worked with knows that I don't keep my mouth shut, and I actually asked, 'why, what happened?' As ludicrous as it sounds the answer

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was, 'there was an error in the spreadsheet and we used the incorrect formula.' So a billion rand disappeared off that claim, and at that point I was beyond furious, I said, 'but we have gone out in the media, there's been a big story about this. How the heck do you think I'm going to go into Court?' I have a philosophy that I only go to court if I know that we have a more than 50% chance of winning, because I don't want to waste resources. Eskom as a huge legal budget and, I mean, for litigation but, you know, it's, it's we need to spend it prudently.

[01h08:04]

The other element was that the person who had actually managed and drawn up the spreadsheet had now moved to Glencore. So if I were ever to go into an arbitration and have to call witnesses, I would be dealing with a hostile witness, or if I would have a witness it all. The contract manager had also left the employ of Eskom, so all I had was documentation. I then asked the primary energy people to kindly draw up for me the rationale as to how they got to that. To cut a long story short, in the final analysis I think we could have, you know, the claim would have been roundabout, in my estimation, was about 722 million, and I was quite pleased to hear Mr Marsden say that he estimated at around 700 million. So we weren't far off the mark. But at that stage I was now quite perturbed, because this was a huge reputational issue for Eskom, a huge risk. We'd gone out... we'd had our group chief executive... I spoke to Matshela Koko and Anoj Singh, at the time Anoj Singh was my direct manager and Matshela Koko was the group chief executive. And I said that while I do have the delegation of authority to decide on whether Eskom proceeds with litigation or not, I was not prepared to make this decision on my own without bringing to the attention of the board. Obviously there was wrangling...let's see how we can get out of it and I said, no, I'm going to the board. Unfortunately, I had to go to the board tender committee because this was essentially a procurement issue. In the background we continued with the arbitration, so we filed papers, we did, you know, the normal so that we did not waste time. I went...at the first occasion that I went to the board tender committee I just wanted to appraise them of the risk that we faced in terms of we had a 2.2 billion claim and now it looks like we gonna end up with nothing. We went away and did some more work, and then I formally approached the board tender committee, took them through what was required. I actually brought in the external legal team that helped us. Had done a formal case assessment by... from Counsel as well so that I knew that my legal assessment was correct. And we did, there was one done before business rescue, but I now did one after business rescue cause it had different implications.

[01h11:45]

So from that we could see that at most we would be able to prove around 700 million. The other complicating factor is that about 248 million of that penalty had already been paid. So whatever amount you settled at, you would need to deduct the 248 million. And based on the calculations that were done independently, when I looked at the records that is exactly the same amount that Glencore had said at the time that they owed. So, you know, there was no reason to quibble about the 248 million, I think we were out by a few cents quite frankly. On that basis we continued, it led us in a bit of a quagmire as far as the arbitration was concerned. And so once we got the pleadings from the supplier, it was interesting at the first arbitration or pre-arbitration meeting, you know attorneys always talk settlement, and we were sort of saying 'ok let's entertain it give us your proposal.' But given what I knew in the background and what I know now about the...from the e-mails as you say, from all the other than reports, I think I was on hiding to nothing quite frankly, because the attorney walked in there he had a file, now bearing in mind this matter has been going on for so long, he walked in there with a file like a couple of pages in like this...[demonstrating thin file to Members]... and I had... my team had like a whole row of things because it was quite a historic matter. So

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it was clear that he wasn't briefed properly, or that he was so confident that they would get what they wanted. I pushed back I said I want a formal settlement agreement...formal settlement proposal. It took us a couple of meetings. In the interim in parallel I went to the BTC, explained it, that they gave me because the supplier had indicated a settlement or a predilection to settle, I asked for a mandate to settle but not conclude. You see in Eskom we have, because I wanted to provide the board with the settlement parameters, because at that stage I did not know what the supplier would come back with.

[01h14:55]

The supplier actually was quite disingenuous. It came back and said, 'we owe you 239 million of which we've paid it, so we don't owe you anything.' So I said well, then we're gonna go and fight. We wrangled, we met, obviously they had the information from Glencore so the figure was around the 248 million, but that was only a portion of the claim and I was interested in the balance of the claim. So we wrangled and wrangled. I think the figures started to get them up to 500 million was quite an effort. I then went back to the board tender committee told them, this was between January and a period ...the first quarter of the year, and I said to them that, 'look this is the situation, my view is that we should still go ahead and claim the 700 million, but I'm open to this. At the meeting it was quite strange because they wanted to know ...members wanted to know, 'why you here', you know, you can sort this out yourself. And I said, 'no given the risk to Eskom I'm not going to make this decision by myself, I would need the board to support the issues.' My view and we stated very clearly, that we could claim up to 722 million or that's what I thought we could reasonably defend.

[01h16:56]

I took them through what we needed to do, and then to my surprise, or not so much now knowing what I know, the board tender committee gave me a mandate to settle the claim without coming back to them, and the words were 'no less than 500 million.' And this was offered... this was stated by Dr Naidoo who... this was proposed by Dr Naidoo, Pat Naidoo, who is a member of the BTC at the time and supported by the other members. So, there I went with a mandate to settle, while I had said 700 I came out with a mandate not less than 500 million. I instructed the attorneys, 'push as hard as you can, I'm not going to the board or I am not going to be able to explain to South Africa 500 million or less. So I'm not going to take that chance.' We ended up settling at 577 million and of which 248 million had already been paid. So Opimum then owed us the balance and that was to be paid over the duration of the contract, which ends next year.

Advocate Vanara - Lets then move to the pension fund for...the pension payment to Mr Molefe; can you share with the committee the circumstances around the payment of the 30 million + to him as the pension.

Ms Suzanne Daniels - Ok, I just need to clarify the 30 million was not paid to Mr Molefe, the 30 million was paid to the Eskom pension fund and Mr Molefe then drew a pension of I think it was about a hundred thousand rand a month net tax; the figures are in the court papers. So I'm happy to take you through how we got to that. I think that in the meeting... in the evidence guideline that I prepared I set out quite in detail what happened before that. But I think for us we woke up one Sunday morning to read in the Sunday Times that must Molefe had received a R30 million pension payout. It was only at that point that we then started looking at this again, because I must admit up until that stage the figure that was actually provided to Mr Molefe was not communicated back to board, so at least we read about it in the Sunday Times. We then obviously as a result of that newspaper report got called to a meeting with Minister Lynne Brown. Eskom was represented by Dr Ben Ngubane as the chairperson, Mrs Venete Klein as the chairperson of people and governance, Mr Anton Minnaar who is the executive responsible for executive remuneration and who administered the

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pension arrangements in this instance, and myself in my capacity as company secretary. And she wanted to discuss the concerns relating to the pension payout referred to in article of the Sunday. We went through the rationale in the background and I've set it out in quite detail in the preceding paragraphs and members are welcome to ask me about it, and then she indicated that she was quite horrified at this amount and that we would need to re...her words were re-evaluate the pension payment or if I can quote her she actually said, 'an alternative pension arrangement.'

[01h21:58]

So the instruction to Eskom at that point in time was, 'not happy with 30 million go and negotiate an alternative pension payout.' We then met, myself and Mrs Klein met with Mr Molefe, basically it was without prejudice, it was also to see where he was at in terms of his amenability to actually reduce the amount, or any other alternative arrangement, and he was really not...he asked for me to think about it, which was fair because we actually met him on the afternoon after the meeting with the Minister. I had also instructed attorneys based on Sunday...on the Sunday Times article, and we were also getting our information together as to how we got to the 30 million. So the agreement was that Eskom would negotiate with Mr Molefe and return with the proposal to Minister Brown. However, Minister Brown issued a statement on that Sunday, which said that she has now declined the Molefe payout and that she had instructed Eskom to reconsider the issue. In the...the statement was a bit contrary to the agreement, so we then had to look at it. During this time I briefed the board on what was discussed with the Minister Brown and then we had a meeting on the 25th of April. My legal team and I worked over the weekend to get all the papers together and we suggested options pursuant to a meeting. On the 28th of April we received our legal counsel's opinion in respect of the payment of the pension benefits, and Eskom was then advised that the early retirement agreement was actually legally impermissible as it was not allowed for Mr Molefe. And you will see in the subsequent litigation there's different interpretations. It was not allowed for Mr Molefe take early retirement at the age of 50 in terms of the rules, because the decision was made in terms of specific rules and those rules really did not apply to Mr Molefe. So on the 2nd of May we met and we considered the legal advice received and I advised the board that the approval of Mr Molefe's application for early retirement actually could not be implemented. That left Eskom in a bit of a quandary as he had departed; he was now an MP, because technically if that agreement was illegal or impermissible he was still an employee of Eskom. And therefore the election was had to be put to him that you either come back or you resign. The other options were that we would provide him with the settlement arrangement and other for us was to sue the pension fund and, you know, there was a lot of cross litigation very technical, it's in the documentation that I've provided for you.

[01h26:24]

Advocate Vanara - Ok. I want to just go back a little bit because I'm interested in what I perceive to be governance failures. There's a letter dated 16 October 2015 addressed by Dr Ngubane to the current Minister of Public Enterprises. Is it correct that Dr Ngubane was not an executive chairperson of the board?

Ms Suzanne Daniels - No, he was not.

Advocate Vanara - Was there ever a board resolution prior to his letter to the Minister?

[01h27:06]

Ms Suzanne Daniels - Which letter?

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Advocate Vanara - The one dated 16 October 2015.

Ms Suzanne Daniels - Oh. That one was in connection with his remuneration, so executive remuneration was discussed at the people and governance committee, which was chaired by Mrs Venete Klein. This did not deal with the pension arrangements.

Advocate Vanara - Yes, I know, but it seems to form the basis later on around the discussions on the pension regime. Isn't that correct?

Ms Suzanne Daniels - No, that's not correct, that's the letter of 25 November 2015. It's in paragraph...
[Interrupted]

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Ms Suzanne Daniels – 64

Advocate Vanara - Ok, I'm sorry for that. But prior to this meeting of the 25th November 2015 was there any board resolution that Dr Ngubane was communicating to the Minister?

Ms Suzanne Daniels - Yes, there was this was discussed at the people and governance committee and also during this time the Eskom was negotiating Ms Molefe's permanent employment with him as the chief...as a group chief executive, and I'm using permanent employment very loosely not in the contractual terms. Because you will recall that he came across to Eskom on secondment from Transnet and his secondment had been extended I think twice.

Advocate Vanara - Can you for the record read what then were the proposals to the Minister. In other words you confirm that paragraph 64.1 - 64.4 were issues consistent with the resolution of the people and governance committee.

[01h29:38]

Ms Suzanne Daniels - Yes, that I...at this stage it was a proposal to the Minister, it would only be confirmed at a meeting of 7th February 2016. But what the proposal was is as extracted from the letter and this was the provisions: one was; regardless of Mr Molefe's age after the five-year termination date he be allowed to retire from Eskom service on the basis that he is age 63. That the penalties prescribed by the Eskom pension and provident fund for retirement prior to age 63 be waived, 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 five-year termination date he will be allowed to subscribe to any other SOC or government pension fund.

Advocate Vanara - Now, what happens to the letter that is sent to the Minister with these proposals?

Ms Suzanne Daniels - I forwarded that letter as signed by Dr Ngubane to the Minister's office. It was received; usually as protocol is the company secretary is the one that communicates formal correspondence with the Minister's office, and so I sent it to her PA, Ms Kim Davids. Receipt was acknowledged. In that time we were discussing remuneration issues for Executives and non-executive directors because they were all new and also in preparation for the AGM. So I think the first meeting that year was the 9th of February 2016, and this was to discuss the retirement of Mr Molefe and other remuneration matters. Well this is not his formal early retirement proposal, so that was on the 9th of February.

[01h32:00]

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From my notes there was a subsequent meeting which I attended on the 23rd of February with Minister Brown, Dr Ngubane and Mrs Klein in Cape Town, where Mr Molefe's pension arrangement as set out in that letter was discussed. Minister Brown indicated that she would not oppose the pension proposal but that it must be submitted to her in writing so that she could deal with it expeditiously. I highlighted to her that the correspondence had been sent to her office in a letter dated 25 November 2015. We also required clarification because when Mr Molefe joined Eskom it was on the basis that he would be a permanent employee as defined; as a permanent employee, i.e. no fixed term contract. However, and that is how the letters also came from Minister's office when she appointed him as, or supported the recommendation that he be appointed as chief executive, that he would be permanently employed. I then asked the governance unit in the DPE that they had mentioned that it was going to be a 5 year contract as per cabinet, but we are not...but it was not stipulated, they subsequently corrected that. But Minister seemed surprised, so she asked that she would confirm for us whether that was indeed the cabinet decision, and it subsequently appeared that that was so; it was confirmed. So at the meeting of the 9th of February the people and governance committee, I set out what was resolved at the meeting in paragraph 68.

Advocate Vanara - Just before you get to paragraph 68, there is in paragraph 67 the meeting seems to have noted the discussions relating to the conclusion of Mr Molefe's employment contract, says with particular reference to and I quote, 'the current role that staff over 50 years of age with at least 10 years service were entitled to retire at or as per the Eskom pension and provident fund rules.' This was followed by a request for and I quote, 'the Eskom rules to be amended in respect of executive directors with fixed term contracts to make up shortfall in years, waive the penalties and refund the pension and provident fund the actual cost relating to additional service,' unquote.

[01h35:20]

So what I gather here is that at least the people in governance committee seemed to be familiar with the rules of the Eskom pension and provident fund to the extent that they were to request amendments to the rules, is that correct?

Ms Suzanne Daniels - Let me just give you a bit of context before I answer. Mr Anton Minnaar was the person who dealt with the Eskom pension fund, and he and Ms Klein...Mrs Klein, as the chairperson of people and governance ran with this transaction. It was not really fully discussed at the board, you know, and when you talk about the governance; we have non executive directors, there are only two executive directors namely the Chief Executive and the Chief Financial Officer, so this was a bit unusual. The first time that myself and the board secretary actually knew about these things was at the meeting because we were told it's so highly confidential, and also as I was a junior to the chief executive I couldn't have access to that. So, what was anticipated that we could amend, that Eskom could amend the Eskom pension fund rules, but that was not so. And this was on the advice of Mr Anton Minnaar, but that did not materialize in that manner.

Advocate Vanara - I hear your explanation. The point I'm making is that it would appear that members of the people and Governance committee knew about a rule that pertains to the pension payout and they are aware that this rule in so far as the executives that are appointed on contract had to be amended, and that's why there's now a request to amend the rule.

Ms Suzanne Daniels - Yes, that's correct. Because this is the first time that Eskom would have executives on fixed term contracts, but they were quite familiar with the rules.

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Advocate Vanara - The Eskom pension fund...pension and provident fund says it was misled by Eskom in that Eskom presented Mr Molefe as a permanent employee as opposed to a fixed term contract employee, which would not have entitled him membership of the fund. What is your response to that?

[01h38:59]

Ms Suzanne Daniels - I agree with the Eskom pension fund. It's in my, in our preparations for the court case that's coming up. We discovered that indeed he was loaded onto the system as a permanent employee notwithstanding the employment contract being very clear that his employment terminates 2020.

Advocate Vanara - Let's move them quickly to the Trillian, McKinsey and Eskom relationship. The first contract you're referring to, there was a payment to Trillian Management Consulting. Ms Bianca Goodson testified that at the time of receipt of this invoice, which amounted to in excess of 30 million. Not 30 rands, not 30 thousand, 30 million. It was herself and her COO and no work had been rendered to Eskom. Are you aware why, and the circumstances Eskom paid this amount?

Ms Suzanne Daniels - I, I wasn't involved in the actual transaction. I was neither a company secretary nor head of legal at the time. However, I am the person responsible for putting together the report for Minister Brown and so based on what I'm going to tell you is based on that. And it does corroborate what, you mentioned Ms Bianca Goodson, it really does corroborate her testimony here. It is also corroborated in the Oliver Wyman report, which points out that the value for money to Eskom is actually questionable.

Advocate Vanara - And that's beside the point that there was no contract between Eskom and Trillian.

Ms Suzanne Daniels - No. At no stage during this payments cycles or any of the payments was there a formal contract between Trillian and Eskom. Trillian was styled as a subcontractor to McKinsey. In, in this particular instance you will find going through the records, that the payment was made and McKinsey was registered, my apologies, Trillian was registered as a subcontractor to McKinsey on the Eskom system.

Advocate Vanara - Ok. So there's no relationship between Trillian and Eskom. There's a relationship between Trillian and McKinsey. Is that correct?

Ms Suzanne Daniels - That's correct. Although McKinsey formally terminated or formally advised Eskom that it terminated its relationship with Trillian.

Advocate Vanara - We'll get there very shortly. But the point I'm making is if there were payments to be made to Trillian, those payments should have been paid based on a relationship, paid by McKinsey to Trillian based on the relationship that they had. Is that correct?

Ms Suzanne Daniels - That is correct.

[01h42:55]

Advocate Vanara - The second contract, there's again amounts paid to Trillian. How much was that?

Ms Suzanne Daniels - I'm just trying to...

Advocate Vanara - Look at paragraph 144, page 20 of your document.

Ms Suzanne Daniels - Payments to Trillian under this contract, this, that is the second contract, was 564 million 562 thousand 913.29 cents.

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Advocate Vanara - Ms Bianca Goodson told us the business operating model of Trillian Management Consulting that they do not do the work, they use their influence to get the business in the public sector, they get an international company that's competent to do the work, their subcontractors and SDL and that's how they make their fee. If you look at this McKinsey TMC arrangement, is it consistent with that operating model?

[01h44:38]

Ms Suzanne Daniels - On the face of it no, there's a slight and I do acknowledge that hers was a, you know, she was there for a short time. I have looked at minutes of the steering committee and there are Trillian representatives at the meetings at Eskom. Even though there was no contractual relationship between the parties. They were there as part of the McKinsey team. So, whether that was the business model throughout, I can't say.

Advocate Vanara - You are South African, you know the material conditions under which the majority of this country live in. There are people that struggle to make ends meet. You and Eskom pays these amount of money to companies that do not have contracts with them, where there was no procurement process, where we could not verify the value-add. What message are we sending to the poor of the poorest of this country?

Ms Suzanne Daniels - In this instance Mr Vanara, I'm not so sure what the message would be, but in my view based on what I know and what I've discovered there's only one way to describe this to the people of South Africa. This was brazen theft.

Advocate Vanara - Have, according to your knowledge, you have prepared the report for the minister and are you going to, are you prepared to make that report available to the committee or any reasons why you can make that report available to the committee?

Ms Suzanne Daniels - I am fully prepared to make it available to the committee and answer any questions. This is the report that I've prepared for the Minister which he said was 'glaring gaps' and this is the entire history and hence I can confidently say it was brazen theft.

Advocate Vanara - So this report was given to the Minister?

Ms Suzanne Daniels - Yes, it was. It was personally delivered by me to the director general on the 1st of September 2017.

[01h47:42]

Advocate Vanara - You refer to some of the activity 'brazen theft'. Are you aware that the Minister has acted on this report in terms of reporting the thieves to the law enforcement agencies?

Ms Suzanne Daniels - No, she, the action that she took was to discredit or try and discredit the report by advising the acting chief executive on the morning that I was going to deliver it, that it has been leaked to the media, when that would have not been possible as I was still busy collating the pages. The, there was a meeting between her and the chairperson and the Mr, sorry, the interim chairperson Mr Zethembe Khoza and the interim chief executive Mr Johnny Dladla on the 15th of September at the airport and where they discussed the report because she issued a media statement on that evening.

Advocate Vanara - So the board is aware of your report to the Minister, which points amongst others some brazen thieves. Has the board acted against the thieves?

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Ms Suzanne Daniels - I brief...the answer is no. I briefed the board on the 29th of August regarding the outcomes and the findings of the Bowman's report and regarding the findings that that were made, and I set out the recommendations, you will see I referred to a memorandum of the 29th of August, I set out the various legal remedies that we needed to take...including referring the matter to the Hawks. I think the board was not really interested in hearing me. They gave me some pointers as to how I needed to fix up the memorandum and the thing that stuck in my mind was that Dr Naidoo told me to go and make sure that the numbering was correct. For me there was far more important issues in the memorandum than the numbering but that, be that as it may, I then...I was asked to take back those, those memos so that nobody had a copy and I was instructed to shred it but I did not shred it, so I have the full bundle of what I handed out as it there and you'll see my notes on there as to what was discussed at that meeting.

[01h50:50]

Advocate Vanara - Would you be so kind to hand the bundle with your notes to the committee including the report that you submitted to the Minister and to your board. But let me go back to the meeting of the 21st of November 2016, there's a CIPC letter addressed to Eskom copied or also sent to the Minister raising a concern around Mr Molefe's return. According to CIPC they were informed that Mr Molefe had resigned and draft minutes of a meeting were sent to CIPC. Can you shed light around that?

Ms Suzanne Daniels - You see Mr Molefe held two positions; as an executive director and as an employee of Eskom. In so far as the directorship was concerned, CIPC requires that you have a formal notice that he has resigned as a director, early retirement does not feature on their options and that is what I explained to them in the letter that I then wrote. The minutes was still draft because we were trying to find a way in which to say that he had left the company and that we could, you know, deregister him as a director on the system. You will see that, so what we did in the updated, the final minute was to say he resigned as a director and he applied for early retirement as an employee, to make it very clear.

Advocate Vanara - Were the minutes of this meeting 29 November 2016? The 29th November 2016, there was a draft minutes sent to CIPC to communicate his resignation. In the response you say that those were draft minutes. I want to find out when draft must become a final document at some point?

Ms Suzanne Daniels - Yes, but I have that for you as well. So I've kept the full set of how it evolved.

[01h53:36]

Advocate Vanara - So they're now no longer draft?

Ms Suzanne Daniels - No, they're no longer draft. At the time when, when they were submitted I think what occurred is administratively someone in the office of the company secretary deals with the statutory requirements and they use the draft minutes to do that, which is not good practice, but I have that on record as well and the responses that we gave.

Advocate Vanara - In your report to the minister shared with a board, you making reference to brazen the therefore there must be thieves. Do you identify the thieves?

Ms Suzanne Daniels - Yes, I did.

Advocate Vanara - Can you share with the committee who the thieves are?

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Ms Suzanne Daniels - The people implicated and who I identify as thieves, that's my view, is Matshela Koko, Anoj Singh, Edwin Mabelane, Prish Govender and Charles Kalima.

Honourable member - Charles who?

Ms Suzanne Daniels - Kalima.

[01h55:00]

Advocate Vanara - We, we know that Mr Koko is going through some disciplinary proceedings. In those charges are you aware, the charges that he's facing, are any of the issues that you identify in your report as forming the basis to call him a thief part and parcel of the charges?

Ms Suzanne Daniels - No, they are not. That relates to the matter of Impulse International... where he failed to declare his stepdaughter's interests in the company.

Advocate Vanara - But you, I'm sure you, you must surely agree with me that that package should form part of those proceedings, isn't it?

Ms Suzanne Daniels - Yes, in the ordinary course of business I would, I would agree with you. The reason I sought to keep it out of that particular disciplinary enquiry was that for me that the current disciplinary enquiry is a sham.

Advocate Vanara - We know that, or at least I know that the Clive Dekker Hofmeyr report on the Impulse issue had exonerated Mr Koko Matshela. How I, I'm not aware, but my understanding is that that seems to be the basis of the charges he's facing. Is that correct?

Ms Suzanne Daniels - That is correct. The report of 13 June did make that conclusion that factually Mr Koko's version held up, however, I recommended to the board that we cannot accept that report at face value. There was no cross examination of any of the people interviewed, there was no legal testing, I spoke to the people who opined on that that report and I was not comfortable with the responses, I thought they were superficial. I recommended that we obtain a legal opinion from senior counsel on that matter and that senior counsel provide us with a view. And you would see that advocate Azhar Bham was briefed and that he came back was quite a few anomalies in the opinion that he provided and he did recommend disciplinary action against Mr Koko to interrogate those issues. He also assisted Eskom in preparing the original charge sheets.

[01h58:47]

Advocate Vanara - The Evidence, the initial evidence leader who I believe was subsequently removed. Is he on the panel of lawyers providing service to Eskom? If not, how did he get to be appointed?

Ms Suzanne Daniels - I was, I was away on leave at the time but no he's not part of the panel. The audit and risk committee instructed the chief procurement officer Mr Jay Pillay to source these individuals. So he sourced senior...3 senior counsels and Mr Sebetja Matsaung. So the CV's were presented to me. Originally my proposal to the audit and risk committee was that Advocate Bambi the case presenter for Eskom as he was intimately au fait with the case, and that one of the senior counsel, I think I recommended Alistair... I just

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can't remember his surname, as the chairperson because he had the most experience in terms of labour matters etc. I set that out in a very detailed memo to the audit and risk committee. They came back and supported it on the one day, but the next day Mr Gounden, who is the chairperson of the audit and risk committee, sent me a message that said I must please speak to the chairman he has some ideas on the case presenter. I asked him to clarify, you know, because I needed to go ahead and then before he could respond I got a message from the chairman saying that him and Mr Gounden thought that Mr Matsahung...Matsahung should be the case presenter. My views on Mr Matsahung's experience to deal with the matter of this nature are, were quite broadly reported. I thought he had very little experience and this matter was not suited for a person of, of his level of experience.

[02h01:27]

Advocate Vanara - My second last question. You refer to that disciplinary process as a sham. What do you mean by that?

Ms Suzanne Daniels - There has been considerable board interference in that investigation and with Mr Khoza leading the charge. He in, in my discussions with him he would mention that; "I was talking to Matjila this morning and he thinks we should do it this way." I don't think he realised that he had told me that because I actually said; "I beg your pardon?" and then he changed tack, you know. That made me suspicious. The fact that after a formal board approval of the charge sheets as prepared by myself and Advocate Bam. They have been changed twice. I was very surprised to see what, what was published as the charge sheet. It is fatally flawed in law. So the risk to Eskom of Mr Matshela Koko being exonerated on that set of charges is actually quite high. And then also the manner in which the case was dealt with from the start. The fact that the evidence leader actually really did not prepare witnesses, I had asked him for a list of his suggested witnesses on the 23rd of August this year and I'm still waiting for it. So, you know, I really don't have any faith in the process that is on the, on the go at the moment.

Advocate Vanara - My last question is a twofold. One, have you ever been to the Gupta family? If so, why? And secondly, why are you on suspension?

Ms Suzanne Daniels - I'll answer the first one first. My reason for suspension is as follows. I quote from it because Eskom has been denying that I am on suspension because of my report to the Minister, but my chargers quite clearly read as follows; "At the core of these allegations regarding misconduct is the allegation that where as you prepared a report for the Minister dated September 2017, which report contains various matters of concern. After perusal of this report and after further relevant information were obtained issues were identified which could warrant disciplinary proceedings being instituted against yourself. It would thus be in the interest of yourself and Eskom that through an interrogative process of disciplinary proceedings questions be answered relevant to the report and the information received." and I close the quotation. Ok, so that's the reason for my suspension.

[02h05:08]

In respect of your answer on the Gupta family, I have had the occasion to meet Mr Ajay Gupta on the 29th of July 2017.

Advocate Vanara - What were the circumstances? And do you have any discussion with him? Who accompanied you to this meeting?

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Ms Suzanne Daniels - I was contacted by Mr Salim Essa and he asked to meet for coffee. I was intrigued as I had met him on previous occasions as well, which I will share with you, and the reason I remember that date so vividly is the only free day Saturday that I had on coming back from holiday, subsequent to that I take my daughter to maths very Saturday morning so... [Laughter]... there was no, there was no opportunity to have coffee with anybody. I met him at Melrose Arch outside I think it's, he had said; "meet me at the Africa... the African Pride Hotel" and I thought, I was in the reception area. He came to meet me and then we walked to a... I didn't know that they were actually townhouses at Melrose Arch, a set of apartment blocks and we went into one of those apartments. And as we walked into the lounge area there were four people, which I was introduced to, Mr Ajay Gupta, Mr Duduzane Zuma, Deputy Minister Ben Marais and a Chinese lady whose name just, I cannot remember because at that point I was actually speechless. The purpose of the discussion was around the process of the Molefe court proceedings. Mr Gupta wanted to know how far they were and I said we...there was a schedule meeting with the deputy judge president to discuss the, when we would set down the matter because you, as you, as the Honourable members would know the DA, the EFF and solidarity have joined the application and we wanted all the matters heard on the same day.

[02h08:26]

He then... it was very difficult to understand him because he speaks in a very heavy Indian accent, but the gist of what I could gather was that he was saying that ok he will have to talk to someone in the DJPs office and to make sure that the meeting...that the hearing take place after December 2017... so that it could be dealt with then. He mentioned something about Nkosazana Dlamini Zuma, but I really couldn't follow what he was saying and partly because I was actually just, I couldn't believe where I was and what, what, I was hearing. [Laughter]... And then there were some mumbling and then I left. That was the second occasion that I drove from Melrose Arch to my house, locked the door, poured myself a small shot of whiskey and went to sleep. The first occasion was on the 9th of March 2015, I think it was. I just want to check the...it was the date Ms Molefe mentioned, 9th of March, when Matshela Koko phoned me to meet him at Melrose Arch. And I went through, he came and collected me at JB Rivers, once again, and we went to the office of who I now know as Mr Salim Essa. Mr Essa started explaining to me, he asked me what Eskom's disciplinary procedure? I said I wasn't really familiar with it because I'm actually not, I... had a, I have an aversion to employment law because I'm a contracts person. But I said generally, you know, if you want to discipline someone, you have to give them a right of hearing and all of that. He got a little bit more specific and he asked me what needs to be done if you want to suspend people, and I said well you'd have to have a reason to suspend them, and a rather valid reason and, you know, give them a chance to respond and then, then you can make your decision and that was as far as I go. He then proceeded in the presence of Matshela Koko to sketch out to me what was going to be happening in the next couple of days. He told me that Mr Matona, Ms Molefe, Mr Marokane and Mr Koko would be suspended and that there would be an investigation into Eskom... and... that... you know, the board would communicate this in due course. Little did I know that it was going to happen the next day or it actually happened the day after... And I actually didn't respond I just, is that all and I, I went. That was the first occasion on which I went home from Melrose Arch. I think those are, and the second time I saw Mr Essa was at Eskom. It was roundabout October 2015, as he congratulated me on my appointment as company secretary. So those are the most significant dates for me.

[02h13:20]

Advocate Vanara - As I hand over to the Chair, Mr Koko was the one who convened the meeting with you and Mr Essa, and he was going to be part of those suspended, and we know that he's the only one that survived the suspension, is that correct?

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Ms Suzanne Daniels - That is correct.

Advocate Vanara - No further questions Chair.

Ms L Mnganga-Gcabashe - Thank you very much to the advocate. Members I'm going to start taking the list of hands. Honourable Swart, do you still wish to leave a little bit earlier? You're ok now, ok. Honourable Luyenge, Honourable Mazzone, Honourable Swart, Honourable Rawula, Honourable Nobanda, [not English]... Honourable Gungubele, Honourable Gordhan, oh, Honourable Tseli... [Not English]... Your opportunity, Honourable Luyenge.

[02h15:14]

Honourable Luyenge - Thank you Chairperson and thank you presenter for a comprehensive presentation about these issues. The clarity that I would want to get maybe is around evidence that you might produce as it pertains to the meetings that you were part of. Do you... would you have access to the attendance registers because definitely you have the content as you have presented of as to what was discussed, which I believe if you have that it will make it much easier for this committee and parliament maybe to take this matter forward. Now, by the look of things you have collected a lot of information with regard to the manner in which people wanted or amass some resources of this state entity, can you maybe roughly say how much has actually been lost? Just the plus minus kind of, you might not be very sure, but because I'm asking that because what we are doing here we also want to ascertain as to how much damage that has happened already in as far as Eskom is concerned. The conduct of the board and management at Eskom if all this kind of information that we are getting dating back from when we started this process, is actually something that I did not believe in in the past when people were saying there are these kind of activities in the country. Then I used to say I never heard of any kind of a formal meeting formal meeting of a structure and agree on how State resources will be looted. So you are the third witness that has come out very clear on that there were such kind of meetings. Now when someone is stealing, it's stealing. When you steal there's an element of humanity that comes to the fore, you don't want it to be seen. But by the look of things this what was happening is an arrogant kind of behaviour that failed to put the plight of the poor masses of the country. Can you maybe share with me is there any state entity that you are approached to report these kinds of activities? If you did what had been the response? After having heard that you'll be called today to come here or even before have you been receiving any threatening calls or maybe being discouraged not to come? The last one relates to the role of the Department of Public Enterprise in the execution of their duty over the entities. Were you ever part of a meeting or received any instruction or had someone with an authority to actually implement these kind of unscrupulous activities? You can respond.

[02h21:26]

Ms Suzanne Daniels - Yes, to your first question about the evidence, I have prepared a full dossier for Mr Vanara. I'm still busy preparing it given the volume of information, and I will be handing it over to him for this committee's purposes. So it will include minutes, documents, etc. The files that I have here are my files that I've compiled and it's very difficult now that I'm on suspension, I don't have my right hand to help me get them all in order. But I'm very willing to make them available. How much has been the last two South Africa? I'm really not sure Dr Luyenge. A rough estimate of what I spoke about today was about 5 billion that, you know, and if I look at all the transactions we haven't uncovered enough information. Because as soon as we started with the investigation I've been getting a whole lot of information from Eskom employees about what is happening. So there's a lot what we need to uncover and deal with. But in actual money terms for what I

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can tell you as I sit here today it's about over ...it's billions it really is billions, it's a sin. No, I have not approached any state entity. Given all that has happened I have been very sceptical as to the bonafides of the state entities. Have I been receiving threatening calls? Yes, I have, not only calls, I've had attempted break-ins at home; I've been bullied on the road, I have been followed a number of times, I know that I'm being surveillance. In fact, in my first meeting... I have no doubt that my phone is tapped... in my first meeting with Mr Essa, when I was driving home, I called a friend of mine and asked him do you know who Salim Essa is and must I believe what he tells me? And the response was, 'yes'. And I got a second call on my way home from Dr Yves Guenon from AREVA and I said to him I was out of the office and, you know, I would call him back in the morning. The next day when I got to the office Matshela Koko asked me why are you speaking to Rustum Mohamed, that's my friend's name, and why are you speaking to the French? And that was on that day, so I have no doubt that I'm being followed. I've increased the security at home and I make sure that I don't follow the same route; it's not easy right now. Yes, I have received threats but, unfortunately, I don't know how they do it but it disappears off the phone, so I actually don't have anything to...I don't have anything to lay a charge with, but I have received a number of death threats; 'and if you know what's good for you you'd shut up', and things like that. So, yes, it has happened.

[02h25:23]

The role of the DPE in execution? I've never really had direct instructions, but one occasion does stick in my mind; Ms Kim David's the PA to Minister Brown, she came up to me at one of these chairpersons forums and said 'Ma'am,' she calls... we call Minister Brown Ma'am; 'Ma'am has been receiving complaints from suppliers and, you know, she's going to send a letter that you need to give them work.' And then I asked who is the suppliers, and the one that she mentioned was Trillian. I was incredulous at that time because already Trillian was in the news, you know, about its thing, and I said 'how would a Minister do that.' I was also surprised that a PA was telling me what to do. And the second one was...she called me and said Ma'am suggested to use Nkonki for the Koko investigation; Nkonki is the auditors. And I said hence also I forgot at the time that's why I say it's a bit of a sham. I was quite perturbed, well not perturbed, puzzled as to how a PA would do that, but then I was called by someone... I actually got a message that said, 'I hear you're objecting to these people.' And I'm saying, 'yes, they're not...I don't know them, you know, I don't work in procurement anymore, so I have nothing to do with this.' But those are the things that stick in my mind. So there may have been more of those, I may just have been oblivious to it or I just, you know, I just ignore them. That's your questions.

Honourable Luyenge - Lastly, did you by any luck come across one of the Guptas maybe, one who would identify himself as a Gupta?

Ms Suzanne Daniels - Yes, that was Mr Ajay Gupta when he asked me about the Molefe matter; that was on the 29th of July.

Ms L Mnganga-Gcabashe - Honourable Mazzone.

[02h28:13]

Honourable Mazzone - Thank you Chair. Ms Daniels you have blown us all away. I think by just confirming what a lot of us knew, unfortunately. Chair, I think it's very important that this committee takes note that Ms Daniels has been threatened and that her safety has come into question. We do everything that we possibly can to keep you safe, not that we can guarantee anything, but it is on public record now, and someone very wise and someone who I respect greatly told me that the best way that you deal with bullies is that you blow

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the smoke screen away so that it's out in the open, and you've put it out in the open, so one hopes that if no one is silly enough to do anything now because it would be too obvious who it is. In your opinion, I mean, you just told us how Ajay Gupta was at this meeting the 28th of July, the meeting about Molefe; now it's beyond... beyond logic... defies logic as to what a member of the Gupta family would be doing at a meeting concerning an internal Eskom enquiry that's going on. Do you need a moment? I can see you very, very emotional.

Ms L Mnganga-Gcabashe - Members, Ma'am, ma'am, you're allowed to get some few minutes of a break.

Honourable Mazzone - Yes, have a break.

Ms L Mnganga-Gcabashe - 2 minutes, 2 minutes, thank you very much. Can we just stretch our legs for 2 minutes, thank you very much.

[02h29:59 - BREAK]

[02h43:50]

Ms L Mnganga-Gcabashe - ... so long, I'll indicate when we are starting.

[02h49:24 - RESUME]

Ms L Mnganga-Gcabashe - How are you going to deal with you registering your attendance in the house?

[O mike answer inaudible]

Ms L Mnganga-Gcabashe - Oh, no, no I understand that, I'm thinking when you need that printout for your SARS; it will say you were not in the house.

[O mike answer, overtalking, inaudible]

[O mike conversations]

[02h50:10]

Ms L Mnganga-Gcabashe - Ok, we are all known that we are here. I'm just thinking about those printouts because at some stage our chief whip said we can use our political party registers you are saying, but SARS has said 'no, we don't take those, we only take parliamentary ones. Parliamentary registers.' Ok, we'll just wait for our Advocate. That's unless you want us to proceed without while he's still outside?

[O mike answer inaudible]

Ms L Mnganga-Gcabashe - I think he should be here, he is coming back. He was held up by some of us outside, I could see. He's just gone to wash his hands; he's coming, let's wait for him.

[02h52:38]

Ms L Mnganga-Gcabashe - We can continue now. Honourable Mazzone.

Honourable Mazzone - ... I've got a praise singer next to me, how lucky can I be. Just before the break we were discussing the 28th of July meeting with Mr Molefe in which you told us that Atul Gupta was there... 29th, sorry, 29...now why, was there a reason given, was it justified as to why Mr Gupta would be at a meeting

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discussing Mr Molefe's court case, I mean it just, it makes absolutely no sense to me. So if, was it asked, did anyone query why Mr Gupta was there? I mean, it must have certainly made an impression on you because you remember that the accent was very heavy. So, you know, did anyone sort of stop and say, 'hold on why is this person here?' So I'd just like some clarity on that. Then you just spoke about a deputy judge president that would be involved in Molefe's case and that discussions around that happened. Can you just clarify a little bit because I was trying to take in so much when you were talking that I don't understand was a decision...did they try to intimate who the deputy judge president was? If so did they name someone or were they trying to figure out how to get a certain person to be the deputy judge president? Dr Ngubane, in your notes his name is mentioned many times because obviously he was the chairperson of Eskom while all of this was happening, but in the cross-examination many names are mentioned but I don't think we focused too much attention on Dr Ngubane's his role in all of this. Now certainly as chairperson of the Eskom board he must have had sight and knowledge of many of the things that we've been discussing today, and we know that he wrote the letter instructing that Mr Molefe was going to go on the early retirement and he instructed the 13 year pay back to ensue, so did you have a discussion with him as board chairperson and explain to him that, you know, this was completely irregular and couldn't be done? And if so what was Dr Ngubane's reaction to that?

[02h54:34]

Purely coincidentally, in your notes you say that around between the times of the 5th - 8th of November Mr Molefe resigned, it's one year ago today, I just happened to pick it up that today is the 8th of November so it's literally on the anniversary we're discussing this. I just want it perfectly clear and for the record; you are of the opinion that there is no way and know how that Mr Molefe could have belonged to the pension fund and could have received the pension fund... pension fund payout that he did because of the term of contract that he was on. Also then Minister Brown has been very vocal in claiming that she didn't know that these things were happening and she was going to institute enquiries etc. Are you of the opinion that Minister Brown did in fact know about the following issues; did Minister Brown know about the Trillian / Eskom relationship? Because you will know that in a question... a parliamentary question Minister Brown claimed to not know of a relationship between Trillian and Eskom and that Eskom and Trillian did not do work together. So, that's my first one. My second one is; did Minister Brown know from the onset about Mr Molefe's pension payout? And thirdly, just because I didn't catch it; did Minister Brown know that you were being asked into these meetings where people like Mr Gupta were present? Then also there's a stakeholder, Eskom reports to its stakeholder who is the Department Public Enterprises, the Director General of Public Enterprises certainly could not have remained unsure of things that we going on, or certainly did not know that these things were going on. He has to, you know, he oversees a department under which Eskom falls, where these issues ever reported to the DG of Public Enterprises? You would know through media that his name has come up in various emails. Were you ever instructed to do anything by the DG of Public Enterprises and do you know if things being reported to the DG of Public Enterprises and not then being acted on?

[02h57:14]

And my last question is, I value your opinion, I think that you're a legal mind of... and you have experience in this field. To me it would seem that Eskom has become a three-way run entity; I see Eskom as being run by the board of Eskom, I see Eskom being partly run by government and I see Eskom being partly run by a Gupta affiliated consortium. Would you agree with that assumption? Thank you Chair.

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Ms Suzanne Daniels - I'll start with questions and if I get you wrong just let me know. The meeting of 29th of July was actually not a scheduled meeting. I was there I was going to meet Salim to...he had asked to meet him, know you, so the fact that I walked into a room with these people was totally...I cannot tell you why he was there, all of those things, because it actually wasn't a formal meeting. Mr Gupta was in a grey tracksuit pants, no shoes, t-shirt so it wasn't a, it wasn't a meeting. I think he looked worse...my view he looked worse than he was at a shebeen. [Laughter]... So I, you know, what struck was, you know, I felt like I was in a movie because here was this man, there was Duduzane and there was the Deputy Minister, Ben Marais is the Deputy Minister of Public Enterprises, and there's some lady that I don't know I'm sure if I see a picture of her I'll recognise her, but, and there's me, you know, I think I was in jeans as well and I'm thinking 'oh my God I've landed in the wrong place.' And I really was praying to God that they would not kill me, because I thought oh I've walked into a trap, you know, all those kinds of things go through your head. So what struck me was, yes, you are correct when I said, 'why would these people be discussing a matter such as Molefe's matter.' I think I just need to clarify; the deputy judge president is the person who allocates judges, ok. So when we were going to meet, the scheduled meeting from Eskom side was to arrange a date for hearing of all the applications as you know, so I think what the machinations were was to make sure that that hearing happened post December 2017 so that it would be more favourable than what it looks now.

[03h00:15]

That's my guess. So, you know, I think they were trying to figure out, and he was articulating in such a way that I think he was trying to tell...to figure out how are they going to influence it. He didn't mention the deputy judge president that he will talk to the deputy, but what I heard was that he was going to have to find someone in that office, you know. You know that, I mean, as Attorneys we know that if we're nice to the registrar we can actually get dates when we, you know, which will suit us. So the fact that he knew of those things was shocking to me, but the biggest shock was that everything that I had read and I was like Dr Luyenge, I think it doesn't happen I live in a parallel universe, but after that day I'm very convinced State capture is real. So I am not, you know, I don't know that if that answers your question. Dr Ngubane's role, I just need to explain and then, you know, I have no doubt that he must have been aware of what was going on in the board. Because, you know, under his watch there's the Molefe payment, which is driven by Venete Klein, there is the BTC issues the, tender committee issues with Zethembe Khoza, there's Mark Pamensky who's chairman of the IFC, the investment and finance committee yet he is so conflicted, I mean, he sits on Oakbay and we've discovered that he was the CEO of Trillian Property Asset management and yet he was presiding over disposals of Eskom's non-core assets, you know, so the methodologies the same. So I don't think that you didn't know, he certainly didn't indicate to me but, you know, facts are facts. There's really no way that you can be the head of an organisation and not know what's going on.

[03h02:43]

In terms of the pension payment, the protocol is that only the Chairman corresponds with the Minister. So in this instance the letter was prepared by Anton Minnaar and it was signed off by Venete Klein and Zethembe Khoza, so then he signed it. In terms of the Molefe pension fund I'm not sure what your question was. Ok, I mean the one whether I agree that he is not entitled. I fully, now that I have all the facts, never mind the intention of the board; he just isn't entitled to it. You would have heard from Mr Luthuli's evidence that I had instructed the...I'm actually asking the Pension Fund to pay us back, I've been very cheeky and also telling Mr Molefe that he needs to pay the money back, because that's Eskom's money not the pension fund and they need to deal with it. And they're quite rightly need a court order to do so, hence they are at that meeting, I mean, at the hearing on the 29th. In terms of Minister Brown; based on her PA's intimations to me she knew

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about Trillian before, and, you know, I find it hard to believe her reaction to my report means that she sanctions this kind of action. I mean, there's no other inference to draw. In terms of the Molefe pension fund payout I, now that I have all my evidence together, I am convinced that she knew and that she tried to fob it off on her officials, as I sent the letter to her office, three people in her office acknowledge receipt of the letter, and we met with her on the 23rd of February. So I don't see how she cannot know about that; she may have forgone but certainly she should have known about it, because the meeting of the 23rd of February he was actually called at her instance, not ours.

On the Gupta meetings I'm not so sure, on a balance of probabilities she must know, everybody, from my experience now and from what I know, everybody in her office is captured, you know, so really it can't stop and you are in oblivion. I really don't buy that argument and I don't buy that position anymore, as a right thinking South African I can't be fooled. Mr Seleke, he's never instructed me but, I think the officials in the Department think that Eskom works for them, you know, they don't really quite understand the role of a shareholder and we are sometimes having to give unnecessary reports, unnecessary information, we get called to meetings at a moment's notice; I think that's an abusive power, you know, and then we sit and have to explain for hours when we've actually got work to do. So, it's not a healthy relationship but I think it points to the paucity of leadership when you have a Minister and a DJ that is so lax, what do you expect. So, I think, I hope that answers your questions. Oh, the other one was do I believe that there's a 12.... the four, definitely, the four pillars of government. Yes... [Interrupted]

[03h07:03]

Ms L Mnganga-Gcabashe - Thank you very much Ma'am. Honourable Swart.

Honourable Swart - Thank you Chairperson and thank you for your testimony. And whilst we appreciate that many of the allegations that you have made the person's implicated will have the opportunity to respond, I must say from my side I have an increasing sense of outrage at what you shared with us and just the level of capture that we have suspected again on the prima facie evidence that we've got here, and as my colleague pointed out this is a year later when the public protector's report came out. Those findings you will know as a lawyer, those factual findings have not been taken on review, whilst the small part of it has been taken on review by the presidency related to a legal issue. And we know that the public protector found that there were serious breaches of the Public Finance Management Act particularly when it came to the Tegeta contract, which we spend quite a lot of time dealing with. But I would just want you to touch on the meetings with the Gupta's on the 9th of March 2015. What I don't understand is why did you comply, why didn't you tell them to get lost when you were summoned to the meetings and you're asked these questions about in details; you should ask, 'who are you, what right have you got to ask us these questions,' similar to what the Deputy Minister of Finance told it in more lucid terms. Then that was on the 9th of March the 2015, and I'm a standard at what transpired there but it does fit into the whole pattern. You sat here when the financial director earlier gave evidence as to that meeting of March 2015 when they were all suspended. Earlier when she spoke about the good people on the board that when she was pushing back against contracts that were being forced through through Gupta aligned contracts when she said no, she's not signing The New Age contract, she's not signing the Regiment Capital contract and the pushback from the acting CEO at that time. And then prior to this meeting you are called to a meeting on the 9th of March and you're told this is what's going to happen those executives are going to be suspended, there's going to be an enquiry, exactly what happens. And I'm sure you'll agree that that plays into the narrative of Eskom having been captured by Gupta aligned people. You were there with them; you were there with Mr Salim Essa as well. Would you comment on that please?

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[03h09:55]

Ms Suzanne Daniels - On the meeting of 09 March 2015, it wasn't...these are not formal meetings ok, and I was a senior manager I was not head of legal and company secretary, I was four levels junior than what I am now, ok. So if you look it up, I've been 11 years at Eskom, so you must understand I started as a junior legal advisor and worked my way up. So on the 9th of March 2015 when I first met Mr Essa I got a call from Mr Mashela Koko asking me to meet him not Mr Essa, but when I got there I walked into him. What I did after that meeting was I called my friend as I told you, but I also called Dan Marokane, who was at that stage the accounting group executive for group capital and he was my boss prior to Mashela Koko. You know we've gone through a lot of iterations you'll see it from what's my CV. So what I did is I told him exactly what had happened and he said, like Ms Molefe he said, he'd heard these rumours and I said to him please, you know... I didn't know Tsholofelo that well, I didn't know Tshediso that well either, and I mean I was a junior official, so that's what I did I spoke to him and he undertook to speak to them and they would deal with it. So that's how I ... I was nowhere, at that stage I was nowhere near the level that I am now. In terms of, I think, the last one what I did do is, look by... [Interrupted]

[03h12:03]

Honourable Swart - What you mean by the last one?

Ms Suzanne Daniels - The 29th of July. I instructed the legal team to make damn sure that we get a date before December 2017. So you will know that the case is going to court on the 29th of November. So in my own way I did what I could to make sure that we, you know, that we put our foot down. Does that answer the questions?

Honourable Swart - Yes it does, thank you. Then we also had the CEO of Trillian Financial Advisory, Ms Mothepu, came and she spoke about the payments, those are the payments that you referred to, and she said, 'I'm of the view that these payments were made in contravention of the PFMA and the Companies Act and are therefore unlawful.' That is a statement that she was... also the public protector's report refers to that yet at this stage very little action has been taken. We also know the Budlender report which was about the Trillian issue express concerns that the issue of capturing was ongoing, malfeasance was on going. So could I ask you firstly, what to your knowledge is happening now to recover the funds from Trillian and McKinsey? There was a Bowman's investigation I understand, is that correct? And is there litigation or is it going to be referred to the SIU, which I know which then will be a further delaying tactic because the President has to appoint the SIU.

Ms Suzanne Daniels - In terms of the legal action the Bowman's report recommended certain steps, I briefed the board on that on the 29th of August. Notwithstanding the referral to the SIU, there's an obligation on the board of directors as the accounting authority to recover the money. And I made it pretty clear in my presentation that despite the fact that you want to refer... because there's actually a formal board resolution to refer it to the SIU,... and I told them you need a presidential proclamation for that. So I tried to sketch out for them that they have obligations in terms of the PFMA and in terms of the Companies Act that they have to follow. I also told them, you know, that I am obligated to handover in the hope that, which I shall think I can do, that I am as I'm handing you the file now I should hand the same to the HAWKS, but I don't really have confidence right now that they will do anything about it.

[03h15:10]

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And, yes, I issued the letter of demand to McKinsey and Trillian. We served it personally to ensure that it was there, without, you would recall that Minister Brown said that she did not have knowledge of that Eskom was going to do so, it was deliberate. I did not tell anybody that I was doing it, except my CEO and I said... and I did this prior to my suspension, the very next day I got suspended.

Honourable Swart - Where is the process now?

Ms Suzanne Daniels - Anecdotally, I understand that the board is trying to discredit my report. They are trying to discredit the veracity of the Bowman's report and so that it cannot be used. There are 3 people on suspension as a result of that, but no action has been taken.

[03h16:05]

Honourable Swart - So there's no summons that has been issued but a letter of demand was issued in July, no further the action has been taken to recover...

Ms Suzanne Daniels - It was issued on the 5th of October, on the 4th or 5th of October. In terms of the litigation, I think, the deliberate... because I had recommended that we go to court, get the decision to pay set aside and because it's an action in terms of the administrative Justice Act, you know, that one and we needed to do that within 6 months of the decision been taken. At the time I could justify a month because you need to ask for condonation, 6 months from the decision would have been the 14th of August 2017. At the time I briefed the board it was the 29th of August because we then got... I've got all the forensic reports together it's not just one, and then took it as a package. But by now because of all the stalling I think a Judge or any Court would be hesitant to grant us condonation and therefore I don't believe, I find McKinsey's commitment to pay the 1.6 billion quite disingenuous, because I'm sure their lawyers have advised them that, you know, the time period for us to do anything is now expired. So Eskom will not get that court order in a hurry to actually get the money back. So that's what was done. I cannot, I've been on suspension since the 6th of October, my access to Eskom information has been severed. So I don't know what's happening right... [Inaudible]

Honourable Swart - Thank you very much, my time's expired. Thank you so much.

[03h17:50]

Ms L Mnganga-Gcabashe - You're welcome. Honourable Rawula.

Honourable Rawula - Thank you very much Chair, thanks Ms Suzanne. On this one I want your legal opinion as a person that was working aside there in Telkom... I mean Eskom. If you look at your paragraph 64 up to paragraph 67, looking for me it basically says you guys were bending the rules of the Pension Fund specifically to suit Mr Brian Molefe and then even the wording on the paragraph it says 'retirement arrangement', so there was an arrangement specifically for Mr Brian Molefe, so you were bending backwards and if you read it from 64 - 67 it indicates, gives a narrative of a communication of Mr Ben Ngubane, the Minister ensuring that you are able to bend these rules. And if you read from there, there was nothing from the Minister that was antagonistic to their proposals of the adjustment. As a legal advisor what has been your own contribution? And I'm raising this specifically because on the previous witnesses that we have had, both the CEO and also the CFO they were suspended without any proven wrong doing, and if it was a standard practice of Eskom it could have been extended, the same arrangement could have been made to them, but was never done, they were just suspended despite the fact that there were no proven allegations. So if you

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can just give me to that; that's one. And then, the other point that I want to make, on the 8th and 10th of November it says on your statement that Mr Brian Molefe announces that he's leaving Eskom, that's number one. On the same day the Minister spins it differently; he describes the leaving of Brian Molefe, that Brian Molefe is resigning. He spins it from leaving Eskom into resigning, that's number two. On the 11th of November Dr Ngubane spins it further, he says no, no, no, it's an early retirement; Mr Brian Molefe applied for early retirement, that's number 3. Number four; the Eskom media person comes back and gives a statement on the same day 11th of November, he said, Mr Molefe is stepping down and Mr Molefe indicates that he is doing that in the interest of good governance. Now I want to hear your legal opinion that the difference between these three versions or four versions, because one, like I said his resignation he's stepping...he's leaving Eskom, two his resignation, three is early retirement and other one is stepping down. Now I'm interested to the actual version, what is this, you see, because if these were the synonymous, please tell us, we want to know.

[03h21:19]

The third point I want to make on the...I think it's paragraph 90, it refers to reinstatement. Now the proposed adjustments or amendments which have been going forth and back with the Minister, you see, it says that it was proposed, but the reality is that they were actioned. They were actioned, these amendments were actioned in the sense that even the board of Eskom even went further to ask someone from the pension fund to enquire how much Mr Molefe will be paid should he step down earlier or should he not make the actual retirement time, and the estimate was given. Further to that on the 5th of May 2017 we hear here that 7.9 million was paid as a result of the proposed adjustment or amendments. So, my point I'm raising is that these proposed amendments to Mr Molefe were actually effected by Eskom, because the 7.9 million will not have been paid if that was not the case, which you saying further down that you then requested that Mr Molefe must pay back because on legal advice it was indicated that it's impermissible. But the point is, the process was already on going, you see. If you can just respond to that before I come in.

Ms Suzanne Daniels - I hope I understand correctly. In my personal capacity and not speaking for Eskom, yes, this was a bit for purpose arrangement and with that I mean I think that it was done specifically for Mr Molefe. There were the attempts to do the same thing for Mr Singh, Anoj Singh; however, because he was too young it wouldn't have worked. Yes, so I think the bending over backwards you are correct in saying it that way. The difference between the leaving, resigning, early retirement, that all in my view was part of the smoke screen to create the confusion that arose. But Mr Molefe did not officially offer a resignation letter. He did that statement in the media, which said 'I'm stepping down in the interest of good governance.' That's the statement that was then sent to all board members as well. The early retirement there is a letter and you'll find it in the file. That's the only letter on record as an employee that we have of his application for early retirement, because you have an election as an employee, but as you know now there are certain requirements, which he did not meet and the board was willing to subsidise that. The 7.9 million, all things being equal, if he had qualified for early retirement any pensioner I think you can take up to a third of what is due to you as a cash payment. And, therefore, it has to be paid back because he was not entitled to it, you know. As I said to you I was not called, and maybe I didn't make this clear, I was not called in to advise on these matters when they happened. You know, the first time I sort of got conscious about the import of this was when I opened the Sunday Times that morning, and then I started putting a file together. And it was at that point when the attorney and I were going through it, we realised but this oak doesn't qualify for this. And I distinctly remember saying, 'does that mean he is still an employee of Eskom?' Because, you know, for

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me that was then the reality, if it was null and void then that meant he was an employee at Eskom while being an MP here. So that was the difficulty. So I hope I've answered your question.

[03h26:04]

Honourable Rawula - That's fine. Let me run on these ones for you. The prepayment of 586 million by Eskom to Tegeta of a contract of 2... 15 billion. I want to ask from you, was it a standard practice of Eskom to do that to its contracts, that is the prepayment to do pre payment? And then also was it part of the contract that Eskom concluded with Tegeta? Ja, if you can just comment on that. The other one we also received from the business rescue practitioner that because of your responsible for contracts, you see, there was a contract which Eskom had with Phembani but for some reason Eskom was not happy with that contract and the sighted reason, there was no specific reason other than that they did not have the capacity that was envisaged. But at the very same time there was a contract that they preferred which was of Tegeta. Will that be...will that have been informed by the fact that the Tegeta was favoured because of it was a company that was linked with Gupta's. My other one, I think it's the last one Chair. The evidence that was led by the former CEO here...former CFO about Mr Collin Matjila who was a CEO; that he pressured her to out the procurement processes and as a CFO she refused. She was even forced to sign a contract of 43 million, which she believed that it was going the procurement policy, which basically are the basis for her suspension and also the suspension ultimately of the CFO. Now, I want to check because you were also ultimately suspended probably 5 months later, because on the 2nd of October or ... [unintelligible] Now, you as a legal person what has been your role, because I see that on paragraph 14 you are responsible for ensuring that the board was complying with legal prescripts, and I want to believe that because of they were suspended without any wrongdoing that was a going of the law. What has been your own role, and whether you personally you will not on hindsight don't think that perhaps you could have on the basis of your own personal ethics and professional ethics you should have resigned earlier or blow a whistle against the wrong doing that was taking place. Thank you very much Chair.

[03h29:31]

Ms Suzanne Daniels - I'm going to deal with my own role first and then work backwards. I think there needs to be clarity; I have only been... I was a chief in legal advisor at Eskom in the primary energy division in 2006. I became contracts manager in the primary energy division from 2009 to 2011 and then I went to work as a senior manager in the office of the group executive. So my role changed along the way. I only became group company secretary on the 1st of October 2015, and I took over at the request of Eskom, I took over the acting role of head of legal when Neo Tsholankule. So during the 2015 issue I was a senior manager in the office of the group executive, so hence, I reported the matter... reported the issues to done Dan because Matshela was my boss but he was there at Melrose Arch, and Dan was the affected party and I spoke to him about it. In respect of, so, in respect of Collin Matjila, he did not pressure me into signing any contracts, what he did do was ask for... I was also head of the... I was chairperson of the supplier suspension committee where we deal with errant suppliers and one of our suppliers had committed fraud. So I'd, with my committee, we went through the process and we in effect blacklisted them.

[03h31:39]

So that meant they couldn't do business with Eskom for the 5 years or, it was a period of time. He wanted me to uplift that suspension and I refused and he threatened to fire me that day, and I said, 'go ahead.' So in that instance that was the only instance that he's forced me to do something that I didn't want to do when you

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didn't succeed. In terms of Phembani; I am not aware that we entered into a contract with Phembani. What I do know from the records is that Phembani approached Mr Molefe; I think it was the Phuthuma Nhleko approached Mr Molefe to sign a contract. They were interested in buying Opium and they wanted some terms, but that is not... that was not presented to us as Eskom, I only found out about that in, I think, it was in the public protectors report. In terms of prepayments; yes, we do do that to suppliers across the board. There are strict rules about it and in this case we did apply those rules. I had the share certificates, they pledged it. It was only the guarantee was in place, it was only upheld once the money had been set off against the coal delivered. But it is... it is unusual in this case because of that we clearly favoured Tegeta in this situation, because it helped them by Opium.

[03h33:37]

Ms L Mnganga-Gcabashe - Thank you very much. Honourable Nobanda.

Honourable Nobanda - Thank you Chair. Ms Daniels, I'm interested in the meeting with the Guptas, can you please repeat who was in that meeting where there was Ajay Gupta.

Ms Suzanne Daniels - It was Mr Ajay Gupta, Mr Duduzane Zuma, Mr Salim Essa, Deputy Minister Ben Marais and a lady whose name I just can't remember.

Honourable Nobanda - Ok, and the meeting on the 23rd of May, I think, 23rd May with the portfolio committee on Public Enterprises at Townhouse Hotel that you were part of with Mr Ngubane and some of the Eskom board members, in that meeting I think it was Mr Ngubane mentioned that Molefe... Mr Molefe qualified for whatever payment that he was supposed to get for the... from the pension fund and you were part there, and on that meeting you were there, you are assisted with the calculations in explaining the calculations of how you came about to the 30 million. If today you are saying those calculations and everything that was done then was wrong, but you were also part and you were in that meeting also but you didn't say anything to us then, because I remember there was a time when one of the members asked that every person there from Eskom to shed light on the meetings and on the Brian Molefe thing, why should I for instance believe that what you are saying now regarding this thing with Mr Molefe is true, why should I believe what you are presenting to me now. You have your dates, you have your minutes, you have your everything but from the previous meetings you never said all these things that you were saying how it was wrong, how it was fraudulent, he didn't qualify and all that. And today you are saying to me, to us, that we should believe that you are saying it was wrong.

Ms Suzanne Daniels - At the time I did not have all the information that I have at my disposal right now we went through an extensive process of looking for documents and then putting it together. This is the file that I put together on the Molefe matter and you will appreciate they come from very different departments and all over. So, whatever I have told you I can verify and fact. Had I known that at the time, I would say so I would have said so.

Honourable Nobanda - So if at the time you did not have the information that you have now, that means if Mr Molefe was paid whatever it was paid and if everything had gone according to plan, whether it was his plan, Eskom or whoever's plan, then it means you would have been part of that plan, whether it was wrong then or wrong now.

[03h38:34]

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Ms Suzanne Daniels - I don't agree with you as my role as company secretary is administrative and in terms of this transaction I was not asked for advice on the matter... [Interrupted] 'Gentleman you are... sorry madam.'

Ms L Mnganga-Gcabashe - Please members, ok.

Ms Suzanne Daniels - So I was not asked at any time to give advice on this. In these meetings I recorded the advice. I support your theory in terms of had, had the Sunday Times not published this we would not have been any the wiser; is my view now with the benefit of hindsight and what I know now.

Honourable Nobanda - Your statement paragraph 20, where you're saying the board decided to suspend you as their first task, what do you think made them to suspend you as one of their first task, if it's a new board that has just come in and all that. And number two; no it's fine Honourable Mazzone asked this one it was about Mr Ngubane. Ja, why do you think the board, the new board just decided that one of their first tasks was to suspend you? What do you think... what is it that you think you have or you had that they, it made them to suspend you as one of their tasks.

Ms Suzanne Daniels - I'm sorry, my paragraph 20 says the first bullet was launched when on the instructions on the interim board chairperson Zethembe Khoza.

Honourable Nobanda - It's where you're saying they recommended a disciplinary against you. Didn't these disciplinary actions that they had recommended you...recommended for you, are they not the ones leading to your suspension or was that a different matter or I'm not understanding.

Ms Suzanne Daniels - You see, if I can... [Interrupted]

Honourable Nobanda - Or start from bullet 19 because your heading says, 'circumstances leading to my suspension,' maybe I'm not understanding that whole part.

Ms Suzanne Daniels - What I was saying here is that my role became a little bit more...it became increasingly difficult with the new board. The first meeting on the twenty...they were appointed on the 23rd of June and I think we had a meeting the following week. My first task from the new board was-

[03h42:54 - END OF DISK 02]

[00h00:00 - START OF DISK 03]

Ms Suzanne Daniels - ... gone. Mr Khoza at a board breakaway announces that, you know, the Board has decided that the Group Company Secretary and the Head of Legal cannot be one person, and I must choose - and knowing full well that I had already chosen, in March of that year, to be the Head of Legal. But because of the organisation it only became effective. And during this period, because of the Molefe matter and the governance issues that we did raise, you know, in terms of finding out that the resolutions, the decisions taken were actually irregular, the Chairman of the Board asked the Chief Audit Executive to do an investigation on the governance issues. And it was that audit executive that then recommended to the Board, without my knowledge, that I be suspended. That was on a different charge. So you got it a little bit right. And that is where, I picked it up in...as I was preparing for the Audit and Risk Committee. And in there it said that we had back-dated minutes and that we had not, you know, we haven't done certain things. And I said to Anna-Marie van Der Merwe, she's been a company secretary for 30-odd years, you know: "We've never had problems with our minutes - what was the issue?" We provided a detailed response to the... to Mr

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Gounden and his colleagues and to this day we have not received any response to that. But, you know, then I get an e-mail that says: "Oh sorry, I made a mistake!" from the audit executive. And I said: "I'm sorry that's not acceptable! You will go back to Board and tell them that this is wrong!" He was subsequently requested to amend the submission, but that doesn't deter from the fact that there was a concerted effort to, you know, not...to get me out of the way.

[00h02:33]

Honourable Nobanda - Thank you Chair. My last question. Why do you think Mr Koko was so comfortable to take you along to these meetings you had with Guptas - I think there are two of them if not three?

Ms Suzanne Daniels - I was the person in his office, so for want of a better word, chief of staff. But I must point out that these were, you know, ad-hoc meetings. And they weren't actually meetings. The last one that I went with him, he said to me we are go and discuss IPP's, and then we end up at the offices of Trillian. I then have to wait outside while he meets with Mr Essa and Mr Wood. So it's...you know, it's not formal. I think he must answer why he took me along. We never got to discuss why?... how?... there were no actions for me! So I don't know. I think you just wanted to also show off who knows!

Ms L Mnganga-Gcabashe - Thank you very much. Honourable Gungubele. Oh yes...yes it's you.

Honourable Gungubele - Ms Daniel good afternoon. Just few think I'm going to ask. Because I think a lot of things you're saying, they seem to be clear. All what we need is to get more verify...verification documents. There is this meeting where officials were supposed to be suspended and Koko escaped. What is the background behind that escape?

Ms Suzanne Daniels - Mr Koko's strategy was that he was...while the other executives...sort of immediately decided to leave, Mr Koko's strategy was to wait it out. And as the People and Governance Committee was dealing with these issues, you know, they designed kind of in sequence - so Mr Koko was the one left. There was a meeting with him where he was asked to motivate why he should, you know, why he should stay. And he prepared a written submission...pardon me...I will check if I have a copy of that in my records. But what I recall is that after that, the Board was ostensibly convinced that he was sincere and that he wanted to come back.

[00h06:06]

Honourable Gungubele - Is the relationship between Mr Koko and the current chair of the Board purely professional?

Ms Suzanne Daniels - In my view, no.

Honourable Gungubele - [on-mike] Can you tell us further?

Ms Suzanne Daniels - The amount of times that they talk to each other...I don't know about now. But in my direct...pardon me...I in my direct experience...during the disciplinary...I mean, Mr Zethembe Khoza was quite honest...

Honourable Gungubele - [on-mike] Honest towards?

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Ms Suzanne Daniels - Towards me in terms of what I wanted to do. He was interfering in, you know, the charges, and you can see the appointment of the case presenter. He was really just too operational to be the chairperson.

Honourable Gungubele - There's a general allegation that the current Board...I hope I'm still talking about the board that was appointed after Molefe's reversal...but generally...is Gupta Board...Your comment...on that allegation?

Ms Suzanne Daniels - In my view, yes. You...I think so too. Certainly this current Board and the previous board - in my experience, because those are the Boards that I've worked with closely. One of the directors, who I have agreed with Mr Vanara, I will provide the name to him - one day, you will remember when they started, the banks started closing down people's... or you know querying people's accounts and money flows and etcetera, - one of the directors phoned me for advice and she was livid because I think she had been declared a Politically-Exposed Person. And during the course of this conversation, because she felt that the Board wasn't doing anything to support her etcetera, etcetera, she then said to me: "We all know that this is a Gupta-run Board and that we all know that we take instructions from, you know, from the Gupta's. So if these guys think I'm going to go down, I will tell on them."

[00h09:13]

Honourable Gungubele - How critical is Mr Khoza in this Board, being the conduit for Guptas?

Ms Suzanne Daniels - Well I think in his previous role as the chairperson of the Board Tender Committee, a lot of these transactions went through, un-opposed, round-robin resolutions, ad-hoc board committees, meetings that I had to call on a moment's notice. So, you know...the ground was there. As the chairperson, I think...I'm not so sure about his actions. But for a non-executive chairperson - he's been in the office everyday - that's unprecedented.

Honourable Gungubele - You see what I'm interested in Chairperson. I suspect it would assist the Committee, if we can be given this...all the CV's of the current Board - just to... to ascertain if they were professionally appointed. I will leave that. There's another thing that I want to...to clarify me in - is - I'm not very good in numbers. This pre-payment of the April at night, which you were reluctant to attend - what is this pre-payment? Can you explain it - 600 million and what?

Ms Suzanne Daniels - In simple terms it meant that Eskom gave the supplier the cash.

Honourable Gungubele - Why?

Ms Suzanne Daniels - Ahead of supply.

Honourable Gungubele - Why?

Ms Suzanne Daniels - The reason on paper was that if we were going to ask them for more coal, they needed to fund their operations.

Honourable Gungubele - If you what?

Ms Suzanne Daniels - If they...we asked them for more coal...

Honourable Gungubele - Yes.

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Suzanne Daniels - ... earlier. So they needed to buy mining equipment.

Honourable Gungubele - So they don't have cash?

Suzanne Daniels - Yes...

[00h11:24]

Honourable Gungubele - But is it... [o -mike unintelligible]... this one was deposited to Tegeta?

Ms Suzanne Daniels - That's correct.

Honourable Gungubele - Tegeta which was not owning any... [O mike] [Mining at that me?]

Ms Suzanne Daniels - They did own other mines.

Honourable Gungubele - But was it for the purpose of those mines or...?

Ms Suzanne Daniels - No. This was for the purpose of Op mum

Honourable Gungubele - Which they were not owning?

Ms Suzanne Daniels - Which they did not own at that me.

Honourable Gungubele - Did you dra the contract?

Ms Suzanne Daniels - I dra ed the Pledge and Share Agreement.

Honourable Gungubele - Did you not see anything wrong there?

Ms Suzanne Daniels - I must admit that didn't even enter my mind. But because, you know, when you have cross-supply, because they were supplying from Hendrina to Arnot and vice-versa, you know, it was plausible. With the bene t of hindsight now, I would have looked a lot closer.

[00h12:22]

Honourable Gungubele - So you agree that there could have been a legal oversight on your side?

Ms Suzanne Daniels - I wasn't the lawyer then. But I drew the share....I was the company... [Overtalk]

Honourable Gungubele - [overtalk] In what... yes. Just switch o that. [o -mike, unintelligible]... Company Secretary. You will correct me if I'm wrong - your primary func on being to advise on corporate governance impera ves. And fortunately, being legally trained. So in other words - primary func on - corporate governance impera ves - also legally trained. Naturally, I think to an extent, you must accept there must have been oversight on your side?

Ms Suzanne Daniels - No, that I accept. I will not quibble with that. The focus was just to make sure that we had security for it.

Honourable Gungubele - Can you tell me more about the guarantee of 2.1 billion? What was the story behind? There's this guarantee. Is it 1.6 billion or 2? Can you tell me what of there... which involves Absa? What is the narra ve behind it again?

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Ms Suzanne Daniels - On the face of it, you know, Matshela Koko wrote to the Department of Mineral Resources - the D-G. Said: "We have a problem." D-G wrote back said... [Overtalk]

Honourable Gungubele - When would any company need that?

Ms Suzanne Daniels - You see, usually what happens is they would use the Eskom coal contract as a surety. It's a little bit unusual for Eskom to have given the guarantee to a supplier.

Honourable Gungubele - Is it unusual or is it wrong?

Ms Suzanne Daniels - I'd say it's wrong.

[00h14:18]

Honourable Gungubele - So who drew that one? Who did the documents...documentation for that one?

Ms Suzanne Daniels - That was the Treasury.

Honourable Gungubele - You were not involved there?

Ms Suzanne Daniels - No. My last point is - call it DC whatever around Koko Matshela. What was the role of the...was it Cliffe Dekker...what is this company? Yes. Who procured that company?

Ms Suzanne Daniels - I did from our panel. They investigated the conflict of interest plus the Whistleblower report.

Honourable Gungubele - Did you think procuring that company was a, in terms of corporate governance, it was a prudent decision? Into account that, that company you guys have sourced, that company a number of times. For that exercise did you think that was a prudent decision?

Ms Suzanne Daniels - I think with the benefit of hindsight, I would have used another company.

Honourable Gungubele - Thanks.

Ms L Mnganga-Gcabashe - Thank you members. At this point I just want to announce that our application for extension to sit has been approved formally, but with a condition that we are back in the house by 6 o'clock...it's 18h00 hours, today. And it means I would like to adjourn the meeting 15 minutes earlier, so that we have plenty of time to walk towards the house. And I would advise that remaining members come yourself maybe to at least not to use more than 5 minutes questioning and then allow the witness to respond... to give her another 5 minutes to respond. If we could manage that, we'll be able to finish with the three left, within the thirty minutes that we have. Please may I have your co-operation? Thank you very much. Having said that, Honourable Gordhan you are the next.

[00h16:39]

Honourable Gordhan - Thank you Chair. Let me play devil...devil's advocate - it might help all of us - for a short while. What if it is put to you that...that you, inverted commas, 'spilling the beans' because of the suspension rather than because some things were genuinely wrong? No...you go ahead. I can hear you.

Ms Suzanne Daniels - Oh. Okay. I know...I am fighting the suspension. So I believe in the institution. I actually would like to go back to work. I would like to be part of the clean-up of Eskom. So I have, whatever I have

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said here today, other than where you have asked me for my personal opinion, I have made sure that I can back up by documentary evidence. So you'll see I have lots of files for the Advocate. But I have made very sure that whatever I have told you, other than the personal anecdotes, that I can back up - so that to show you that this is not an act of vindication...what's the word? This is not a vindictive action on my part.

Honourable Gordhan - If Mr Koko comes along and says he knows nothing about taking you to Melrose Arch, and if Mr Essa comes along and says he never had coffee with you and it's untrue that some people were in T-shirts and whatever. How would you rebut that?

Ms Suzanne Daniels - Unfortunately I won't be able to rebut that, because it's my word against theirs. But certainly if you look at the evidence. I mean that they've also said that the Gupta leaks are not true and we know that they are. You know, so it's a question of you making up your mind as to whether you believe me or not.

Honourable Gordhan - Mr Gounden, who's the chair of the Audit Committee, flows constantly through your statement. If you had to sum up his role? He's a chartered accountant who...in the news at the moment. Has he operated with the right level of integrity on the Board and in that committee?

[00h19:22]

Ms Suzanne Daniels - In my view, no. He is very much tied to the influence of Zethembe Xhosa. And, as an illustration, when I presented...when I presented the Trillian Report to the Audit and Risk Committee, he was prepared to allow Anoj Singh to sit in while I presented. And I, you know, at that point that just lost respect.

Honourable Gordhan - What exactly in your report that was given to the Minister, the so-called 'issues' that is referred to there? What are those issues?

Ms Suzanne Daniels - [on - mike]... There were four issues. The first one was around, she said from the report it appears that there was a complete failure in audit controls. And I agree with her there, because the report by the Chief Audit Executive said the McKinsey-Trillian deal was above-board, complied with all processes, etcetera, etcetera, and the only thing that was required was a Termination Agreement. The second question that she asked was why did we not put in place a contract with Trillian? And my answer to that was, because there was no legal or contractual obligation for us to do so. The third issue was that she said it appears that the Legal Department had no role in the contracting process. That was in fact untrue. It was dealt with by my predecessor. He raised all the issues. The compliance people raised the PFMA issues, and there was in fact a opinion by Advocate Kennedy that the contract that McKinsey...between McKinsey and Eskom...the proposed contract was actually...did require Treasury approval for the deviation. But notwithstanding all of that, the executives went ahead and the BTC approved that entering into that contract. The...I think that's...The fourth one was, she wanted us then to prepare an explanation as to the executive ethics committee as to why she had lied to Parliament.

[00h22:15]

Honourable Gordhan - So... why... why suspend you? Are... are they saying you're incompetent?

Ms Suzanne Daniels - Well it says I ought to have known about this contract. I ought to have advised the Board. And if you look at the time periods - I'm very aware that the Board thinks I'm God, being omniscient and all of those things. But the first time that I actually, you know, became aware of this was on the 5th of December 2016.

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Honourable Gordhan - Last two points. Why would Mr Dladla take the trouble to come and deliver your suspension letter personally to you, at your residence. Sounds like a tremendous honour.

Ms Suzanne Daniels - I think he was under enormous pressure to suspend me. But I must be honest, I expected it from the day that I handed in this report. So...

Honourable Gordhan - That's the report on Mr Molefe?

Ms Suzanne Daniels - No this is the report... the Trillian McKinsey Report.

Honourable Gordhan - Trillian Mckinsey Report.

Ms Suzanne Daniels - Yeah. You know, so I think...because he needed to go back and say he had done it...

Honourable Gordhan - From your knowledge of the Companies Act, let alone the PFMA, are the current and previous directors of the Eskom Board capable of being reported for their lack of diligence, amongst other things, to the CIPC and declared - what do you call them?

Ms Suzanne Daniels - Yes definitely a delinquency application... [Overtalk]

Honourable Gordhan - [Overtalk] Delinquent directors...

Ms Suzanne Daniels - [overtalk]... would have very much merit in this instance.

[00h24:07]

Honourable Gordhan - And then lastly Chair. I think we should write to the office of the Gauteng Judge President and inform him that the DJP's office came up in our discussions in the context that Ms Daniels presented it to us - so that they are aware of the abuse of these sorts of things in the context of State Capture thank you very much.

Ms L Mnganga-Gcabashe - Thank you for saving me minutes and Honourable Marais...or Marais...

Honourable Marais - Thank you I'll save you a lot of minutes. I've got one question to ask. Just to get to the gist of it with the Deputy Judge President, because you indicated on...around setting a date. But isn't it also the task of the Deputy Judge President to allocate cases to judges, because that is actually the crucial point. Because he can decide which judge to give this case to.

[00h25:23]

Ms Suzanne Daniels - Mr Marais yes that is an important point that I've omitted to stress. And I think that's why it would have been important for them to know the process. Ja... that is true

Honourable Tseli - I...I...

Ms L Mnganga-Gcabashe - Honourable Tseli it's your turn.

Honourable Tseli - I don't want to assume that yourself, as a legal person, in the course of you performing your duty, the advisor role... [Overtalk]

Ms L Mnganga-Gcabashe - [overtalk] Your mike Honourable Tseli. Oh it doesn't show the light. I...

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Honourable Tseli - Ja.

Ms L Mnganga-Gcabashe - Is it working? It's functioning?

Honourable Tseli - But it's on...it's on

Ms L Mnganga-Gcabashe - Oh it doesn't show the mike...the light. Okay...no it's fine.

Honourable Tseli - Okay. I was saying I don't want just to assume, that in the course of you performing your duties as an advisor to the Board, you'll do it in writing?

Ms Suzanne Daniels - I have done some memos, especially around the McKinsey-Trillian. I have them in writing and I have put...it will be provided in the...in the file.

[00h26:41]

Honourable Tseli: In the case of the 'Brian Molefe saga'. And in your own words, the meeting you had with the Minister. In your own words: "The Minister says not happy with the pension arrangement. Go and negotiate any other better or reasonable pension arrangement." Did you advise in writing as to which one will be a better arrangement?

Ms Suzanne Daniels - Yes that is all in writing. We have that.

Honourable Tseli - Okay. The business rescue practitioner process that we spoke about earlier, and I'm sure my colleagues told you that business rescue practitioner was here some time last week. Under normal circumstances, you in your capacity as a Company Secretary, were you not part...were you not supposed to be part of the processes of the business rescue practitioner negotiations around the 600 million shortfall?

Ms Suzanne Daniels - No I would not have been as my role is administer...administrator of the company. So at that stage I was not part of it. I do recall being called to one meeting with...but Matshela wanted notes taken of the meeting. It was a meeting with the business practitioners, and I think Nazeem Howa was there and the people from Primary Energy.

Honourable Tseli - Paragraph 67 - the amendment of the rule or the relaxing of some of the rules around the pension issue. Your comment on that one? Is there anything wrong in that particular arrangement?

Ms Suzanne Daniels - It actually didn't. The relaxation of the pension fund rules, that actually did not materialize, because the Board was not authorised to do so. You know the...this pension fund is administered by separate Board of Trustees. Any amendment to the rules gets done there. The best that they could have done was to ask the Pension Fund certain questions.

[00h29:23]

Honourable Tseli - Was that the only incident since you started working in the company that you come a situation where a rule has to be amended to address a particular aspect? That is the last one Chair.

Ms Suzanne Daniels - No it wasn't and that's why, that one, I was quite relieved that it could not be done. I'm not a pension fund expert, but I was glad when the Pension Fund said: "No that can't be done."

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Honourable Tseli - No. My question was not necessarily on the pension issue. I'm saying since you started working for the company, was that the only incident where a rule has to be amended to address a particular aspect in the course of you doing the job that you're doing in the company. Was...has it happened before?

Ms Suzanne Daniels - Yes it has. There have been executives who have retired. But the difference in this instance was that Mr Molefe was a contracted employee. There are a number...I think there were about seven senior executives who took early retirement.

Honourable Tseli - Thanks Chair.

[00h30:40]

Ms L Mnganga-Gcabashe - Thank you very much. You're most welcome members. Ma'am thank you very much for your time that you've taken to come to interact with this portfolio committee that is holding an enquiry...oversight enquiry and on governance of Eskom. And also your co-operation with us - it has been a long day and we value that very much. Your contribution will assist a great deal for Members who have a better understanding on the workings of your company during your tenure. We wish you a safe journey back to your destination. Once more thank you very much. You are excused. Oh yes, thank you. We have noted at all your proposal on both days and I think our legal desk would look at it and advise accordingly, and I think by then the Chairperson of the Oversight Enquiry will be back and we'll take it from there. And the meeting is adjourned. And thank you the guests that has been with us up to this far. And let's go back to the house. I'm told by Honourable Rawula that he went to debate. So there's a debate inside the house, so it's very important for us to go back to the house. Thank you very much. Let me also thank our personnel team who has been with us this far. Thank you so much.

[00h32:51 - END OF AUDIO]

[00h33:57 - END OF DISK 03]



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Public Enterprises

31 January 2018

Chairperson: Ms Z Rantho (ANC)

Meeting Summary

Deputy Minister for Public Enterprises, Mr Ben Martins, in his testimony, disputed Eskom's suspended head of legal Ms Suzanne Daniels's claim that the two had a meeting with Mr Duduzane Zuma, Mr Salim Essa and Mr Ajay Gupta at Melrose Arch on July 29, 2017. Mr Martins said that on that day he attended Mr Ronnie Mamoepa's funeral. This was backed by evidence from his official diary.

Mr Martins clarified that he had met the Guptas with former Prasa CEO Mr Lucky Montana. "I had organised the interaction with Mr Tony Gupta, Mr Duduzane Zuma, and Mr Lucky Montana where issues of Prasa were discussed. I never insinuated that Mr Montana organised the meeting". In his submission recounting events of the meeting, Deputy Minister Martins said: "Mr Montana arrived first at the meeting. The issue of Prasa's board was discussed between myself and Mr Montana before the arrival of Mr Tony Gupta and Mr Duduzane Zuma. At the time there was talk and rumours that Mr Buthelezi and Mr Montana were going to be removed as the chairperson and CEO of Prasa respectively. I assured Mr Montana that I would not support his and Mr Buthelezi's removal as there was no basis and justification for it. Shortly after this meeting, Mr Tony Gupta and Mr Duduzane Zuma arrived at my residence."

In his testimony the day before, Mr Montana told the Committee that Deputy Minister Martins, in an attempt to clear his name and distance himself from the Gupta family, created the impression that Mr Montana brought members of the Gupta family to Mr Martins.

Members asked Deputy Minister Martins why the Guptas felt comfortable to meet and talk about a tenders with Ministers/Deputy Ministers were had busy schedules and it was difficult even for Members of Parliament to arrange meetings with them. They asked if the Gupta request about the plane carrying wedding guest was a one of its kind for the then Transport Minister.

The Chairperson for the Inquiry, Ms Zukiswa Rantho, asked Mr Martins to apologise to the Committee for the media reports where he referred to the Inquiry as a kangaroo court. Mr Martins said he had never regarded the Inquiry as a kangaroo court, and requested he be provided with proof of his saying this. "I have never ever said that this Committee is a kangaroo court. I would like whoever has articulated this to provide the requisite proof. It is not the first time I've heard this," said Mr Martins.

Meeting report

The Chairperson clarified to the media and all South Africans that Mr Lucky Montana had come to clear his name because he was mentioned by the Deputy Minister of Public Enterprises in a media statement. Mr Montana did not come to the Committee to deal with Prasa. Although he had mentioned a lot of things dealing with Prasa, this entity did not fall under Public Enterprises, but rather under Transport.

The Chairperson welcomed Deputy Minister Ben Martins and read the affirmation to Mr Martins.

Mr Martins affirmed to tell the truth before the Committee.

Mr Martins said that he had prepared a statement which was provided to Members. He opted to read his statement in its entirety before the Committee so as not to leave anything behind.

The Chairperson granted Mr Martins time to read his statement.

Witness: Mr Ben Martins

Mr Martins read his statement to the Committee.

Chairperson: Thank you Honorable Deputy Minister for the statement you have read. I will now hand over to the Evidence Leader.

Adv Vanara: Thank you. I would like us to go to your letter of 5 December 2017 addressed to the Chairperson of the Portfolio Committee on Public Enterprises Ms Lungi Mnganga-Gcabashe. You are responding in this letter to a letter dated 30 November 2017. You

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acknowledge been furnished with a legal opinion, and you say you had not at the time managed to obtain advice on the opinion. Can you see the third paragraph where you say "I have not had an opportunity to seek legal advice on the legal opinion you provided".

Mr Martins: That's correct.

Adv Vanara: I just want to find out if you have subsequent to this matter obtained legal advice on the opinion that the Committee received from Adv Wim Trengrove Senior Counsel (SC)?

Mr Martins: On the legal advice of Adv Trengrove, the Senior Counsel to my right spoke about it to me.

Adv Vanara: Is there convergence on the opinion or is there difference of opinion to that of Adv Trengrove?

Mr Martins: From what I recall SC Lebala next to me said there are portions of the legal opinion of Adv Trengrove he agrees with, but there are other matters he has a difference of opinion with what's written there.

Adv Vanara: On administrative justice applicability to this process, was there convergence or disagreement around that, you can consult SC just to refresh your memory around that, sir?

Mr Martins: SC says there are aspects of the legal opinion that he differed with. I would request through you Chairperson that he articulates what the differences are because he knows them better. He is the one who told me what differences he had with Adv Trengrove. That will make it easier.

Adv Vanara: Was SC's opinion in writing or verbal advice?

Mr Martins: It was both. He did furnish a copy in writing and he spoke to aspects of that.

Adv Vanara: It is fine, all I wanted was for SC to speak on applicability of the administrative justice principles to this kind of an inquiry. That's all that I want a view from SC.

The Chairperson: SC to respond

Adv Lebala: Thank you Members of this important august forum of our democracy. Certainly an opinion of SC remains an opinion. My colleague Wim Trengrove SC esteemed is a SC and I am a SC. My clients were advised of the differences in the interpretation of procedural facts. To summarise and assist this forum, the interpretation of the principles of procedural fairness are not unique to this important forum. This forum does not have its own principles that govern procedural fairness. What has always bewailed the ministry and in particular Minister Lynne Brown and Deputy Minister has been how the processes in particular of implicated persons in as far as this forum is concerned were handled.

Let me give an example, implicated persons' versions were not put before witnesses. Throughout my seating where I attended this important forum I have never heard the Evidence Leader saying to one of the witnesses "You are implicating Deputy Minister Ben Martins". I had the duty to consult Deputy Minister Ben Martins after speaking with you because this process limits cross examination. Be informed that during my consultation with you when you are implicating Deputy Minister Ben Martins and or when you are implicating Minister Lynne Brown I had the duty to go and consult with them and tell them how you are implicating them. I also had the duty to put their versions to you as an implicating witness. That's a typical example. Fundamentally, that's one of the most bawling concerns that my opinion had to deal with, and my interpretation of what fairness entailed in that regard differed completely to that of my colleague, esteemed Trengrove SC.

To summarise it Adv Vanara, my opinion says you had an obligation together with members of this forum when you consult with a witness that you avoid one version. The standards and principles of administrative justice and fair administrative processes and procedures call upon you when you consult with a witness to say, "You are implicating Lebala". Let me give a hypothesis. The processes of this forum do not accept Lebala to cross examine. I have a duty to put the version of Lebala so that one version should not be heard. And that's the basis upon which I differed with Trengrove SC, and that's what I have been advising the Minister and Deputy Minister from the onset that let your versions or the versions of any witness also be put. And remember that's just my view as SC. Trengrove is entitled to his own opinion, and I am entitled to my own opinion. In conclusion I say respectfully before this forum that I think the standards of fairness fell short in line with that important premise of our democracy that says administrative fair procedures cannot be lowered.

Adv Vanara: Thanks, Counsel, and as you have said it, it is matter of two different opinions provided to different set of clients, and the clients acting in accordance with the advice from their lawyers.

Adv Lebala: Adv Vanara with respect may I close...

The Chairperson: With due respect Adv SC Lebala we give people time to respond to any question and those people give other people time to respond. You are getting into Adv Vanara's mouth. You should give him a chance to speak and then if he still wants you back, because we are not here for you. We are here for Deputy Minister. In fact this is just a fair process that you are given to respond to what Adv Vanara is saying on legal administrative issues. So you are not here to interrogate anyone. Over to you Adv Vanara.

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Adv Vanara: That is fine. Thanks for the clarity. Back to the Minister, in your initial submission, I think it is part and parcel of the documents that you have been given. It must be the second document which is your submission that you made in December together with the latter. You made reference to three set of letters and the one was 9 August in which the Minister had requested clarity on procedural fairness to the Committee. Can you see that, it is the second page of your submission?

Mr Martins: I can see that. 1.2?

Adv Vanara: Yes you are correct Deputy Minister.

You seem to take an issue that this letter was not responded to at the time. Was the Deputy Minister aware that during this period, after the Committee had taken a decision to institute this inquiry, that the Committee struggled to get technical support in implementing its decision inquiry?

Mr Martins: I was not aware of that.

Adv Vanara: Notwithstanding that the Parliamentary Liaison Officer (PLO) and other officials of the department were in attendance of the Committee meetings?

Mr Martins: I was not aware of the challenges that you had of organising responsibility. I was not privy to that information.

Adv Vanara: Further, on the issues raised in that letter, is the Deputy Minister prepared to concede that these were legal matters in nature that required the Committee to be advised legally?

Mr Martins: Yes.

Adv Vanara: The timeous response to the letter if you were to be told that these were as a result of technical support to the Committee at the time, would the Deputy Minister's stance change from the initial position of saying these letters were not responded timeously?

Mr Martins: That would be a reasonable response. The other issue we should also take cognizance of is that the letter was written to your office by the Minister and that the response to that was expected by the Minister, and the information that I had was that the letter was sent and there had been no response to it. And from the side of the Minister I got no further information whether there was a response or not, nor did she intermit to me that she was aware of the challenges that you had. With the background that you have given, if a response of this nature was given, it would be appropriate for any reasonable person to understand why there wasn't a letter forthcoming as soon as possible to explain what the challenges were.

Adv Vanara: Then there was a second letter. I see you are referring to it in paragraph 1.3 as the 16 October. I assume that you are referring to the letter that dated the 13th which got to Parliament on the 17th to which there was a response which you referred to in 1.4 on page three of your submission dated the 20 October 2017. In other words the second letter was responded to. I want us to go to paragraph 1.9 on page four of your submission Deputy Minister where you say in the Portfolio Committee's response to the Minister's letter, the Committee indicated that in the event that a witness implicates an individual, that individual will be notified and may attend the proceedings: "I was not informed that Ms Daniels would implicate me and I was not requested to attend the proceedings". And this is an issue that SC has taken up. Before we can deal with this, there is a tweet that was attributed to Deputy Minister. I just want to read it to confirm whether it was indeed your tweet. And this was on the 9 November 2017 after Ms Suzanne Daniels had testified. It appears as 'Dikobe Ben Martins' @dikobebm where the tweet reads: "There are many ways to kill a man. The only ammunition you need for character assassination is to allege a phantom meeting with a Gupta without any shred of proof and then drown what is left of your conscience with a glass of whiskey". Can this tweet be attributed to you Deputy Minister?

Mr Martins: If you tweet something it remains as a record so I'll have to check the record of my tweets for 9 November. Offhand it sounds like something I might have written, but I will have to check the veracity of the framing of the wording there.

Adv Vanara: When you come to the conclusion that Ms Daniels testimony implicates you, is it because of legal advice that you sought or a conclusion you came to on your own?

Mr Martins: If I understand what you are saying, did I come to conclusion that she implicates me as a result of my assessment or legal advice that I receive, my response is that on the basis of her testimony placing me in a meeting I was not, that implicates me to some form of meeting that I was not party to. That's my assessment.

Adv Vanara: So you had not sought legal advice on this matter, you on your own assessed the situation and decided that this was implicating you?

Mr Martins: From the information in front of me, this is the conclusion that I came to. Why would somebody place me in a meeting I was not, what's the motive of this?

Adv Vanara: In your understanding, what is that you were implicated in, was it just a mere presence in what you term a meeting?

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Mr Martins: My understanding, my recollection of the testimony given to the Portfolio Committee is that there was a meeting and at that meeting the Brian Molefe matter was discussed, the Deputy Judge President's Office was discussed as to how the date could be postponed to a later period or after a certain period. All that, it's my view that it placed me in a context I would not be where you discuss how to undermine the Office of the Deputy Chief Judge President.

Adv Vanara: This was Ms Suzanne's testimony before the Committee specifically in reference to your name that she had received a telephone call from Mr Salim Essa inviting her to Melrose Arch to have a cup of tea together, and that when she got to Melrose Arch she was taken to a flat in Melrose Arch wherein yourself, and a Mr Gupta were in the flat, and that Mr Gupta then started asking her about the status of Mr Brian Molefe's matter and when that case would be heard. And at the meeting you didn't say anything. The sense that I at least got of the meeting was that this was not a meeting with an agenda to discuss Mr Brian Molefe's pending case in court which was to be heard, but rather you found yourself in a room where someone had raised an issue with her. So there was no reference to you having been part of a meeting and contributing to the discussion, nor having demonstrated any knowledge of a prior discussion on this matter. This is where I must be upfront with you Honourable Deputy Minister, at that stage, I as Evidence Leader did not see any evidence implicating you in any wrong doing. This is what I want to understand, what is it that you found so implicating in wrongdoing that could be attributed to yourself?

Mr Martins: My response was just that how does someone place me in a meeting that I was not? Simple. And I couldn't understand this. Why should I be placed in a meeting and someone leads evidence here. And my rationalisation of this afterwards was why my response was what it was. Why am I placed in this context of this meeting? The response immediately was that "Martins is in a Gupta meeting and what have you". As I said in my earlier statement, 2012 and four years ago was a different dispensation. Right now members of that particular family are regarded as corruption personified so the next day I went to address a press conference. I was asked why I was at that meeting. It was not your innocent interpretation of somebody been found there. The association was that there must have been something wrong that was being done there.

Adv Vanara: So if I understand you correctly, correct me if I am wrong. So it was the mere association with the Gupta family that drew you to conclude that you were implicated in some form of wrongdoing?

Mr Martins: As I said earlier, first and foremost why locate me in a meeting that I was not and I don't know what's been discussed there, and then members of the Gupta family are mentioned there, and in the current environment so that raised questions in my mind.

Adv Vanara: That would be consistent and I do concede that you seem to verify the wording of your tweet where you say "There are many ways to kill a man and the only ammunition you need for character assassination is to allege a phantom meeting with a Gupta". From this I read again that in your view in this toxic environment an association to the Guptas is something bad, and thus you need to distance yourself particularly when you are of the view that it didn't happen.

Mr Martins: As I said, I don't have the wording of the tweet in front of me but what I can say to you is that there are two poetry books that I wrote; Baptism of Fire before I went to Robben Island in 1983, and Prison Poems. I think in Baptism of Fire there is a poem that I wrote there that there are many ways to kill a man, and that was referring to interrogation, torture, discrediting, so the context there as I say, I can't without the wording of the tweet you refer to, and the authenticity of the tweet if it is my tweet and if I had written it. But the association there I can see, so the wording there and the wording would be from that poem that there are many ways to kill a man.

Adv Vanara: Tweets are in cellphones, is it correct Deputy Minister?

Mr Martins: Yes.

Adv Vanara: Do you still have your phone?

Mr Martins: I still have my phone.

Adv Vanara: Is it difficult to check this tweet so that we clarify this thing once and for all?

Mr Martins: I don't have the phone with me, it is with VIP Protection Services before I came to the meeting. I handed over my two phones to them.

Adv Vanara: You have given in both your submissions that we are going through the steps of what you did on the day from 3.8 to 3.14 on page six, and today you have also indicated that the people that you were with at the ANC Lekgotla and dinner are prepared to testify to that effect. But is the Deputy Minister prepared to concede that the individuals mentioned specifically in paragraph 3.14 cannot attest to the Deputy Minister's movements after he left the ANC Lekgotla that evening?

Mr Martins: As I said in my statement, I left there at approximately 8:30pm and in the company of VIP Protection Unit and they took me to my residence. So the people I mentioned here, it states there they can attest for the time I spent with them at the ANC Lekgotla.

Adv Vanara: The question there Deputy Minister is that they will end there, they will say you were here with us but they can't say what the Deputy Minister did after leaving the ANC Lekgotla is that correct?

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Mr Martins nodded his head in agreement.

Adv Vanara: Let's get to your meeting with Mr Lucky Montana. You issued a statement and this is one of the reasons Mr Montana came to testify yesterday. In a media statement you implied or insinuated that it was Mr Montana who introduced the Gupta brother to you, but Mr Montana's version is the other way around. You seem to be confirming that today that at the meeting that took place at your residence, Mr Montana got there first and that the two gentleman joined the meeting. Is that correct sir?

Mr Martins: What I would like to correct is that the day after Ms Daniels gave her testimony I had a press briefing and at the press briefing I said specifically in reply to a question that was asked; "Have you had meetings with the Guptas?" and I mentioned about three or four different occasions I had interactions with the Guptas. And one of those interactions I mentioned I said that there is a meeting I organised in order to discuss issues pertinent to Prasa, Mr Montana, I am not sure if he saw that himself or heard from somebody else about that briefing got the impression that I had said that he brought the Guptas to me which was never the case. It has never been said by myself. If there is a clip of that particular engagement it will show me saying that "I organised that particular meeting".

Adv Vanara: The different engagements between yourself and the Gupta brothers and including Mr Duduzane Zuma in certain instances, let me be specific. When one of the Gupta brothers called you in connection with the landing of the plane at Waterkloof base, I don't know if I am being misled by the sequencing of events in your submission but it appears to be long after interactions that you, Mr Montana and the Gupta brothers would have had around Prasa issues. Is that a correct understanding?

Mr Martins: It seems so. I would have to check the dates but it does seem to be an event after that engagement with Mr Lucky Montana.

Adv Vanara: And you do recall that when Mr Montana came back from Berlin, there is no factual dispute at least around that, he came back furious about what he had learned in Berlin at the meeting, to which you also confirm. And in your testimony you even rebuked Mr Tony Gupta. Did you receive any complaints from a person or one of the Gupta brothers about Mr Montana refusing to allow Salim Essa and Mr Iqbal [Sharma] to serve on the evaluation panel of this tender that you had discussions on?

Mr Martins: I do not recall that. What I recall is that shortly after I became Minister of Transport, I had been given a report by officials at Prasa that that the process pertaining to the Rolling Stock acquisition for Prasa, had run its course and was at an end. And I was also informed that the committee that was in charge of overseeing the tender process was a committee of the board of Prasa and CEO. There had been a process and independent people were responsible for that tender process; they were in lockdown; there was a particular venue where they were where; they were not in access with anybody – a secured venue – that was the information that I had. I could not see how anybody else could be parachuted into that process at a late stage.

Adv Vanara: When did you learn about that, is it before you called Mr Montana to your residence where you were later joined by and Mr Tony Gupta and Mr Duduzane Zuma?

Mr Martins: No the information as to what happens at various entities was given to me as soon as I became Minister. I was given reports as to what's happening in the different areas shortly after my appointment.

Adv Vanara: So this would have been even before your meeting with Mr Montana.

Mr Martins: Yes.

Adv Vanara: If you knew that this process was at an advanced level and you were approached by Mr Tony Gupta with Mr Duduzane Zuma about the process, why didn't you just give them the briefing you had received after you had assumed office, why was it necessary for you Deputy Minister to call Mr Montana to that meeting?

Mr Martins: In my interaction with them I told them that the information that I have is that the tender process was open. Stakeholders, any interested parties were entitled to engage in that process. If they had not done so, that was their fault. Then he mentions the issues that I elaborate here in my statement, what was the duration of this process, was it open and fair, where was it advertised; a number of technical, specific questions that I did not have the information to. Then somewhere along the line he said that he would take the matter to court and what have you. And I said that there is somebody who can give you the information in regard to the course that this process has run, to obviate you taking the department to court. Then I organised this meeting with Mr Montana for him solely to explain to them where this process was. And that was the remit and extent of this meeting, and he did so at that meeting.

Adv Vanara: Was there any prior engagement between yourself and the two gentlemen that were at the meeting about Mr Lucky Montana's suitability for his position as CEO of Prasa?

Mr Martins: No, there was no prior engagement with them in regard to Mr Montana's position. As I was appointed Minister of Transport, Mr Montana was the CEO, and Mr Buthelezi was the Chairperson, and there were board members there. In that context I learned from Mr Montana and Mr Buthelezi that there was word and rumors going around that the two of them could be removed from Prasa, and I said to them verbally that I would not allow any situation where anybody can influence me unduly, or anybody in the department to have them removed without justified reason. And I even went further to say to them that if that had to happen, then I also would fall with them – be removed with them.

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Adv Vanara: Mr Montana testified yesterday and it is in his submission on page 55 where he says that "They (Mr Gupta and Mr Duduzane Zuma) were arrogant and reminded Ben Martins that they did not want me, and he had convinced them that I was his comrade". Do you remember such a discussion?

Mr Martins: I don't remember such a discussion.

Adv Vanara: Did such a discussion take place?

Mr Martins: I have said I don't remember such a discussion taking place. So in my presence it did not take place.

Adv Vanara: Did it take place in the presence of Mr Tony Gupta and Mr Duduzane Zuma?

Mr Martins: I thought this is what I just answered now that such a discussion did not take place in my presence that they had to be removed.

Adv Vanara: You are aware that in your submission you are not dealing with this particular issue that you are disputing now. Why?

Mr Martins: The reason is that I have not gone through Mr Montana's statement. He gave his version of events yesterday. I have not received his testimony, and I didn't watch his testimony over TV. So after he gave his testimony all I had to do was basically prepare my input myself. I have not gone through his testimony.

Adv Vanara: So the SC that was here yesterday and your Head of Legal who were given the submission did not bring this important thing to your attention, is that what you are saying?

Mr Martins: No no. I am saying that at what time? I don't know at what time they were given. All I have said to you was that at the time Mr Montana spoke before two o'clock, I am not sure what time he spoke. I only had sight of the submission that Mr Montana made after the SC and the other advocate came back from the proceedings and that was already late at night. So this particular portion that you referred to, I have not seen it.

Adv Vanara: I accept that you didn't see it, but they did not bring it to your attention, is that what you are saying?

Mr Martins: No, I don't remember them bringing it to my attention.

Adv Vanara: In your assessment of the conduct of these two gentlemen; Mr Duduzane Zuma and Mr Atul Gupta, did you at any stage find their behavior problematic?

Mr Martins: In my interactions with Mr Tony Gupta, I have seen an avid businessman who is looking for avenues to find ways of making money or strengthening his company.

Adv Vanara: In other words, you have not seen any wrongdoing in him?

Mr Martins: No, I have seen that he is a person who, as I said in my submission, the first time I got into contact with them was when they were running Sahara, and what I had read about South African Sahara was that it was a medium sized company struggling to grow. And on the various occasions, which is why I say that my impression, what I see has been like any other businessman who's looking for opportunities to empower or enrich their company.

Adv Vanara: Not even after Mr Montana came back from Berlin and told them in front you what they were doing in the name of the President?

Mr Martins: That one I covered. My recollection was that Mr Montana had given me a report on this and then when we met him we told him exactly what we felt about what Lucky says they allegedly did outside the country.

Adv Vanara: You said you rebuked them. That's the words in your statement. Did you rebuke them for doing the right thing, or for doing the wrong thing?

Mr Martins: I have never come across somebody who rebukes someone for doing the right thing. So when I rebuked them it was on the basis of the information that Mr Montana had given me that there was misrepresentation and that can't be correct even if the person is an avid businessman who wants to enhance the company. But you can't enhance it with misrepresentation and utilising the names of the Office of the President, a Minister, and a CEO in a company.

Adv Vanara: So at least for the record that was the first instance that you saw something was wrong here, correct?

Mr Martins: Yes, that was the first instance. I had no proof but I had to work on the basis of trust and the report I heard from Lucky.

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Adv Vanara: When Mr Tony Gupta called you for permission to land at Waterkloof, was that the right thing to do?

Mr Martins: I would like to correct that portion. Mr Tony Gupta never called me for permission to land at Waterkloof. Waterkloof Airbase falls under the Department of Defence; it does not fall under the Department of Transport. So when he called me and asked if the plane could land at OR Tambo International Airport, the size of that plane is like any other plane. I don't recall whether it is a 727 or whatever. The issue in question there is that many planes from different countries, to be specific a plane would come from India, it would have to land like any other plane. But the permission sought here was that when our plane lands at OR Tambo is it possible that where the plane has landed that there can be a welcoming ceremony there so that as our guests get out the plane, they can be received. And my response was that it can't happen for a few reasons and I articulated the reason. Any plane that lands there, as people get out there, you can't have song and dance as people get out. Where people get out of the plane and where they go to scan their passport, that falls under the remit of Home Affairs, it is not Transport. Only after you have stamped your passport and go through to fetch your luggage, that is where the jurisdiction of Transport is. I explained all these things as to why it could not happen there and I suggested that to my knowledge I know there is an airport closer to Sun City where the wedding was scheduled to take place. And I said I have never been to Pilanesberg International Airport, but what I was informed was that it was a smaller airport like an aerodrome. They might be able to accommodate a plane landing, depending on its size and organise a reception area. I said it can't happen at OR Tambo International Airport.

Adv Vanara: I am sorry, and let me acknowledge that in your submission it is OR Tambo and not Waterkloof Airbase. In your tenure as Transport Minister, have you ever received such a request?

Mr Martins: No I have not.

Adv Vanara: Did you ask Mr Gupta what was the basis of him making such a request to you about the dance at the airport?

Mr Martins: He said that would be a good way of welcoming his guests if there is a ceremony there, and I said it cannot happen there. It is not regular.

Adv Vanara: Was it not because he considered you a friend and that he could ask a favour from a friend?

Mr Martins: Mr Gupta has never been my friend. Within the remit of my various responsibilities as Minister of Transport, and before that as Deputy Minister of Public Enterprises, and Minister of Energy, you meet many individuals from different stations of life, and if they make requests, where it is reasonable and where it is possible, you do so. But under no circumstance can I say that Mr Tony Gupta is a friend of mine. He is not a friend of mine.

Adv Vanara: Was it because of a relationship? Might not have been a friendship but as you say you meet a number of business people, they request interests in this or that. Was it because of that he would have had courage because you say nobody has ever made such a request in your tenure as a Minister of Transport?

Mr Martins: I am not sure if it is a question of courage or somebody looking after their own interest. People always, for lack of a better conceptualization, push their own envelope in their own interests.

Adv Vanara: The Prasa AGM that was postponed, you were still the Transport Minister. Mr Montana testified yesterday and it is also in his testimony that an Indian chap had earlier indicated to him that the AGM would be postponed, and indeed it was postponed. Why was the AGM postponed?

Mr Martins: I would have to check as to why the AGM was postponed. Preparations for AGMs involve the Office of the Minister, the Office of the Director-General (DG), it involves the board of an entity, it involves the CEO and Chairperson there, so there are a multiplicity of factors that can result in the AGM taking place on time or not. So in this particular instance I don't want to just guess and say for this reason the AGM was cancelled, I would have to canvas and find out for this particular period why the AGM did not take place at the first appointed date.

Adv Vanara: One last question Deputy Minister, you are aware that your Committee was looking at certain governance lapses within Eskom?

Mr Martins: Which Committee?

Adv Vanara: This Committee. You were aware of that?

Mr Martins: Yes, that's the remit of one of the aims and objectives of this inquiry.

Adv Vanara: And that there has been testimony that has been produced before the Committee including that of Suzanne Daniels to which you have responded. And in your December submission you don't deal with the issues surrounding Mr Tony Gupta and Duduzane Zuma. You only deal with it after Mr Montana has made a submission and gave testimony yesterday. Is that correct?

Mr Martins: That's correct. Then we should also look at the correspondence that I have received as the Deputy Minister. If I recall, the first invitation was to deal with lack of governance at Eskom, but the manner in which the letter was framed, my rejoined response was that in

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terms of delegation of responsibility that is directly the purview of the Minister. Subsequent to that, there was another letter that I received and then I think that particular letter said "deal with the testimony of Ms Suzanne Daniels". Then subsequent to that a third letter was received on the 26th of this month saying that "Suzanne's matter yes, but also be aware that Mr Montana in his testimony might implicate you". So in that context, sir, I did not know the remit of Mr Montana's evidence, if there was something that I had to engage or respond to. I could only do that late last night after the good advocate and the other advocate came back from this engagement to say that this is what transpired, and these are some of the elements. On that basis I responded to one or two of the issues. I could not have done so if that was not the guidance that I received from the Committee. If we recall in my letter or where I started, I thanked the Committee Chairperson for the guidance given to me, saying that the issue of Ms Suzanne Daniels will be canvassed, and the issues raised by Mr Montana, thus I responded to some of the meetings and issues to put them into context as I remember.

Adv Vanara: So before Mr Lucky Montana came forward, the Deputy Minister did not deem it necessary to take the Committee into confidence, yes, disputing you were at the meeting as alleged by Suzanne Daniels, but also saying that look the only instances, as you have done now, I met these individuals were these different instances?

Mr Martins: No. I think we should put things into context. You have just said that I did not deem it necessary to take the Committee into confidence in regard to my engagements with the Guptas. Am I understanding correctly?

Adv Vanara: I am just asking did you not deem it necessary, I am not saying you deemed it necessary.

Mr Martins: Yes. What I have said even in public that immediately after Ms Suzanne Daniels made input here, I spoke in a public forum where I addressed a press conference about different instances where I met members of the Gupta family. So it is not a question that if I had not mentioned it in a previous conversation that I would not have mentioned it. I had no problem with mentioning it, which is why at a press briefing I gave instances that led to the "misunderstanding that Mr Montana had that he had brought Tony Gupta to me".

Adv Vanara: No further questions Chair.

The Chairperson: I am now going to give over to Members to ask questions, but I just want to put it on record that we are not a court of law. The approach that we took as this Committee is to listen to everybody whom we think will give us a clear picture of what is happening in Eskom. We are not putting people on a stand here and saying you are an accused, and you are a witness that is going to give evidence against the accused. I want to clarify that our approach is to get information from those people implicated and from people who think they have information that can help the Committee to either clarify the implicated people or to further give evidence against the implicated people. We are not a court of law, and we will never be a court of law. Our approach will never be the same as a court of law. I just wanted to clarify that.

Questions by Committee Members

Mr M Gungubele (ANC): The question was asked to you, Deputy Minister, whether when tender queries are raised with you, you call a meeting similar to the one you called with Montana. What was your response?

Mr Martins: My response to?

Mr Gungubele: Is it the first time you called Montana to give clarification when such questions are raised?

Mr Martins: Honourable member, I did say that there are meetings, most of the meetings take place at the office, but there are some meetings that I have conducted outside the office. And I did say that in this particular instance there was a series of questions with regards to when the tender took place, for how long, where it was advertised, and I covered that. And that in that particular instance where the party concerned felt that it would be necessary for him to take the matter to court, I said to him, "Before you go to court, can I arrange that you meet with the CEO who would be able to explain the history of this particular tender and answer your questions more appropriately than I can", so that was the context; it is not to say that each and every person who comes and says this. I will try and assist with information where I can.

Mr Gungubele: Let me ask it this way, is it the first time you called Montana to give clarifications when such questions are raised?

Mr Martins: In regard to the Prasa issue, the questions were specific to a particular tender.

Mr Gungubele: You know there is an accusation outside there that we don't give you time to explain yourself, but it becomes a problem when you don't respond directly. My question is, irrespective which other tender, you were working with Montana for a particular period of time while he was CEO and you were the Minister; is it the first time you had to call Montana to make such clarification when such questions are raised?

Mr Martins: In my recollection that was the first time I called him in particular, in reference to that matter.

Mr Gungubele: If it is the first time, this is the interesting part about this, it means such questions have never been asked before whilst you were a Minister. That question was unique amongst all the questions regarding a tender to such an extent that it was the only time you called Montana for clarification.

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Mr Martins: I must say that I am not following the gist of your question Honourable member.

Mr Gungubele: Remember, my narrative is that you explained that is it your tradition when such questions are raised you call Montana to clarify? You explained the reason, now my next question is, that reason, was it a unique one and as such the only one that occurred in your tenure?

Mr Martins: Where I am not clear is where you say "Was that unique, was that the only one in my tenure as the Minister of Transport"? I would like to answer you but I am not exactly clear what it is I must answer.

Mr Gungubele: Let me ask this question for the last time. Is the question asked by the Guptas to you and the weight you attached to it the first kind of such question during your tenure in the department?

Mr Martins: From what I think you are saying, in my submission it is clear that in the various positions that I have occupied including Transport Minister I have interacted with various stakeholders and on the basis of the information they request it depends who can best assist them with information. I would refer them to the relevant person. Where I can answer I will give them the information. Where I can't give or don't have sufficient technical information, I will pass the matter over to the DG or go to the entity

Mr Gungubele: Sorry, Honourable Deputy Minister, I think you understand the question but you don't want to answer it because my question seeks to check if this type of question and the weight you attached to it when you were Minister of Transport was the first time you were asked. This is so that we can check how consistent you are in calling Montana to clarify such questions. I am clear you understood it, it is my view that you don't want to respond to it.

Mr Martins: No ...

Mr Gungubele: It is my view.

Mr Martins: And it is also my view that I have not understood how you articulated your question.

Mr Gungubele: Thank you. No, it is fine. I am saying you understood my view. Thank you. Next point, post Berlin, Montana seeks to explain a lot of things that happened in a meeting where you sat, where amongst other things the Guptas said, "We can work with you and pay you through Dubai". Did these things happen in that meeting?

Mr Martins: No.

Mr Gungubele: They didn't raise that?

Mr Martins: No.

Mr Gungubele: Montana raised allegations of extortion of manufacturers during the Berlin conference as a result of which he called this meeting, did he raise these things in this meeting?

Mr Martins: The meeting was called by Montana, and in that particular meeting as I said earlier, the issue was raised that in furtherance of their business he cannot and should not abuse the names of the President, myself, and Mr Montana.

Mr Gungubele: I asked a specific question, Deputy Minister, that Montana says "Manufacturers were put under pressure by the Guptas to make certain payments" I am asking if you remember this being raised in that meeting?

Mr Martins: No. In the meeting he raised all the issues...

Mr Gungubele: I am asking a specific question, was this specific question raised?

Mr Martins: As part of the meeting where he was saying that the names of the individuals mentioned were abused, he mentioned that from his knowledge, from his information they were seeking to get monies from third parties because they were using the names. So that issue was raised in the context of that meeting.

Mr Gungubele: What was the response of the Guptas?

Mr Martins: They denied this.

Mr Gungubele: Do you remember the postponement as cited by Essa, or this third man? Do you remember the third man whose name Montana says he cannot remember?

Mr Martins: In that meeting there was Tony Gupta, Duduzane, and there was a third Indian gentleman, I think his name was Prakesh/Rajesh.

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Mr Gungubele: Montana says this man alleged that a 12 September 2012 conference would be postponed. Were you aware of that?

Mr Martins: No, I was not aware of that.

Mr Gungubele: So it never came to your knowledge?

Mr Martins: No.

Mr Gungubele: It is said that they are amongst those who played a role that the board should be changed, and you actually stood up and said no. Do you know who was responsible for the intention for the board to remove Buthelezi and Lucky?

Mr Martin: In my interaction with Mr Buthelezi and Mr Montana they informed me that the pressure to have them removed they believed was from Mr Gupta. And I told them that I would not accede to any undue pressure.

Mr Gungubele: Was that pressure exercised on you?

Mr Martins: No, that pressure was not put to me.

Mr Gungubele: So you had no reason to act on that at any point in time.

Mr Martins: Yes.

Mr Gungubele: You know why I am asking all these things, I asked a question to you about Dubai payments and you said that it was not raised. Montana said that in that meeting they said they could work with him and pay him via Dubai. You said that was not raised.

Mr Martins: In my presence.

Mr Gungubele: Remember at the opening, you must go and check this out, you said you don't remember everything that happened in that meeting. But this one you are sure did not happen. Do you want to make a comment?

Mr Martins: The undue pressure on me?

Mr Gungubele: No. I asked you the Dubai payment narrative. You said this was not said in that meeting, and I am asking that in your opening with Adv Vanara you said you don't remember everything; but this one you remember was not said.

Mr Martins: I don't recall that been said in my presence.

Mr Gungubele: In your tweet you are reacting to an unfair accusation by Suzanne Daniels and you don't remember what you said in the tweet. Remember you were preparing almost every day until yesterday and this morning, and you were preparing to deal with whatever issue that affects you, in particular the one said by Suzanne and you reacted through Twitter. And you say you can't remember exactly what you said in your tweet. If I was the one saying that to you about my Twitter, would you find me believable?

Mr Martins: In regard to Twitter, I have tweeted more than 2500 tweets. I can't recall every word I have tweeted. That's a fact. If you can recall each and everything you have tweeted...

Mr Gungubele: On a matter as serious as this which affects your integrity, and you were planning all the time to defend yourself.

Mr Martins: So why should I recall that particular tweet for this engagement, why should I?

Mr Gungubele: Oh. You don't have to?

Mr Martins: I don't have to. Why should I recall the tweet?

Mr Gungubele: Thank you.

Ms N Mazzone (DA): Deputy Minister, before you were made the Minister of Transport, did you ever meet the Guptas at their Saxonwold home?

Mr Martins: As part of my testimony I stated there that as Deputy Minister of Public Enterprises during my first stint, the first time I met them was at the SABC TNA Breakfast show where the Minister was in charge of proceedings. Some members attended there. Subsequent to that I did state in my submission that the Gupta family organised a food fair at one of the Saxonwold homes and I stated that I attended that.

Ms Mazzone: And at that food fair, did you attend it with the then former DG of DPE?

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Mr Martins: No. I don't recall that.

Ms Mazzone: Deputy Minister, you must understand that we find it as a bit curious that you actually said to the Gupta that if they didn't like what was happening with the tender process they should go to court but later on in your testimony ...

Mr Martins: I didn't say if they don't like what's happening with the tender process they should go to court. Mr Tony Gupta said that he was not happy with some aspects, and that he would exercise his right to go to court and I said that he is free to do so.

Ms Mazzone: Right. You tell them this, "You are free to go to court. Do whatever you see fit". But then you still take Mr Montana to see them afterwards. Why would you do this, were you being bullied into having meetings with the Guptas?

Mr Martins: No. I wasn't bullied into having meetings with them. It is what I have stated in my submission. My conversation is that he articulates all those issues and according to him, he believes there wasn't sufficient time, where was the tender advertised? It is in that context that I say in order to get information in regard to this aspect, it might be better to engage the CEO. He can give you the background, how the process was run, where it started, where it is right now, instead of taking the entity to court.

Ms Mazzone: Deputy Minister, let me tell you as a Member of Parliament (MP) it is virtually impossible to get a Minister or Deputy Minister to have a meeting with one. One can only imagine that being a member of the public it is also quite difficult to gain access to a Minister or Deputy Minister, especially if you are a small developing enterprise as you said Sahara Computers was when you first met with the Guptas. I have got to tell you, and it's not just me, I think a lot of people will agree with me that it is highly suspicious that you have business people simply out of the blue especially at your personal residence because my understanding of good corporate governance is that especially if you are meeting with someone who is interested in a tender you do so in an environment such as your office where your meetings are recorded. What I would like to know is how did the Gupta family get hold of you in the first place?

Mr Martins: Let me start where you began. I'll disagree that it is difficult to get all Ministers and Deputy Ministers to engage with MPs or members of the public. In my experience as a Minister and also as Deputy Minister even to this day, when MPs have sought an audience with me, I have made that possible. In regard to the Gupta family and other business folk, when they have asked for meetings I have sought to direct them to the relevant DDGs or the DG, or where I can I have engaged in those meetings. In my statement I have also stated very clearly that the majority of meetings of an official nature, depending on the remit of the meeting, will take place at the office, but other meetings that Ministers and Deputy Ministers have do take place at the residence. The issue there also is that in this particular instance as I said at the very beginning, as I got in as the Minister of Transport, the information at my disposal was that the tender process had virtually run its end. So when Tony Gupta had asked to see me in regard to this tender and raised all the issues, I found nothing untoward in arranging for him to get clarity because I believed you could not change the tender process when it is already coming to an end. You will not be able to do that.

Ms Mazzone: Okay, Deputy Minister, let me ask you this, you said just now and stated quite categorically that during your meetings with CEOs, the Guptas, and even Duduzane Zuma, you had seen no criminal intent. In other words you yourself had no intention of been involved in any corruption or corrupt activities. Did they have any intention to be involved in corruption or any criminal activities?

Mr Martins: No. as I said earlier, you interact with a number of businessmen. In regard to Tony Gupta, I did say my appraisal of him was a person who would look for opportunities, and where he gets the opportunity, exploit them to the full to advance his business interests.

Ms Mazzone: Deputy Minister, when you were Minister of Transport and you were approached by the Gupta family to have this fanfare welcome to welcome this aeroplane from India, and you quite correctly turned this offer down. It concerns me as to why you would have indicated for them to rather use the Pilanesberg. Let me tell you what I would do if I was the Minister of Transport, if anybody phoned me and said "We want special treatment. A plane is landing, we want fanfare outside to welcome our guests, we are going to bypass all the usual things that every other normal human being should do, that every South African and visitor to your country should do". I would say that what you're asking me is corrupt; against the law; in every way or shape wrong. I would then pick up the phone and phone the Hawks and say this has been suggested to me, I think you need to investigate this. I would then pick up the phone and phone my colleague who is the Minister of Home Affairs and warn them that a group of people are going to try and gain entry in our country without having their passports stamped, and certainly would not suggest that this plane go to the Pilanesberg where I don't think you could have correct imports or any kind of diplomacy, Home Affairs oversight, and certainly the most unusual circumstances ever. I am actually quite astounded that you would have even suggested that to them.

Mr Martins: May I respond to that. I said that the welcome service that they wanted at OR Tambo Airport would not be possible there. Pilanesberg to my knowledge is a small airport and they do have trips to game reserves, and other areas, and they do have reception areas where they accommodate clients. My suggesting that they should try Pilanesberg was not saying that there's a possible avenue where you can circumvent the regulations and authority of this country. That was not the intention. It was saying that OR Tambo is a busy airport. You can't have any interruption for a ceremony there. But Pilanesberg is a smaller airport, they could if they wanted to accommodate some of the requests to have the people welcomed there. But the regulations pertain to all airports and aerodromes. There's no way you can circumvent the legal requirements in this country. The fundamental point I am making is that by my having referred them to Pilanesberg was not to say that you can't do this here legally, go do it at Pilanesberg. That was not the intention.

Ms Mazzone: Once again I maintain that I think it is highly irregular that even at Pilanesberg it would be allowed. What concerns me is what gave this family the power or even the assumed position of power to even approach you as Minister of Transport with such a bizarre

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request. And upon you turning them down and then finding out about the Waterkloof Airbase landing, did you question that, and do you know who authorised that, given the fact you didn't authorise anything at OR Tambo?

Mr Martins: I think I did try to explain this earlier. The remit of the authority of the Department of Transport is for airports within the country, and there are certain airports that are privately run with certain regulation. In terms of Waterkloof, that falls under the responsibility of the Department of Defence. The Minister of Transport does not have authority over Waterkloof Airbase. We are not informed which plane lands there, who is in that plane. It is completely run by the Department of Defence. In regard to that I am not responsible. I do not know who gave them permission to land there. It became an issue where the relevant officials had to account how the plane landed there.

Ms Mazzone: So in a Cabinet meeting that normally happens on a Wednesday it was never discussed that the Minister of Transport had said no and now the Minister of Defence said yes. This was never a discussion that came up in Cabinet meeting?

Mr Martins: The deliberations of Cabinet are secret. The Waterkloof matter was discussed there.

Ms Mazzone: Have you ever been instructed by the President to appoint anyone to any board?

Mr Martins: No.

Ms Mazzone: Have you ever been instructed by the President or by any Guptas to give a tender to a certain company?

Mr Martins: No.

Ms Mazzone: Given what we've heard and what we know in this Eskom inquiry, do you believe that state capture is a real thing?

Mr Martins: It depends what we mean by state capture. In Eskom there have been lapses of corporate governance and there are individuals being brought to book in regard to those issues there in order to ensure that there is proper governance there.

Ms Mazzone: Chair, my final question is more a statement. I went into the Deputy Minister's Twitter account, and in his bio he says he is an artist and writer, and some of the tweets are actually profound. On the 21 December 2012 Deputy Minister you wrote; "A day is a very long time in politics. Alliances shift like sand in the wind. Former enemies embrace and kiss, old friends clash and lock horns". No further questions, Chair.

Mr M Dlamini (EFF): When you were deployed as Deputy Minister of Public Enterprises I said to you that I think you are one of the last people in the ANC with integrity. But clearly I was wrong. I intend to prove to you that you are misleading this Committee. The Guptas are your friends, and everything you did, you did it knowingly, and there is no confusion in terms of "I don't remember, I can't recall". The fact that you brought a lawyer already sends signs. You said you met the Guptas in Saxonwold at a food fair with other Ministers. Who are these Ministers that were there, just give me two?

Mr Martins: What I said in my submission was that the food fair was open to members of the public, and Ministers had been invited. On that particular day, I can't give you two...

Mr Dlamini: So you don't remember any Minister. I just want names please.

Mr Martins: You have asked a question, kindly give me the time to respond to your question.

Mr Dlamini: But I won't allow you to waste my time. I'll just ask a simple question, who are two Ministers that were there? I don't want explanations. It's a straightforward question, yes or no. If you can't give me names then it is fine.

Mr Martins: There are rules of engagement. If you ask a question, you must be prepared to listen to the answer.

Mr Dlamini: Even if it's a nonsensical answer?

Mr Martins: Yes, even if it is a nonsensical question.

Mr Dlamini: Who are two Ministers that were there on that day?

Mr Martins: On that particular day, a Minister that I recall was there was Minister Rob Davies.

Mr Dlamini: Thank you. That's all I wanted to know. In your statement you are saying you met the Guptas in one of their homes in Saxonwold. How many houses do they own in Saxonwold?

Mr Martins: In Saxonwold they have several homes next to each other, so the food fair took place in one of their homes.

Mr Dlamini: Did you visit that house on that day in your capacity as a Minister or in your private capacity?

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Mr Martins: The invitation was saying that you are welcome to a food fair to sample different types of Indian food, and I attended. I didn't say that I am coming here as a Minister or I am coming here as a member of the public.

Mr Dlamini: But I am asking you now.

Mr Martins: Yes. I just went.

Mr Dlamini: You're saying the Guptas called you regarding the Prasa deal. How did they contact you?

Mr Martins: The conversation that I had with him was on the landline.

Mr Dlamini: At your office?

Mr Martins: Yes.

Mr Dlamini: Not at your private residence?

Mr Martins: No.

Mr Dlamini: Alright. What was the reason for entertaining their call; is it because you went to their house to eat their food, or is it normal business that you entertain calls of business and you even take them to the CEO?

Mr Martins: I told you earlier that the responsibility of Ministers and Deputy Ministers is to interact with all stakeholders and where you can respond to their requests, to do so.

Mr Dlamini: Okay. And then your response to him, Atul Gupta or any other Gupta when they are calling you on the issue of Prasa, you said "According to your understanding, the process has run its course". You are a Minister, someone calls you about a specific tender, and how do you handle yourself as a Minister? Do you respond to people according to your understanding or according to facts?

Mr Martins: Understanding is based on interpretation of facts.

Mr Dlamini: I can assume that you knew that the facts were that the tender has run its course. It's no longer an assumption. We want to get to simple English so that we can deal with this.

Mr Martins: Simple English is that the tender on the basis of the information that I was given, on the basis of the facts that I was given, was that this particular tender is running toward its end, and I communicated the same.

Mr Dlamini: When you suggested the meeting, that the Guptas must meet Mr Montana the CEO, did you not think that as a Minister, with experience and educated, that you are exposing the Office of the CEO by bringing business people to him?

Mr Martins: No. I didn't think that I am compromising him. The CEO of Prasa is very astute and he knows his responsibilities so I had no problems in saying that he should give answers to the queries that were raised.

Mr Dlamini: Did you know that Duduzane Zuma is coming to the meeting?

Mr Martins: No, I didn't know that Duduzane Zuma was coming to the meeting.

Mr Dlamini: So you were shocked to see him there?

Mr Martins: I was not shocked to see him there.

Mr Dlamini: Why?

Mr Martins: Because I knew that he works with Tony Gupta.

Mr Dlamini: How?

Mr Martins: As a business partner.

Mr Dlamini: But how did you know? You are not into their business.

Mr Martins: I've known. It is public knowledge. And it was not the first time that I met 'Duduzane Gupta'.

Mr Dlamini: Okay. Now that Duduzane Gupta...

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Mr Martins: Duduzane Zuma.

Mr Dlamini: Oh, Duduzane Zuma. You are a member of Cabinet serving under Jacob Zuma. You arrange a meeting for the Guptas to meet the CEO. Jacob Zuma's son comes to the meeting. As a person of integrity that I assume you are, did you go to Jacob Zuma and say; "President, I am a member of your Cabinet. I arranged a meeting for the Guptas to meet the CEO, and your son arrived there". Just to know, because we are dealing with issues of integrity, did you tell Zuma that his son came to a meeting that you arranged for the Prasa CEO?

Mr Martins: No. I saw nothing untoward in Duduzane Zuma accompanying his business associate to a meeting. And I did not see any necessity to raise the issue with the President.

Mr Dlamini: Nothing?

Mr Martins: Nothing.

Mr Dlamini: Okay. In 32.8 of your statement you say that "I think it is important to remember that the meeting occurred in 2012, the context and public image of members of the Gupta family was not what it is today, namely a family perceived and projected as personification of corruption incarnate". You are saying "it is perceived". Why do you say that?

Mr Martins: I am saying that because in my contribution to the Portfolio Committee today I have said that conditions in 2012 and conditions in 2018 are different. Then at that particular stage they were responsible for a medium sized company, and in the public mind, in the court of public opinion they had not been judged as this family that is seen as corrupt, but today, 2018, the general projection in the public is that they are responsible for corruption, and I said that is a perception. A perception has to be proven whether it is a fact or not. In order for that to be proved I can have an impression of anybody but I would need to substantiate my perception or view with facts. In regard to them, they will have to be charged in a court of law and be found guilty for the crimes that they might be accused of. This is what I have said.

Mr Dlamini: In the public opinion they are perceived, and you are saying that can't be correct according to your own opinion, because this is not a fact?

Mr Martins: No. I can't give a judgement on public opinion. So I am saying that is a perception currently.

Mr Dlamini: You are saying that is a perception, and perception must be proved. Now let's go to 32.10, you are saying again "They are perceived to be billionaires". I am putting it to you that it is not a perception because it is your friends, you want to go that way. On the results of the 10 richest people in South Africa in 2016 Atul Gupta is number seven with R10.7 billion. That is no longer a perception. So why do you say they are perceived to be billionaires when Atul is no longer a perception?

Mr Martins: No. You should not impose your views on me. If you believe the report you have read that they are billionaires, I have not read the report. I don't know the scientific veracity of the report that you have read. My reason for saying this is a perception is that I have not seen any member of the Guptas' bank statement to see how much they are worth. So I can't say that they are billionaires, or millionaires, or that they are poor. From what I have seen, I can't categorise them as poor people, but I can't say they are billionaires.

Mr Dlamini: You served with me in the Portfolio Committee of Public Works. Am I Honourable Dlamini?

Mr Martins: I did. Sometimes you are Honourable Dlamini, sometimes your behavior is not honourable.

Mr Dlamini: Let's leave my behavior. Am I Dlamini?

Mr Martins: Yes your surname is Dlamini.

Mr Dlamini: How do you know that?

Mr Martins: Because there is a record of the Portfolio Committee.

Mr Dlamini: Have you read it?

Mr Martins: Yes. I have seen your name there as a member of the Committee. It states there that you represent the EFF.

Mr Dlamini: You know, it is disappointing that you guys went to Robben Island and have cadre experience. But to do the things that you are doing is a disappointment, and it is not happiness. I know that your arrogance and your ego tells you that you are doing the wrong thing but it is not the right thing. Actually we are very disappointed because you are people that we thought "at least there is a few". All the things that I have asked you demonstrate that they are billionaires, that's why you are going to perceive that they are billionaires. I am saying to you to that it's there, it is written but you choose not to agree with that. Let me just ask you my final question.

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Mr Martins: Before you ask me your final question sir, I have got the right to reply to what you have just said.

Mr Dlamini: Okay reply.

Mr Martins: You have to substantiate the issues that you refer to. You have not substantiated anything in regard to your accusations that you make about me. There is a simple principle in law, he or she who alleges must prove. You have made allegations here and you would like the public to believe that the allegations you make are fact. They are nothing more than simple mere allegations which you have failed to prove.

Mr Dlamini: But I am sticking to them for the fact that it is problematic that you can go and have Gupta curry and the next day you arrange meetings.

Mr Martins: That's your view.

Mr Dlamini: That's fine. It is my view but it remains as such. Now, my final question

The Chairperson: Honourable Dlamini your time is up.

Mr Dlamini: So I can't ask the question.

The Chairperson: No you can't.

Mr Dlamini: But it's fine because I won't get an answer.

Mr S Swart (ACDP): Deputy Minister, I am trying to ascertain the two meetings held with Tony Gupta and Duduzane Zuma. When you had your press conference you referred to one meeting, and you didn't refer to the second meeting. Was that just an omission from your side as far as far as memory is concerned because it is quite distinctive that there were two meetings with yourself and Mr Lucky Montana?

Mr Martins: With regard to the press engagement, at a press engagement you will be asked a question and you would answer as fully as you think it is necessary and relevant to the question you were asked. So you don't look at all the factors if I understand you correctly. The answer that I gave on the day I thought was adequate for the question posed.

Mr Swart: One does appreciate that when one refers to those meetings it is a number of years ago and therefore ones memory might not be very accurate. But when Mr Montana, and again one will need to decide on the weight to be attributed to his evidence. We have been criticized for not further cross examining on Prasa yesterday, and as the Chair indicated that was not the function of this inquiry. But one of the issues he does raise and maybe I can just alert you to that, is the first meeting where there was in your version a discussion about the board prior to Mr Gupta and Mr Zuma arriving. He is very adamant that "We had a conversation there and we had a tea party there. We were joined 30 minutes later by the two gentlemen and the Deputy Minister claimed in his media briefing that we had met to discuss the board of Prasa. This is not true". On your version you say you had met to discuss the Prasa board. Is that still your version because we have two contradicting versions of the first meeting?

Mr Martins: In regard to the first meeting, from what I recall the issue of Prasa was raised, and the issue of engagement with Tony Gupta was also raised.

Mr Swart: You indicate that the Prasa board was discussed before the arrival of those two gentlemen.

Mr Martins: In my engagement with Mr Montana, that was discussed.

Mr Swart: Mr Montana takes a strong view and he says "This is not true". His version is "I had no business to discuss the appointment of the board of Prasa with the Guptas. The Minister had introduced them to me and said they had expressed an interest in the Prasa Rolling Stock fleet renewal programme", so I appreciate that there is a difference of opinion in what was said there and we are not going to take that any further. You say in that first meeting that at the time there was talk and rumours, and you go on, so your whole version on page 32.1 of the whole discussion is that the first meeting related to the Prasa board and the possibility of him being removed. That seems to be more consistent with the later event, and one appreciates that time has lapsed but latter when the letter was sent to you and there was concerns about the board meeting. One might have a lapse in memory, do you think that is possible from your side?

Mr Martins: I think that's a possibility. As I said, I have not had the opportunity to go to the records, or look at files, even in the meetings that I had with Mr Montana to discuss the allegations that there was pressure for them to be removed from their positions, I didn't take notes of those meetings so I can't say I have got the records.

Mr Swart: And that would be a reasonable explanation given the time lapse and would be more consistent with Mr Montana's version of the meeting where this multibillion rand tender is discussed. He then goes to Berlin and is shocked about the news in Berlin where you refer to it as "misrepresentation" which is a ground for fraud, that he says here, "The Guptas were extorting money from manufacturers and had wanted this money to be paid in an account in Dubai, and then the manufacturers were apparently summonsed to a meeting in Zurich with Salim Essa". You wouldn't have knowledge of that, but it was at this meeting they were instructed to pay monies if they wanted

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to get a share of the Prasa new build programme. "I was so furious at this, and saw this as extortion". Then he comes back, and that's the second meeting that takes place. He called you and requested you to convene a meeting with Mr Duduzane Zuma and Mr Tony Gupta. He went to your house, they were there, and the third gentleman you gave the name. You spoke at length at this meeting and you both condemned the conduct there. What is very interesting here is Mr Montana says, "They were arrogant and reminded Mr Martins (you) that they did not want me (Mr Montana). But he (you) had convinced them that he (Mr Montana) was your comrade after an hour of fighting". Do you remember that part at all of the meeting, again bearing in mind that it took place a long time ago? Would you agree that it was an acrimonious meeting?

Mr Martins: All I know is that it was an acrimonious meeting.

Mr Swart: I appreciate the time lapse, so you may actually have forgotten that it actually did occur. Would you agree with that?

Mr Martins: That's possible.

Mr Swart: He says "After an hour of fighting, they ultimately relented, but after they had accused me (Mr Montana) of favouring Bombardier over other companies, I rejected the accusation very strongly". You said that the meeting was acrimonious and that brought the discussion to an end. So it is quite possible that Mr Montana is correct in his version. It was an acrimonious meeting, you might not recall specifically that Mr Gupta saying, "But we didn't want Mr Lucky Montana. We warned you about him". You might not remember that being said, although that is quite a severe statement. You would remember that being said.

Mr Martins: It is quite a severe statement. I don't recall it being said at that meeting in my presence.

Mr Swart: If one looks at the picture of what one sees with state capture, you see a pattern developing of certain people, certain CEOs / Ministers taking positions, and when they are not compliant, they have been moved out of the way, and it seems as I said, we haven't, and I want to categorise this because I have also been criticized in the media, we haven't interrogated the whole issue of Prasa so I am not commenting on the character of Mr Montana. At this stage there is nothing to disbelieve him on this meeting, but it does seem to play into the narrative of Ministers been deployed, that you did meet the Guptas at their home, and that there was this meeting. And whilst you don't have a correct recollection of everything, there doesn't seem at this stage to be anything to disbelieve Mr Lucky Montana about the pressure that was brought to bear upon him. Would you tend to agree on that?

Mr Martins: Yes.

Mr Swart: And that's fair enough because as I say it is a long time ago and it does play into, because again when people are not cooperative the next step would be to remove them from the board, and that is where the second element came in, the removal from the board and the strong letters, and that's where you said, "The board will not be moved. They are in the middle of this project" and you took a very strong standpoint, commendably. Would you agree that there is already a pattern at this early stage although you wouldn't have known it? With hindsight now you can see a pattern developing of board members being moved to satisfy a certain agenda. Secondly, yourself, when you did not comply with a favour, were you not soon after, a month later, moved from Minister of Transport to Minister of Energy?

Mr Martins: Well, it is correct that a month after that I was moved from Transport and made Minister of Energy.

Mr Swart: So what I said yesterday to Mr Montana is that had we all been more focused on being more aware we would not be in the situation today, possibly speculating, that we are sitting with Eskom and other SOEs. Would you think in hindsight that would be a fair observation?

Mr Martins: I think if we analyse and look at all these issues with the benefit of hindsight we would be able to see certain trends, other postulates might be confirmed, other postulates might not be confirmed. But as you correctly say, there is nobody that I know of at this stage who has looked at the trajectory and the phenomena that you have highlighted here, and that would be necessary to be done.

Mr Swart: I think there has been quite a bit of research, but I think you correctly say that at that stage the family was not well known so you had nothing to respond to. What I don't understand, and I have known you for many years, I can't explain because Ms Daniels presented her evidence, and there is a total denial from you with backing up evidence that you weren't there. Is it possible that you confused the date because you denied any meeting with her?

Mr Martins: With regard to Ms Suzanne Daniels, I have had meetings with her. We should recall that she is the Company Secretary of Eskom. She is also holding the position of the Legal Adviser of Eskom, so in the remit of her responsibilities, there is interaction between the board members of Eskom, the Chair of Eskom, and the previous Chair Eskom she advised very closely – Dr Ben Ngubane. And when there were issues concerning the payments due or not due to Mr Brian Molefe, we had occasion for the two legal teams of Eskom and the Department to discuss and get clarity on the legal matters concerning Mr Brian Molefe. So in that context I did meet her.

Mr Swart: What is your relationship with Ms Daniels, your working relationship?

Mr Martins: My working relationship is fine. She is a person that I have only met in the context of the responsibilities I assumed. I don't know her at a personal level, I don't have any reason to have a grudge or something against her. But in the context of the ministerial engagements with Eskom, and her role, we spoke, and some of the conversations in trying to advice the Minister, obviously when you have

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two legal teams and they differ, we would be able to come in.

Mr Swart: She alleges that the whole meeting related to that specific Molefe issue, and you said in your press statement "As Head of Legal you admit to admonishing her in the past, and secondly, you called her a clueless ignoramus". Do you still hold to that view that she is a clueless ignoramus?

Mr Martins: I think in regard to the first portion of what you stated, in regard to her responsibilities, in the meetings that we held with the Chairperson and the Minister, and in regard to some of the decisions that she had taken as Company Secretary and Legal Adviser to Eskom, I differed and pointed out certain things there. In relation to the issue of clueless ignoramus, you have to read that sentence in context.

Mr Swart: Can I read it to you?

Mr Martins: Yes. The entire sentence and what precedes that.

Mr Swart proceeded to read the press statement.

Mr Swart: Do you think that's what she did in her evidence here?

Mr Martins: I believe that there are issues that she could better attest to and give clarity on. One of the issues from the top of my head, I think in May sometime she came to the Portfolio Committee as the Head of Legal, and as Company Secretary, and the Brian Molefe issue was discussed here in regard to payments, and there is a version of events she gave to the Committee. Later on when she comes, her testimony contradicts what she said here.

Mr Swart: I understand that, and just as one might differ on the probabilities, it is a very strong term, and knowing you as a person it is not language that one would use normally. But one does understand, and it is a very strong indictment. Chair, that is the end of my time and questions.

Ms L Mnganga-Gcabashe (ANC): Let's say for argument's sake that Ms Daniels might have confused the dates, did such an occasion, be it a tea party, or a tea gathering, or a breakfast, or lunch, or dinner ever take place with the people that she mentioned where you were also in attendance?

Mr Martins: No.

Ms G Nobanda (ANC): Minister, what do you think were Ms Daniels' reasons for saying you were in a meeting that you believe you were not part of?

Mr Martins: I really don't know why she would say that.

Ms Nobanda: So Ms Daniels would just somehow make up this date, this time, this meeting with yourself and Mr Ajay Gupta, Duduzane 'Gupta' where you all discussed Brian Molefe's payment, according to you?

Mr Martins: As I said, I can't answer for her, but from my perspective I don't know why she would have said that. I can tell you that I have had a meeting with her, the DG, and others at my house where the legal teams were trying to find a way of dealing with the issue around Mr Brian Molefe.

Ms Nobanda: Have you ever met or do you know Mr Salim Essa?

Mr Martins: I have seen Mr Salim Essa. But he is not a person that I know closely. But I know that he is a business associate of Mr Gupta.

Ms Nobanda: You have never had a meeting with him, beside Tony Gupta?

Mr Martins: No.

Ms Nobanda: Thank you, Chair.

Dr Z Luyenge (ANC): Deputy Minister I would want to get explanations for a number of issues but ask a few. One is that as a senior member of the ANC, knowing it for a fact that there are resolutions taken by the NGCs, by NEC for the rooting out of corruption and corrupt elements within the government machinery, and Parliament is actually implementing that. How best can you assist that process at your level?

Mr Martins: The responsibility that everyone has in a position in government, whatever the role that you occupy is to ensure that you do not condone corrupt practices, that you do not enter into corrupt practices, that you ensure in the space that you are responsible for that the principles of clean government are adhered to.

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Dr Luyenge: If all what has been said by Mr Montana yesterday is anything to go by, he put it very clearly to the country the perception out there that in the looting of state resources, there is this particular family of the Guptas that is actually behind those elements, in fact perpetuated by certain leaders and members of the community including leaders of the ANC. A mention of our prominent leader has been made even though not necessarily linked to the Gupta family. As a senior member of the ANC, what is it that you can do to assist this process? Ensuring that what Mr Montana was saying is not just something if it is proved beyond reasonable doubt that those prominent leaders of the ANC whose names were mentioned have contributed to this quagmire. What can you say, what can you do as a senior member of the ANC?

Mr Martins: Honourable member, with due respect, I don't regard myself as a senior member of the ANC. I don't sit on the NEC, I don't sit on any other important structure. I am an ordinary branch member. But I understand the tone, and timbre, and context in which you say it. All I would say is that the members of the Gupta family have been mentioned, but the most important thing for me is for somebody to lay a charge so that there can be a follow up of a court case. Right now I don't have knowledge of people who have gone to lay charges, perhaps they have done so. It would be important that those cases be expedited so that anybody who has transgressed, who has broken the law should be taken to court without fear or favour. I did say earlier that I did not have the privilege of being here yesterday to listen to the entire testimony of comrade, Mr Lucky Montana. I did hear the mention of ANC senior leaders. If that is the case I would reemphasize the basic principle that nobody is above the law. If I have broken the law, if any ANC official has broken the law, then the people with the relevant information should ensure that those people are charged because if they are not charged in their personal capacity, then it lends to the narrative that the ANC is corrupt. The ANC cannot be corrupt. Individual members who abuse their positions in the ANC can be corrupt. That is a responsibility for all members to ensure that those who are engaged in corruption are brought to book.

Dr Luyenge: Thank you. You are talking like a senior leader, not a senior member. But the necessity is that being appointed by the ANC to be a Deputy Minister and Minister, you are definitely a senior member trusted within the ranks of the ANC. It is necessary that I say that. Do you know a certain Zodwa Manase who is a Risk Manager?

Mr Martins: The name of Ms Zodwa Manase rings a bell in my mind. If I am not wrong she is a chartered accountant.

Dr Luyenge: Is there any moment when you actually differed with the leadership at Transport when Mr Montana was rejecting approaches to reject supply chain policy, and if that is the case how did you assist him? On the wedding plane coming from abroad, can the plane land anywhere?

Mr Martins: In my workings with officials I have said it very clearly to them that nobody should be in a position to compel them to do anything that is irregular or untoward in regard to their responsibilities. That is a point that I have made in all the departments that I have served. I have even said to staff members or officials that your responsibility is not to carry out the instruction of Ministers willy-nilly, your responsibility is based on your qualifications and integrity. So your responsibility is to give the best advice. After having given that advice, whether the Minister agrees with your advice or not, you should be able to sleep with a clear conscience that you have given the requisite advice. In regard to the landing of planes, there is paperwork that has to be filled in based on the capacity, the size of the plane as to where they can land, and necessary permission has to be sought from the Air Traffic and Navigation Services authority. So they deal with those authorisations.

Dr Luyenge: Did you play any role in the acquisition of the landing rights by the Gupta family in relationship to the wedding?

Mr Martins: No. As I said earlier, the remit of my responsibility as the Minister of Transport was for civil aviation – aeroplanes – but in regard to the military aspect, I had no role there. That fell under the remit of the responsibility of the Department of Defence. They are responsible for Waterkloof. So as to how that plane landed there, I was not consulted.

Dr Luyenge: I rest my case Chair.

Mr R Tseli (ANC): Let me indicate upfront that I have a problem with a meeting that is arranged at your residence with people who have business interests. You even go the extent of inviting the CEO to that meeting, and you want the Committee to believe that this was an official meeting and not a private meeting. A direct question maybe, why was it not necessary for the DG to be part of that meeting?

Mr Martins: In none of my submissions, nor did I ever say that was an official meeting. I stated it was meeting at my residence.

Mr Tseli: So it was a private meeting?

Mr Martins: Yes. It was a meeting that I facilitated between Mr Tony Gupta and Mr Lucky Montana. The purpose was to get that information that he required.

Mr Tseli: The reason I am talking about private and official, I wanted to understand if this meeting was convened in your capacity as a Minister.

Mr Martins: The issue is that if you are a Minister it is difficult to say if I convene this meeting, I convene it in my personal capacity or I convene it as a Minister. My conceptualisation of that meeting is that it was convened by the Minister of Transport. I was the Minister of Transport, but it was an informal meeting at my residence.

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Mr Tseli: In May 2013 you refused to give permission to the Gupta family for the plane to land at OR International, and in May the same year you are deployed from Transport to the Department of Energy. Will you disagree with people who say these two events are not related?

Mr Martins: I cannot say that the two events are not related. I can only go back to the issue that it is the President who decides who is a Minister or who is not a Minister. My understanding is that you serve at the pleasure of the President, and if he redeploys you, he has the prerogative to disappoint you, in both senses of the word disappoint.

Mr Tseli: Paragraph 30, the food fair organised by the Guptas. I know Ministers to be people whose schedules are very hectic. Here is a family that organises a food fair, Ministers put all their programmes aside, activate their blue lights and go to that. Will you disagree with me if I say this is another indication of an extent to which the family is influential?

Mr Martins: I would say that we need to put things into perspective. Ministers, Deputy Ministers can have busy schedules, but it does not mean that they never have free time. And my recollection about this food fair was it was on a Saturday morning. You decide to go there. You are not compelled to go there. It is not an official function where the Presidency will say that here is a function, this line up of Ministers is required here, or you have to go to some embassy's national day. Those you can't avoid.

Mr Tseli: You try to clarify the Lucky Montana issue, the one that he raised yesterday. The impression you created at the press briefing that he introduced the Guptas to you, and now you clarified it very well today that you introduced the Guptas to Lucky, and not the other way around. Can you clarify just for the record because from what Lucky was saying yesterday, the impression he has is that he introduced the Guptas to you.

Mr Martins: What I did say at the press conference is that one of the occasions at which I met members of the Gupta family, I cited the issue concerning Prasa, and at that press conference I said "I Dikobe Ben Martins organised the interaction between Mr Tony Gupta and Mr Lucky Montana". But somewhere along the line what he understood or perhaps what somebody told him about the press conference was, "It was said that you Lucky Montana took the Guptas to Dikobe Ben Martins" which was not the case.

Mr Tseli: At the meeting that Lucky requested when he came back from Berlin to show his displeasure about the Guptas using the name of the President and the two of you, you even indicated today that you reprimanded them for their conduct. How did they respond?

Mr Martins: Obviously they were very defensive and saying that it was an untruth, and Lucky said, "But the people I engaged in my various meetings overseas said that this is what you sought to do". So he was very strong and forthright in regard to that point.

Mr Tseli: A number of people have raised concerns including those who came before the Committee to testify, they have raised concerns about the influence of the family in government particular in the awarding of tenders. Do you think people have reason to be worried about this influence?

Mr Martins: I think reasonably anybody would have reason to be concerned if they had to look at the tender records of various state departments and found that there was normally a particular company that belongs to particular people.. That would be a cause for worry. Just like if there are Black Economic Empowerment (BEE) projects to be given, and they are always given to the same people, then there is something wrong there.

The Chairperson: I also just want to set the record straight, Honourable Tseli's question as responded by the Deputy Minister. Mr Lucky Montana said he was introduced to the Guptas by the Deputy Minister. The Deputy Minister called him in a meeting where the Gupta family was present so it's not Montana introducing the Deputy Minister to the Guptas.

The Chairperson welcomed Mr N Singh (IFP) back to South Africa and the Committee. This was his first appearance in the Committee since 2017.

Mr Singh: Thank you very much ma'am. I apologise for not being here, but we've got a very capable alternative here, Honourable Swart. We've been busy dealing with other matters of state which will impact on us next week.

The Chairperson: Thank you very much for that clarification and your apology has been accepted.

Mr Gungubele: Maybe you can check the Hansard or whatever. My understanding of Honourable Tseli was that he was articulating the response of Montana based on his perception of the situation. He was not saying what Montana said, and I think we should go to the Hansard.

The Chairperson: We will do that. Deputy Minister, the statement that you made in the press conference, I want to bring it to your attention that this Committee found it insulting to the Committee and to the work of the Committee especially when you said this Committee works as a kangaroo court. It was very insulting and it also disturbed us a Committee because we are a Committee that you belong to. You are Deputy Minister of Public Enterprises, we are the Committee of Public Enterprises, a Committee constituted in Parliament and a constitutional body. Our terms of reference, Deputy Minister, were very clear. Our principle has always been the same, and we said it again and again, that if you are implicated you must come forward. You will be given a chance to respond to what you are implicated in. I think, Deputy Minister, even if you won't see it befitting now, I think you owe us an apology as this Committee because

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when we took this decision of taking the inquiry forward we had your blessing that I can assure you. You assured us you will be behind us in the process but to our dismay and disappointment you uttered such words in public instead of coming to us because we are your your children as the Committee. We work with you, we want to work with you going forward.

Mr Gungubele: We are not the Minister's children. We can't!

Mr Dlamini: We are not his children.

Chairperson: We are not your children Minister. It is just a Xhosa phrase that maybe I took it from Xhosa as it is and put it in English, and people who understand English more than me took it the other way. We are not your children literally. Deputy Minister, according to South African law you cannot be charged for meeting the Guptas. We are going to be meeting the Guptas, and I am looking forward to meeting the Guptas, and I am sure that for us to meet the Guptas as this Committee we are not doing any criminal act. We are looking forward to working with you in developing the country, and also in fighting corruption in government and in the governing party, and thanks for letting us have an interaction with you.

Mr Martins: With your kind permission, Chair. I would humbly ask the Portfolio Committee to privilege me with a copy of the letter where I said this Committee is a kangaroo court. I have never ever said this Committee is a kangaroo court.

The Chairperson: Thank you, Deputy Minister. We do not have a letter but it is what came out of the media statements that you made. For now the Committee stands adjourned.



ORIGINAL

COMBINED SUMMONS
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 35689/20

In the matter between:

ESKOM HOLDINGS SOC LIMITED
SPECIAL INVESTIGATING UNIT

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 HOE HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

First Plaintiff

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 ABOVE COURT, **PRETORIA**

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 GRONDIK VAN DIE HOE HOF VAN SUID AFRIKA GAUTENG AFDELING, 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

First and Second Plaintiffs' Attorneys

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Ref: MAT744

C/O MANAMELA MAROBELA AND ASSOCIATES INC

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Pretoria

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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).xlsx". 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 Koorfontein 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.	Koorfontein (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	<u>R 577 839 105.42</u>
	R 588 325 607.95 +
Unpaid Amount	<u>R 133 781 381.48</u>
	<u>R 722 106 989.43</u>

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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**MINUTES OF THE ESKOM BOARD MEETING AND WORKSHOP B14-2014/15 HELD ON 9
MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 10H00**

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Board Chairman
Mr NT Baloyi	Member
Ms N Carrim	Member (Tele-conference)
Mr Z W Khoza	Member
Mr R Kumalo	Member
Ms C Mabude	Member
Mr T Matona	Chief Executive
Ms T Molefe	Finance Director
Dr P Naidoo	Member
Ms V Naidoo	Member
Dr BS Ngubane	Member (Tele-conference)
Mr MV Pamensky	Member (Tele-conference)

APOLOGIES

Ms V J Klein	Member
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BY INVITATION

Mr F Ndou	Acting Divisional Executive: Office of the Chairman
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IN ATTENDANCE

Mr L Dlamini	Senior General Manager: Office of the Chairman
Mr M Phukubje	Company Secretary
Mr N Tsholanku	Senior General Manager: Regulation and Legal
Mr W Venner	Committee Secretary

1. OPENING AND WELCOME

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

2. APOLOGIES

There were no apologies noted.

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3. QUORUM

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

4. DECLARATIONS OF INTEREST

There were no declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

The agenda was approved.

7. STRATEGIC ISSUES

7.1 External and Independent Enquiry

A Memorandum detailing the current status of events around Eskom was tabled for information, details of which had been circulated to members. The memorandum included resolutions around the establishment of an External and Independent Board of Enquiry for Eskom, at the request of the Presidency.

The Chairman reported that the Presidency had expressed a concern that the impact of Eskom and power on the country was being understated. In this regard it was felt that the Board had to be certain that it received accurate information from management for all issues and initiatives. Once the Board had the information it would have to make decisive resolutions.

He had been requested to request the Board to authorise and mandate an independent, external enquiry to establish the facts of the current difficulties. This enquiry would have to be unfettered by management and the Board and other policy stakeholders. It must be seen to be credible and objective and have a mandate to be penetrating and unhindered.

The Chairman took members through each of the resolutions proposed as follows:

1. "That this Board resolves that there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors. Ordinarily notice of at least 7 days is required. Due to these exceptional circumstances (recorded in the memorandum) this Board resolves to accept short notice and to receive and consider the notice and resolutions of this meeting.
2. That this Board resolves that an external and independent enquiry be set up to investigate and determine the facts relating to the current technical, commercial and

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structural status and any acts and/or omissions that have contributed to the current deficiency of generating and distribution capacity of Eskom.

3. That the Board resolves to appoint a Board subcommittee comprising Zola Tsotsi, Chairperson of the Board, Ms Chwayita Mabude, Chairperson of Audit and Risk Committee and Zethembe Khoza, Chairperson of People and Governance Committee, mandated with delegated authority of the Board to determine the terms of reference of the enquiry; the selection, mandating and contracting of the independent investigators; and the oversight of the enquiry. The subcommittee shall have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the unfettered fulfilment of this mandate, as the board itself would have such power and authority, and further, without limitation, to ensure that the environment within the Company does not hinder or create a perception of hindering the enquiry and to take all such necessary steps to ensure such.
4. That the Board authorises the Chairperson in consultation with the Minister and the Minister of Finance to approve expenditure sufficient and necessary to fund this enquiry.
5. That this enquiry shall be required to present its final report to the Board, the Minister and the Presidency no later than the 30th June 2015.
6. That the subcommittee shall have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary given the target to complete the investigation within 3 months (urgency) and to appoint such persons or entities to conduct the enquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have any effect on the enquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations."

It was recommended that Resolution 4 should refer to the Finance Director and not the Minister of Finance. The Chairman reported that an independent resource had been identified already by the Presidency for Resolution 6. He reported further that the Presidency had done all the legal and governance work to facilitate this resolution and he had a document in that regard.

A member stated that he was not comfortable with making major decisions based only on a two page document and there had been no opportunity to discuss the issue in an In-committee session. He was also against approving resolution 6. Furthermore the Board had not had an opportunity to discuss the entire issue in an in-committee session or discuss the policies around procurement and tenders. The Board was being asked to approve the implementation of a sub-committee with wide ranging powers and he felt that he could not agree with this request.

Another member stated that he was concerned that this enquiry would take 3 months and would also take up time from both Board and management which would deviate the focus from their normal duties. This may also result in causing initiatives that were on track no

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longer being so because of the deviation in focus. He stated further that the Board had received a significant amount of information from management. One positive point to note was that the CE and FD had not been long in their positions and therefore their participation had been very positive.

A member stated that the Board required facts but to date had not had a proper Board meeting. In this regard the Board should make a call but if the shareholder made the decision around this committee, he was comfortable. However then it would not be necessary for the Board to make a decision thereafter. He also stated that Board would have to understand how this would affect the critical issues between the Board and the War Room, while at the same time the Board would be dealing with load shedding. He was therefore of the same opinion as Dr Ngubane that he could not approve the resolutions.

The FD stated that it would be necessary to unpack the scope of work before implementing the sub-committee. It would also mean having to look for cash to pay for the sub-committee as well as justify the funding. The instruction around funding would have to be given in writing in order to protect the Board.

A member was of the opinion that this should have been a directive to the Board from the Presidency or the DPE. In this regard the resolution should state that the enquiry was a request from the Presidency.

Another member stated that the Board should meet with the Minister of Public Enterprises ("Minister of PE") to understand what her expectations were from this enquiry. It was agreed further that clarity was required as to whether the Board would continue with its normal duties while the enquiry was underway, as to date no reason had been given as to why the Board meeting of 26 February 2015 had been cancelled by the Minister of PE. Clarity was also required in respect of the Board's obligations to the War Room.

It was reported that the Audit and Risk Committee had emphasised that the Board needed to review the sitting process of the War Room as there was no alliance or alignment between the Board and the War Room. Members wanted to ascertain the Shareholder's view around this issue because at present the Board had still not held a Board meeting and would need to understand the scope of work and how the committee would function. A concern was raised that the committee could usurp the Board's powers.

It was noted further that the War Room had been established as a result of a Cabinet decision and answered to Cabinet and had the authority to implement solutions to the electricity crisis. Therefore there was some confusion as to what was expected out of this committee as it would also report to Cabinet. Furthermore the War Room also had a plan to implement a Board of enquiry to look at the maintenance of generation plant. It was noted further that deviations from procurement processes were allowable when warranted and justifiable. But it would be necessary to understand why the Presidency required this deviation for this committee.

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The Chairman stated that in regard to the nature of what the Board was being requested to approve, it would be prudent to expect a direct communication from the Shareholder around this issue in writing. Therefore the Chairman undertook to discuss the feelings of members that the request for the establishment of an External and Independent Board of Enquiry for Eskom should be formalised by the Shareholder either in writing or at a formal meeting. Once this had been formalised the Board would decide how it would be implemented. It was agreed further that the Board was supportive in principal of the request but that there had to be alignment between Board, the War Room and clarity was required around the Terms of Reference, the scope, objective and expected achievement of the Board of Enquiry. This would inform how the Board would respond.

The Chairman reminded members that at the Board induction it had been recommended that the Board should meet with the Minister of PE more often. He noted further that he was also concerned that the Board meeting of 26 February 2015 had been cancelled and still needed to take place. A member stated that Board committee meetings were proceeding but without a formal Board meeting the committees were effectively operating without a mandate.

The Company Secretary advised members of the statutory requirement around the Corporate Plan. An extension for submission had been requested for submission of the Corporate Plan from the Shareholder but there was uncertainty as to whether this would be approved by government. The FD noted further that the risk around the borrowing programme had to be noted by the Board before it could be submitted to the Shareholder for further submission to National Treasury for approval and this was required before 1 April 2015.

The Chairman reported that a previous letter to the Minister of PE had stated that following a request by members that more frequent meetings should be held between the Board and the Minister of PE. It was recommended that another letter be sent advising of the deadlines around regulatory submissions to the Shareholder and National Treasury.

After some discussion it was agreed that the Board would advise the Minister of PE that they wanted to proceed with the formal Board meeting and would request that it not be cancelled by the Shareholder.

Resolved that:

1. the request for the establishment of an External and Independent Board of Enquiry for Eskom is noted;
2. the Board should engage with the Minister of Public Enterprises around the following issues before the establishment of the Board of Enquiry;
 - 2.1. obtain clarity around the Terms of Reference, the scope, objective and expected achievement of the Board of Enquiry;

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- 2.2. the Resolution should refer to the Finance Director and not the Minister of Finance around approval of expenditure sufficient and necessary to fund this enquiry;
- 2.3. obtain clarity as to whether the Board would continue with its normal duties while the enquiry was underway;
- 2.4. obtain clarity in respect of the Board's obligations to the War Room;
- 2.5. ascertain the Shareholder's view around the sitting process of the War Room

9. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 11h15.

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

CHAIRMAN:



DATE:

18/11/16

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**MINUTES OF THE ESKOM BOARD IN-COMMITTEE MEETING HELD ON 11 MARCH 2015 AT
THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 12H00**

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Chairman of the Board
Dr B Ngubane	Member
Ms V Naidoo	Member
Ms N Carrim	Member (Left early)
Ms V Klein	Member
Ms C Mabude	Member
Mr Z Khoza	Member
Mr N Baloyi	Member

APOLOGIES

None

IN ATTENDANCE

Mr M Phukubje	Company Secretary
Mr N Tsholanku	GM: Legal & Regulatory
Mr N Linnell	External Consultant

1. OPENING AND WELCOME

The Chairman opened the meeting and welcomed all those present.

2. APOLOGIES

Apologies as indicated above were noted.

3. QUORUM

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

4. DECLARATIONS OF INTEREST

There were no other declarations of interest pertaining to items on the Agenda.

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5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

There was only one item on the agenda, which was to discuss the issues which arose at the meeting with the Minister of Public Enterprises.

7.1 BOARD IN-COMMITTEE SESSION

A number of issues were raised in the In Committee session, being as follows:

- It was proposed that the P& G Committee initiate a process and that the ARC be responsible for the ultimate forensic element of the inquiry;
- It was agreed, confirmed and resolved that the ARC be the custodian of the process and to engage with other committees where it was necessary to do so.
- The Chairman highlighted the view that it may be necessary for employees whose areas are implicated to be requested to step aside whilst the inquiry was proceeding. A question was asked about what effect this would have on the operations of the business. Members also discussed the possible impact on continuity this approach would have on the company's business activities.
- It was noted that there had been a trust deficit and that people who may be to blame would not want the truth to be found and findings to be made. The Chairman outlined a number of misdemeanours allegedly committed by some executives. It was pointed out that these issues needed to be investigated forensically but that the executives who are responsible for those areas not be around during the inquiry.
- A member pointed out that a fact finding exercise should be undertaken before actual suspensions are implemented and this was to avoid acting against possibly innocent executives. If Eskom acts hastily then it will find itself in the spot and having to fight cases in the Labour Court, so the Board needed to exercise great caution.
- The executives identified initially as being likely to be requested to step aside are the GE: Commercial and Technology, GE: Group Capital, FD and the CE. It was pointed out that it would be advisable to have sub-committees discussing the matters first and then ensuring that proper processes were followed. The Chairman reported that a lot of groundwork has been done and a report can be given to Board members at a later stage. The most important thing is that the inquiry is done and that it should be done soon. A Member pointed out that it would be worrisome, especially in the market, for Eskom to suspend the FD and the CE at the same time. That would not be ideal. It was stated that the FD had an issue around her as she had allegedly met with tenderers during a tender process.

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- It was noted that the inquiry is not about individuals but rather was intended to focus on areas of responsibility. That was the rationale for letting those responsible for the said areas go on leave for the duration of the inquiry.
- It was proposed that the relevant Board Committees deliberate on the matters and issues and then revert with recommendations to the Board.
- It was then resolved that the inquiry should proceed, that the executives concerned should be put on leave and that the ARC and the P&G should work on the ToRs.
- The P&G Committee was then mandated to look into who should act in the absence of the executives who would be on leave and make the necessary decisions.
- It was agreed that the Corporate Plan and the Borrowing Programme be deferred.
- It was also resolved that management must investigate the issue of the bugging of the Boardroom as well as information leaks and come up with a report to be presented to the Board.

RESOLVED that:

- An inquiry be instituted into the affairs of Eskom and that the duration of the inquiry shall be three months;
- The ARC take custodianship of the inquiry and P&G Committee and other committees assist where necessary and report to the Board. The ARC is mandated to draft the Terms of Reference, with the assistance of the P&G Committee;
- The executives whose areas will be investigated be put on suspension for the duration of the inquiry;
- The Corporate Plan and the Borrowing Programme be deferred until further notice; and
- Management must institute an investigation into the bugging of the Boardroom and report to the Board on their findings and recommendations;

10. CLOSURE

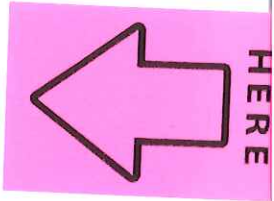
There being no further matters for discussion, the Chairman declared the meeting closed.

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

CHAIRMAN: 

DATE: 15/11/16



"VK8"

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**MINUTES OF THE ESKOM BOARD MEETING WITH MINISTER OF PUBLIC ENTERPRISES
HELD ON 11 MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM
10H00**

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Chairman of the Board
Mr T Matona	Chief Executive
Ms C Mabude	Member
Ms V Naidoo	Member
Ms V Klein	Member
Ms N Carrim	Member
Mr P Naidoo	Member
Mr M Pamensky	Member
Ms T Molefe	Finance Director
Mr N Baloyi	Member
Dr B Ngubane	Member
Mr Z Khoza	Member
Mr R Kumalo	Member

APOLOGIES

None

IN ATTENDANCE

Ms L Brown	Minister of Public Enterprises
Ms M Mokholo	Director-General DPE (Acting)
Mr M Phukubje	Company Secretary

BOARD IN-COMMITTEE SESSION

After introductions and formalities, the Minister raised the issue of the location of a bugging device which was found in the Huvo Nkulu Boardroom at Eskom Megawatt Park. She also noted the fact that no investigation into the matter had been initiated and pointed out that it is a very serious matter over which action should have been taken.

The CE responded by explaining that the matter was being dealt with and that a number of new procedures had been introduced in order to stem the possible repetition of a similar matter. It was standard procedure that the boardroom is "swept" for the existence of recording and transmitting devices a day before a meeting



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as well as a day after the meeting. He further reported that he is still awaiting a report from the service providers about the origins and the exact nature of the device.

The Minister stated that the matter needs to be investigated urgently and that it should be accorded the necessary urgency, which she is not detecting from the actions taken thus far.

(At this point the CE and the FD were excused from the meeting: 10h34)

The Minister continued and stated that she has no right to instruct the Board on any matter regarding the conduct of Eskom's business. She stated further that the meeting is an informal one and then proceeded to note a number of negative developments in the South African economy such as the fall of the Rand, Standard & Poor's two-year review leeway period granted to the country, the growth of the economy at pedestrian rates and the possible effect of a downgrade of the sovereign credit rating.

She also noted that she was aware of the fact that the Board may feel that it has fallen by the wayside given the activities of the War Room. The last War Room engagement had indicated that even information which was provided by Eskom was unreliable, for example, the War Room had been provided with two financial reports within the space of a month indicating vastly different financial scenarios for Eskom. One of the reports painted a dire picture and the other indicated that Eskom was profitable and financially healthy.

It was also noted that around February 2015 during the period when the State of the Nation was due to take place, there was a lot of load shedding but that at the moment things appear to be going well in that regard. With regard to the Voluntary Severance Packages, the War Room made it clear that Eskom cannot be allowed to proceed, as this would amount to a serious loss of skills for the company. There was a contradictory article in the newspapers about Eskom intending to retrench over 1000 white engineers. This is not the role of Eskom but it leads to contradictory messages being sent out to the public.

The Board of Eskom knows what would happen in Eskom if it were a private company. It is the wish of the DPE that there should be a forensic enquiry so that there is proper information around the main issues which affect the business of Eskom. It will not be an easy one because both Eskom and the DPE will be attacked about it. It was noted that this is an unusual appeal from a shareholder.

The Minister also expressed her concern about the interest rates which Eskom negotiated and agreed to in the market. There is also the issue of inequality of the coal price purchases, with some companies being paid more than others. There is also the issue of mismanagement of the load shedding process. The issue of the purchase of diesel "on the hoof" is also another concerning matter which requires attention.

It was noted that the country has an obligation to ensure that the economy is shared in a sustainable manner, with the majority of the population also benefitting. Fortunately, it was noted further, the appointment of the Board did not bring about any problems and the process went smoothly.

The Audit and Risk Committee may go out and procure the services of an independent, credible forensic investigator to undertake the inquiry and not someone who has done work before for Eskom or whose independence may be in doubt.

During the discussion phase of the meeting, the following questions were asked by Board members:

- What are the reasons for cancellation of the Board meeting of 26 February 2015?
- The CE has confirmed that there will be an investigation to be conducted in the War Room, Is that still proceeding, in light of the possibility of having another one in Eskom?

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- What can be done about the alignment between Nersa, DPE and DOE in enhancing the efficiencies for Eskom?;
- Can there be an exploration of a possible executive role for non-executive directors as the current model is inadequate in addressing the problems which beset Eskom;
- Is it possible for committee chairpersons to become members of the War Room to allow for a flow of information between the War Room and the Board?
- Is Minister comfortable with the composition of the Board Committees as they currently stand?; and
- The Board would like clarity on the issue of the municipal debt, particularly as it has a statutory responsibility to collect outstanding debts owing to the company.

During the discussion following the questions, it was clarified as follows:

- The Board confirmed that a letter had been sent to the Minister for her consideration regarding the municipal debt and how to address it. The Minister stated that she will look into the contents of the letter and respond. It was explained that in terminating supply to municipalities, various factors would need to be taken into account.
- Executive who are responsible for areas which will be the focus of the investigation must step aside for the duration of the inquiry in order not to impede it;
- The issue of directors' liability may need to be reviewed in light of some of the risks which are coming up e.g. environmental risk;
- With regard to the War Room and the Board subcommittees, the Minister undertook to respond to the queries in a few days' time;
- The Minister raised a concern that the reports on Duvha and Majuba have not been provided and that the DPE is therefore in the dark as to what is happening there.
- With regard to the investigation, it was submitted that it should not be a long drawn-out exercise and a report (even if it is a preliminary one) must be given within 3 months;
- Board representation in the War Room can be done by means of only one member- not all the chairpersons of committees;




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- It was noted that there is a need for a political response to the statement that Eskom is retrenching 1000 white engineers and the Minister undertook to address it;
- On the War Room investigation, it was explained that that is a technical investigation and that there will still need to be a broader one;
- Eskom was urged to engage with its fellow state-owned entities in order to maximize its benefits and efficiencies as very often there will be ways of working together for mutual benefit;
- Cost overruns at Medupi, philosophy maintenance and the reserve margin need to be looked into; and
- It was noted that there is a high likelihood that the Corporate Plan does not address the critical issues confronting Eskom.

10. CLOSURE

There being no further issues to discuss, the meeting closed at 11h44.



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MINUTES OF THE PEOPLE AND GOVERNANCE COMMITTEE MEETING NO 07/2014/15 HELD
IN THE HUVO NKULU BOARDROOM, MEGAWATT PARK ON 11 MARCH 2015 AT 14:58

STRICTLY CONFIDENTIAL

PRESENT

MEMBERS

Mr Z Khoza	Chairman
Ms N Carrim	Board Member (left meeting early)
Ms C Mabude	Member
Dr P Naidoo	Board Member
Ms D Naidoo	Board Member
Mr N Baboyi	Board Member
Mr Z Tsotsi	Member
Ms V Klein	Member

IN ATTENDANCE

Mr N Tsholanku	GM: Legal and Regulatory
Mr M Phukubje	Company Secretary
Mr N Linnell	External Consultant

APOLOGIES

No apologies were noted

1. OPENING AND WELCOME

The Chairman welcomed all members and officials present and declared the meeting open.

2. APOLOGIES

There were no apologies.

3. QUORUM

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

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4. DISCUSSION OF ITEMS ARISING FROM BOARD'S DECISION TO INSTITUTE INDEPENDENT INQUIRY

P&G applied their minds to the current impact that the executives would have on the inquiry. The executives identified were:

1. Mr T Matona
2. Ms T Molefe
3. Mr M Koko
4. Mr D Marokane

It was agreed that the Chairman of the Board would lead the discussion and chair the meeting as he was familiar with most of the issue to be discussed. The Chairman started the meeting by confirming that the Board had made the decision for the enquiry to continue.

Mr Linnell introduced himself and gave a brief background of his skills by stating that he was a non-practising attorney who now runs a consulting firm. He is from Cape Town and he understands the environment of SOC's, having performed similar work in other SOC's previously. He proceeded to outline the important elements of carrying out such an inquiry, stating that impartiality was an extremely important aspect of any inquiry. He also stated that it would be important to ensure that service providers with the requisite levels of skill and competency are appointed to undertake the exercise.

The committee agreed that it would appoint a specialist communications advisor in terms of Eskom's procurement process, to ensure that the Board's communications strategy around the inquiry and matters related thereto were managed properly.

Each of the executives were then called into the meeting and notified of the Board's decision. They were also handed suspension letters which were signed by the Chairman of the Board and each of the executives. The purpose of the inquiry was explained, as well as why the Board felt the need for the executive to vacate their position. Each executive was given an opportunity to give reasons why they did not believe the decision to be the best course of business.

Mr T Matona

(No record was kept of this discussion.)

Ms T Molefe

She was advised that the Board had arrived at a decision to institute an inquiry into the affairs of Eskom. The Board had mandated the P&G Committee to implement the Board's mandate. A number of areas would be looked into by the inquiry.

In order for the inquiry to proceed unhindered, it had been decided that executives in whose areas the inquiry will be focusing would be requested to step aside for the duration of the inquiry. It was stated that there is no apportionment of guilt on anyone's part. It was explained further that the committee had decided to put her on precautionary suspension while the inquiry was proceeding. She was requested to make input and she stated that the Board needs to do what it

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believes is in the interests of Eskom but she cannot comment on whether it was right or wrong. She stated that she did not know what transpired during the engagement with the Minister. The letter was then handed to her and she signed it.

Mr M Koko

Mr Koko stepped into the meeting and the Chairman gave him the background of what had happened that morning, including the fact that a decision had been made by the Board to institute an independent fact-finding inquiry into the affairs of Eskom.

The focus of the inquiry was explained and the specific areas of focus outlined to him, these being maintenance, commercial processes, technology inputs and the new build programme as well as finance. The inquiry will focus on these areas and come up with recommendations on how best to improve these. It was explained that the executives leading these areas would be put on precautionary suspension for the duration of the inquiry, which will run for a period of approximately three months.

It had therefore become necessary to give him a notice of suspension and he was advised that he was entitled to give a view on whether the suspension was justified or not. He was then requested to make his input. He confirmed whether he understood the Chairman to be saying that the executives for the areas pointed out must make way for the inquiry to proceed in an unfettered manner and this was confirmed. He then stated that the executive in Eskom responsible for maintenance was Mr Thava Govender and he should be the one sitting before the committee. He asked why then was it him sitting in front of the committee. He also would like to understand for the areas are not being brought to face the committee.

It was explained to him that there were problems in his area and it had been decided to request him to step aside so that there would be an unhindered inquiry into that area. He stated that while he understands and agrees, he still wants to understand why the other executives were not being given the same notices of suspension.

He was told that he should not concern himself with what was happening in the other areas of the business. He then entered into a dialogue with the Chairman and asked whether it meant that those other areas are not areas of concern for the organization. The Chairman explained to him that the committee was addressing him and that it was not for him to concern himself with matters which were not for him to be concerned about. He then stated that he is not different from other executives who were not being requested to step aside and further that he should therefore not be made to step aside.

It was proposed that his concerns and inputs have been noted and he then stated that for reasons of equity, he would like to be treated on an equitable basis like the other executives (such as Dr. Lennon, Mr. Govender and Mr Ntsokolo). Apart from the submissions he had made, he had nothing further to add. It was made clear to him this was not judgment against him personally. He would like to reserve his rights because he does not know where this process will end.

(Mr. Koko was requested to step outside to allow the committee to deliberate)

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Upon his return he was advised that the Board had deliberated and made its decision and that its position had not changed. He was informed that his presence during the inquiry would not be ideal and the committee had decided to give him a notice of suspension. He stated that the nature of the inquiry had nothing to do with maintenance or technology and this was noted. The letter of suspension was then handed to him to read and he wanted to clarify that the period of the inquiry would be three months and this was confirmed. He then signed and accepted the letter.

11. CLOSURE

There being no further matters for discussion the Chairman declared the meeting closed at 16h25.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS



CHAIRMAN

01/12/2017
DATE

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**MINUTES OF THE SPECIAL BOARD IN-COMMITTEE MEETING HELD ON 19 MARCH 2015 IN
THE HUVO-NKULU BOARD ROOM, THIRD FLOOR, MWP**

STRICTLY CONFIDENTIAL

PRESENT:

MEMBERS

Mr Z Tsotsi	Chairman
Dr B Ngubane	Member
Ms C Mabude	Member
Ms V Klein	Member
Ms V Naidoo	Member
Ms N Carrim	Member
Mr R Kumalo	Member
Mr N Baloyi	Member

OFFICIALS

Mr M Phukubje	Company Secretary
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1. OPENING AND WELCOME

The Chairman welcomed all present and declared the meeting open.

2. APOLOGIES

None.

3. QUORUM

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

4. DECLARATION OF INTERESTS

5. SAFETY/EVACUATION

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. CONFIRMATION OF THE AGENDA

The agenda was confirmed as tabled.

- 7.** Chairman reported that he has spoken to the Minister and she indicated that it is unlikely for Eskom to receive any further financial assistance. She said that she will speak to the Acting DG

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and she will sit down with our CFO. She also wanted to know what Eskom will be saying about the downgrade tomorrow and he had responded that he didn't know. It was therefore imperative that the CFO & the Acting DG sit and discuss a joint response.

8. ITEMS FOR INFORMATION

8.1 New Age Contract

Chairman would speak to Ms. Klein who had explained that she would not sign because she was not comfortable with the resolution.

Mr. Baloyi also expressed his concerns to the effect that the Board should choose its items carefully, especially as the organization was in need. The second issue was that of the way in which it was done – processes where not followed properly.

Ms. Mabude said that the principles around how the New Age breakfasts were to be done could be discussed and clarified. It must be recorded that this contract did not follow due process on the basis of the fact that it was a commercial process and that the contract cannot be rescinded by Eskom. There was also a letter of demand and it was not going to be possible for Eskom to get engaged in a litigation.

It was agreed that an early termination clause should form part of all contracts in future.

8.2 Power Purchase Agreements (PPAs) for Short Term Energy procured by Eskom from Independent Power Producers (IPPs) and Municipalities.

It was noted that the round robin resolution for the PPAs for Short Term Energy procured by Eskom from IPPs and Municipalities had been approved by the majority, and Mr. Naidoo recused himself.

8.3 Suspended Executives

With regard to the Letters from suspended executives, including the CE, it was agreed that the position was clear that no charges would be preferred against the suspended executives at this stage. The Legal department was authorized to send the letter that had been prepared in this regard.

The Chairman explained the background as to who Nick Linnell was and that he (the Chairman) had been introduced to him in a meeting with President. Mr Linnell had offered to co-ordinate the work that was supposed to be done. The Chairman stated that he did not offer the Board an opportunity to agree to appoint Mr Linnell and that this had been a mistake on his part and Mr Linnell had probably believed that the proper processes had been complied with and he then proceeded to undertake the work. He had asked whether there were charges which could be brought against the individuals concerned. He was told that he could meet with the complainants and other trade union representatives who then told him a number of things. Then came the Wednesday meeting and he did not inform the Board again as to the issue around the appointment of Mr Linnell. There was no contract for Mr Linnell, and there was no clarity as to who he was acting for. This was not broached with the Board again.

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The Chairman accepted blame for that failure to take the Board, as well as the fact that work that was already being done (e.g. Interviews etc.). The people who were acting in place of the suspended executives were allegedly called into a meeting and knew beforehand that they would be acting. The Board needed to find out how this happened. They were apparently called into a meeting and the acting CE met with them. The problem was that the Chairman's action had now compromised the process of the inquiry. It was agreed that the statement issued should be retracted & Mr Dlamini should advise on how this will be done.

Resolved that:

- The ARC deals with the matter;
- it should be ascertained whether the Board was exposed in bringing the consultant in without the correct governance procedure being followed;
- The ARC should report back to the Board on what steps they are proposing to take with regard to this matter;
- Minister should be advised of the error of the nature/ contents of the statement;
- It is noted that the Minister had stated that the statement should not be sent out until briefing has been held with either the Minister or the acting DG.

Mr. R Kumalo joined the meeting

Resolution by the Board:

Break and resumed at 23:40, the Chairman was excused from the meeting. Dr. Ngubane was elected to chair the meeting.

The view was that the Board needed to make a call about the actions of the Board and the Chairman. The Chairman was an ordinary member of the Board and given the severity of the matter and what happened to the Company due to the downgrade. The downgrade occurred purely on governance and this was a reflection on the Board. Members felt that the decision of 11 March 2015 to institute an inquiry was correct, given what the company was going through. That member should now stay fully non-executive and that is how it must be done.

The Board cannot go back on decisions which have been made but the one thing the Board had control over was the independence of inquiry. It was therefore very important how the process going forward was managed by the Board. At the end of the process the Board either goes down with the process or survives the process. The question before the Board was what it needs to do about the Chairman's actions. Two options were tabled of which one was to say that the Chairman should step aside as well for three months of the inquiry or based on the apologies, the Board could work together with him on the provision that he obeys the rules of governance.

The Board unanimously resolves that it had lost confidence in the Chairman as a Director of the Board and recommended his removal as a Director. It was agreed that supporting documents should be put together to indicate:

- Failure to get Board approval

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- Matters considered as aggravating actions of the Chairman.
- Preparing and distributing a media statement in the name of the Board without Board approval.

The Board resolved that

1. Mr. R Kumalo is the delegated media person in the ARC; and
2. Dr B Ngubane is appointed as Acting Chairman of the Board.

The Board was prepared to take the risk of whatever the Minister might decide around the issue. It was agreed that all communications should go through ARC around this resolution and all matters related thereto.

The Chairman then came back to the meeting at 00:37

The proposal was that the Company Secretary should write to the Minister requesting a meeting as soon as the Minister was available, the sooner the better given the inquiry, preferably on Friday or even the weekend. Sunday, Monday, the ARC decision to continue.

The meeting adjourned at 00:45

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


 CHAIRPERSON

18/01/16
 DATE

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MINUTES OF THE ESKOM BOARD IN-COMMITTEE MEETING 18-2014/15 HELD ON 30 MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 20H00

STRICTLY CONFIDENTIAL

PRESENT

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

APOLOGIES

None

BY INVITATION

None

IN ATTENDANCE

Mr M Phukubje	Company Secretary
Mr W Venner	Committee Secretary

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1. OPENING AND WELCOME

It was noted that the Chairman had a conflict of interest around the only item on the Agenda and as a result it was agreed that he be recused as Chairman for this meeting and Mr M Pamensky be appointed as Acting Chairman for this meeting.

Resolved that:

1. Mr M Pamensky is appointed as Acting Chairman for the Board meeting held on 30 March 2015.

The Acting Chairman welcomed members to the meeting.

2. APOLOGIES

There were no apologies.

3. QUORUM

A quorum being present, the Acting Chairman declared the meeting duly constituted.

4. DECLARATIONS OF INTEREST

There were no other declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

The agenda was approved. It was noted that this meeting was a continuation of the meeting held on 25 March 2015

7. MATTERS FOR APPROVAL

7.1 Proposal to Remove the Chairman of the Board

At this point Mr Tsotsi joined the meeting in his capacity as a director

It was agreed that Mr Tsotsi's legal counsel would lead the discussion on the charges noted in the Notice of the meeting and Mr Tsotsi would respond to each one.

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

Mr Tsotsi stated that on 9 March 2015 he had convened a special Board meeting wherein he put to the Board the idea of an inquiry into the affairs of the Company. The reasons were that the Board was aware of the true state of affairs, the financial predicament and capacity challenges in Eskom. The Board had been keen to ensure that Eskom received relief at the earliest opportunity. He had not employed Mr Linnell but had suggested to the Board that Mr Linnell would provide advice, Mr Linnell had been given the opportunity to make a presentation to the Board on 11 March 2015 at which he explained himself and the ideas he had to assist. During this time the Board had not had the opportunity to state whether it was engaging Mr Linnell or not. The Board had delegated authority and oversight to two Board committees, vis People and Governance Committee ("P&G") and Audit and Risk Committee ("ARC") to set up the inquiry and engage whoever needed to be engaged therefore. P&G had met after the Board meeting and it had been decided that Board would have to decide if it was fair to employ Mr Linnell. Mr Tsotsi was clear therefore that this should have been dealt with by P&G.

In response to a query as to whether the Minister of DPE was involved in the decision to implement the inquiry, Mr Tsotsi stated that the Minister of DPE had been consulted. The Board had requested the Minister of DPE to address the Board on this issue, and a meeting had been held on 10 March 2015 in this regard.

Charge 2: The Consultant commenced with his work to the knowledge of the Director and without the Board of Directors being informed that work had commenced within the Company. The Director was aware that no contract of engagement for the Consultant had been concluded, thus exposing the Company to non-compliance with applicable statutes and procedures.

Mr Tsotsi stated that there was no contract with Mr Linnell and no payments had been made to him. Mr Tsotsi stated further that it was not his duty as Chairman or as a director to employ Mr Linnell, as this was the responsibility of the P&G. In fact P&G had requested Mr Linnell's assistance to draft the letters of suspension.

Charge 3: 1.3. The Director authorised the commissioning of a media statement in relation to an inquiry into the affairs of the Company ("the Inquiry") with the assistance of the Consultant without the knowledge and or consent of the Board. This media statement

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consequently fell into the public domain. The media statement contained numerous inaccuracies and misinformation which may lead to the Company facing potential legal action from third parties named therein.

Mr Tsotsi reported that the Minister of DPE had called him to request that he correct the misconception that he (Mr Tsotsi) would be leading the inquiry. This was necessary to show the integrity of the inquiry. Mr Tsotsi had requested Mr Linnell to draft the media statement around this issue and to his (Mr Tsotsi's) mind, Mr Linnell was acting in an advisory role. Mr Linnell had made various suggestions such as appointing a retired Judge to head the inquiry and retaining the services of Grant Thornton to conduct the inquiry.

Mr Tsotsi stated that he had advised Mr Linnell of the need to consult the Board before the media statement was put out to the media. He had further decided to send it to the Minister of DPE, as well, to obtain her input. He also wanted to confirm that the Board was satisfied with the media statement.

Mr Tsotsi stated that he was unaware as to how the media statement had got into the public domain before it had been approved.

He reported that the P&G had reviewed the media statement and had asked Mr Dlamini to review it further after some members had made further changes. In the interim Mr Kumalo had recommended that the media statement also be reviewed by a media specialist, Mr H Ntshingila. A long session had been held with Mr Ntshingila after the P&G input at Bryanston City Lodge before the media statement was released the next day.

The P&G had suggested that Dr Ngubane, The Acting CE and Ms Klein (in her capacity as Chairman of P&G) should accompany Mr Tsotsi to the media briefing, which had been done.

Mr Tsotsi reiterated that he was unaware as to how the media statement got into the public domain.

Charge 4: The Company is in the process of establishing the Inquiry and the Director's actions put the integrity of the process and the Inquiry itself at risk. The Director's conduct has undermined the reputation of the Board.

Mr Tsotsi stated that the idea of the inquiry had been accepted by the Board. Therefore he did not understand what this accusation was about, as well as all the internal actions around it. He had never done anything alone and had only introduced Mr Linnell. All other actions had been done by the Board. He had voluntarily consulted the Board with the view that he was carrying out the instruction from the Minister of DPE.

Charge 5: The Director's actions did not meet the minimum requirements of the standard of care expected of him as a Director of the Company and a member of the Board.

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Without looking at the specifics of the charge, Mr Tsotsi stated that he was of the view that the inquiry was a necessity in the public interest to indicate to the public that the Board was looking into the affairs of Eskom. He noted that his letter dated 26 March 2015 provided specificity around his actions.

With regard to the incident with Sumitomo Corporation, Mr Tsotsi reported that he had received a letter from Sumitomo Corporation requesting his assistance around an issue with Eskom. He decided that as he knew nothing about the issue he would have to ask the relevant Executive to intervene. He had advised the CE about this and to ask the relevant GE responsible to address the issue. Mr Tsotsi subsequently called Mr M Koko (GE: Technology & Commercial) and advised him about the letter and requested that he look into the matter, sort it out and advise him (Mr Tsotsi) of the response that Eskom should give. After some time he asked for an update and was advised that Mr Koko was still looking into the matter. Mr Koko came back and gave him a letter addressed to Sumitomo Corporation to sign. Mr Tsotsi then asked Mr N Tsholanku as the GM: Regulation and Legal to review the letter and advise if he could sign it. He had never communicated with anyone else. In this regard he stated that he never approached management at all and always only engaged with the CE or members of Exco. He had asked Mr Tsholanku to confirm that he could sign the letter so as to ensure that he was not committing Eskom to any liability. Mr Tsholanku had come back to him to advise that he could sign as the letter did not commit Eskom to any liability.

With respect to the media statement, Mr Tsotsi stated that he had already referred to this. He was of the opinion that when the Board had mandated Business Communications to proceed with the preparation of the media statement, the Board had not stated what Business Communications should and should not do as it was expected that Business Communications would use professional judgement and report back to the Board. The issues in the media statement had been introduced by the P&G and how it came out was how Business Communications wanted it to be published. The document had been produced by Business Communications and he (Mr Tsotsi) had not had any scope to produce it himself.

With respect to the appointment of an Acting Chief Executive, Mr Tsotsi reported that when he had joined the P&G meeting he had been confronted with the names of executives who had been proposed for this position. He had then asked if any of the P&G members knew the people being proposed and where did the list come from. He was advised that Dr Ngubane had engaged with the Minister of DPE who had suggested the people. He had not pushed back against the list. He then made a recommendation that a certain GE be the Acting CE and was advised that the Minister of DPE was aware of his recommendation. With regard to the accusation that he had misled the Minister of PE around this issue, he stated that he would not ask the Minister of DPE to suggest an Acting CE and he knew that such an appointment required shareholder approval.

In respect of the nomination of Mr M Sekhasimbe as Acting CE, Mr Tsotsi stated that although Mr Sekhasimbe was a good candidate, he could not be considered as he was on suspension.

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It was reported that Mr Linnell had confirmed that he had no expectation of receiving a contract or otherwise from Eskom and had undertaken the preliminary work at the risk of no payment. He was aware that he would receive no payment unless he was properly contracted. Mr Tsotsi stated further that Mr Linnell still had no expectations around being awarded a contract but was still willing to engage with the Board.

Mr Tsotsi then proceeded to make his final statement noting that the Board had been appointed on 11 December 2014⁷ at a time when Eskom was experiencing many problems. The Board had full knowledge before accepting their appointment that there as a significant amount of work to be done and he personally had learnt that this Board had plenty of energy to get the work done. The first time the Board had met had been at the induction meeting with the Minister of PE and thereafter at the Eskom induction meeting on 16 January 2015 followed by a Ministerial induction. The first formal Board meeting had been scheduled for 26 February 2015 but this had been cancelled. Therefore the reality was that the first time the Board met was on 11 March 2015, when the Board had also met with the Minister of DPE. In the meantime the members had been active in the Board committees and he had observed a large amount of energy from them.

Therefore this dramatic action had shocked him as he did not understand why the Board was doing this. If he was removed as a director of Eskom he would also be removed as a director from every other Board he served on. He was of the view that he was able to do the work of the Chairman and had explained all his actions to the Board. He did not see why the Board could not resolve its issues with him and that this was an action that the Board should not be proud of. The rotation of the Chairman was a shareholder decision. He was at a point in life where he could only receive director's fees and if he was removed as a director then he would no longer be able to received director's fees from any company, He was also of the opinion that he did not deserve to be removed.

The Acting Chairman thanked Mr Tsotsi for his presentation and asked members if they wanted clarity on any items.

In respect of the letter from Sumitomo Corporation, a member queried in what capacity had the letter been directed to Mr Tsotsi as Chairman and not to the CE and as legal advice was available why had Mr Tsotsi signed instead of giving the letter to the CE. Mr Tsotsi advised that the letter had been addressed to him and that there had been a lot of correspondence before that around this issue. The letter to him had been an attempt by Sumitomo to come to an understanding with Eskom, and he (Mr Tsotsi) had assumed that the CE was fully aware of the issue. Sumitomo had been exasperated with the responses being received from Eskom. He noted that he had requested the GE concerned to advise how to deal with this matter and give a proper response to Sumitomo and that he had advised the CE about the action he had taken. The GE could have advised him that he would prefer that the CE respond but instead had just produced a letter for Mr Tsotsi to sign. Mr Tsotsi had then asked Mr Tsholanku to review the letter and had been advised by Mr Tsholanku that he could sign as Eskom had already made commitments to Sumitomo and the Chairman would not be acting on those commitments.

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The Acting Chairman thanked Mr Tsotsi for his response and requested that he recuse himself while the Board considered his presentation.

At this point the Board went into a caucus session with their legal counsel and all non-board members, except for the Company Secretary, were excused from the meeting.

In-committee minutes are kept separately

CLOSURE

There being no further matters for discussion, the Acting Chairman declared the meeting closed at 22h00.

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

CHAIRMAN:



DATE:

18/11/16



MINUTES OF THE ESKOM HOLDINGS AUDIT AND RISK COMMITTEE

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**MINUTES OF THE SPECIAL AUDIT AND RISK COMMITTEE MEETING NO 01/2015-16 HELD ON
10 APRIL 2015 FROM 17H00 IN KGORONG BOARDROOM AT MEGAWATT PARK**

STRICTLY CONFIDENTIAL

PRESENT

MEMBERS

Ms C Mabude	Member
Ms N Carrim	Member (via teleconference)
Mr R Kumalo	Member

IN ATTENDANCE

Mr M Nkhabu	Senior General Manager: Assurance & Forensic ("SGM: A&F")
Mr N Tsholanku	General Manager: Legal and Compliance ("GM: L&C")
Mr C Kalima	Senior Manager: Procurement
Ms N Gambushe	Senior Advisor: Procurement
Ms K Crookes	Committee Secretary

APOLOGIES

Ms V Naidoo	Member
Mr M Phukubje	Company Secretary

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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. DECLARATION OF INTERESTS

No interest was declared pertaining to the matters on the agenda.

5. ESKOM INDEPENDENT INQUIRY

The Commercial Department made a presentation to the committee in terms of the procurement process they had followed to identify suitable suppliers that would carry out the Independent Inquiry in Eskom.

Commercial reported the following sequence of events, namely:

- 30 March 2015 - Procurement received an approved mandate from the Acting Chief Executive via an emergency procurement form, to conclude an enabling agreement with the successful service provider for the provision of forensic services for a period of three (3) months.
- 31 March 2015 - an RFP was issued to two suppliers, viz: Denton and Werksmans.
- 1 April 2015 - Werksmans responded with a letter requesting an extension and indicated that they would not be able to conduct the investigation within three months. Their request was subsequently declined by the end user.
- 2 April 2015 - the RFP process closed. The Dentons response was evaluated, the results of which indicated that there was insufficient information to determine that the supplier was technically acceptable. A decision to cancel the transaction was then made by the members of Audit and Risk Committee. It was also decided that the tender would be issued to the top 10 legal firms that have oil and energy capability.
- 7 April 2015 - A list of 8 suppliers was provided without contact details from the End user. Commercial started and completed the process of collecting contact details and contact names.
- 8 April 2015 – A cancellation letter was then issued to Dentons. Non- Disclosure Agreements (NDAs) was sent to 8 firms, who were all requested to provide a response by the close of business on 8 April 2015. A total of 6 firms responded with a signed non-disclosure.
- 9 April 2015 - an RFP was issued to the 6 firms, one of which responded that they would not be in a position to tender as they did not provide the type of service requested.
- 10 April 2015 - RFP closed and Evaluation commenced. Three tenders were received within the submission timeline and a fourth was rejected on the basis of being late.

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In terms of the eight suppliers, commercial provided the following feedback:

- Dentons - Recommended
- Fluxmans Attorneys - The contact person whose details were provided indicated on the non-disclosure agreement that they had no any knowledge of the request.
- TGR Attorneys - Not commercially responsive
- MacRobert Inc. - Did not sign the NDA
- Savage Jooste and Adams - Price too high
- Tabacks - Supplier indicated that they would not tender as they did not provide that type of service
- Fasken Martineau - No tender
- Dyason Attorneys – No tender

In response to a query, it was stated that the Board had taken a decision in terms of the Independent Inquiry, to not consider any of the legal firms that had done work for Eskom in the past or who were part of the Eskom Panel of Attorneys. It was stated that Dentons had not done any work for Eskom in the past and that they also had the necessary forensic investigation capability to conduct the inquiry. It was also stated that Dentons had the capability (skills and competencies) to conduct an investigation across the various disciplines in Eskom, e.g. Finance and Engineering etc.

A member expressed concern about the 3 month timeline that the investigation was expected to be concluded, given the broad scope of the Terms of Reference. The member queried the feasibility to conclude the entire investigation within the remaining 6 week period, since the investigation was expected to commence by 11 March 2015 and the contract had not been placed as yet. The member further stated that the appointment process for the service provider needed to be robust and above reproach as it would be open to public scrutiny and the committee needed to be fully confident in terms of its decision to appoint the chosen supplier. The General Manager: Legal and Compliance ("GM: L&C") assured the committee that in terms of the timeline, the appointed firm would be afforded the full three month period to conduct the investigation (i.e. post contract signing).

The Chairman stated that in order to meet the necessary timelines, the supplier would have to provide clear project milestones. In addition, she stated the criticality of establishing stability in terms of the executive roles that were impacted by the investigation, citing that the appointed supplier would be expected to commence and conclude their investigation in those critical areas. She also stated that a detailed analytical review would have to be carried out.

The GM: L&C stated that the Dentons was aware of the 3 month timeline and had already submitted a framework to meet the timeline. A member stated that the committee would need to fully clarify its expectations with the approved supplier in order to avoid a situation whereby the supplier does not understand the scope/scale of the project and later requests an extension of time or increases their costs. The Senior General Manager: Assurance & Forensic ("SGM: A&F") shared that once the committee reached a decision about the preferred supplier, then A&F would conduct the necessary probity checks.

In response to a query, it was stated that the main difference between Savage Jooste and Adams and Dentons, was the pricing. Commercial stated that this was possibly due to different assumptions being made by both companies, about the amount of time and resources required to complete the project. A member then suggested that commercial should enter into negotiations with

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both these firms. The Chairman recommended that the committee should reach a decision about one of the firms and then through the Company Secretary, communicate the committee's decision to the Board. She further stated that, apart from the Board, the decision would not be publicly communicated, pending the successful outcome of the negotiation process and probity checks.

The committee then reached agreement that Dentons was the preferred service provider. It was also agreed that the CE 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.

In response to a query it was stated that ARC was fully mandated to make the appointment and would refer its decision to the Board for information only. The SGM: A&F proposed that the identity of the preferred supplier not be communicated to the Board at this point, pending the outcome of the negotiation process and probity checks. He further stated that he would also check the minutes of the Board meeting to confirm that ARC is mandated to make the final appointment. He also suggested that in the interest of time, a probity check should also be conducted on both suppliers, in the event that the negotiation process and probity checks with Dentons is unsuccessful.

The committee agreed that in the event that the negotiation process and probity check with Dentons, is unsuccessful, then commercial should proceed negotiations with the next supplier, namely Savage Jooste and Adams.

In response to a query, the GM: L&C stated that commercial was comfortable that based on Dentons responses; there was no conflict of interest with Eskom.

Resolved that:

1. Eskom negotiate and conclude a contract with Dentons to conduct an Independent Inquiry into Eskom, subject to the successful conclusion of the probity checks;
2. the CE 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; and
3. in the event that the negotiation process and probity check with Dentons, being unsuccessful, then commercial should proceed negotiations with the next supplier, namely Savage Jooste and Adams.

6. CLOSING

There being no further matters for discussion, the Chairman declared the meeting closed

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRMAN

DATE

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**MINUTES OF THE SPECIAL AUDIT AND RISK COMMITTEE MEETING NO 02/2015-16 HELD ON
14 APRIL 2015 FROM 17H00 IN KGORONG BOARDROOM AT MEGAWATT PARK**

STRICTLY CONFIDENTIAL

PRESENT**MEMBERS**

Ms C Mabude	Member (via teleconference)
Ms N Carrim	Member
Mr R Kumalo	Member (via teleconference)
Ms V Naidoo	Member

IN ATTENDANCE

Mr M Nkhabu	Senior General Manager: Assurance & Forensic ("SGM: A&F")
Mr C Kalima	Senior Manager: Procurement
Ms L Njaza	Middle Manager: Procurement
Ms K Crookes	Committee Secretary

APOLOGIES

Mr N Tsholanku	General Manager: Legal and Compliance ("GM: L&C")
Mr M Phukubje	Company Secretary

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Office of the Company Secretary

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. DECLARATION OF INTERESTS

No interest was declared pertaining to the matters on the agenda.

5. ESKOM INDEPENDENT INQUIRY

The Commercial Department made a presentation to the committee in terms of the outcome of their negotiations held with the two potential service providers.

The outcome of the negotiations was as follows:

Dentons:

- The contract conditions were not accepted
- The price quoted is not fixed
- The total price quoted and resources provided may increase based on clarification sought from Eskom with regard to the Terms of Reference.
- The scope of work may not be concluded in the three month period as indicated

Savage, Jooste and Adams:

- The contract conditions were accepted
- Rates of the experts that they will use, fall under consultant rate fees
- The hours would be reduced from 3600 to 2400, thus decreasing the quoted price from R37.8M to R25.2M.
- The three month project timeline to execute the work is acceptable. They would be able to indicate after the first month if there is a need to extend the three month period.
- The supplier cannot agree to a sectional completion of the scope but will do 95% work across the sections and then finalise all sections as part of the whole investigation.
- The supplier recommended that they utilize their premises in Pretoria and secure 24hr security which will be included in the disbursements.

Commercial reported that, based on the above negotiated outcomes, they (commercial) recommended the following:

- That a rates based contract be concluded with Savage, Jooste and Adams.
- the Chief Executive be authorized, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of the agreements, consents or other documentation necessary or related thereto.

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The committee stated that they needed to understand, following the previous meeting held on 10 April 2015, wherein Dentons was recommended as the supplier of choice, why commercial was now recommending Savage, Jooste and Adams. Commercial reported that Denton's stated that they cannot cap their price as they needed to foremost understand the scope of the work. Denton also submitted their own proposed terms and conditions and stated that they were not comfortable with the Eskom NEC type contract. It was reported that Dentons further indicated that they could not commit to the three month timeline or the bi-weekly reports. In response to a query, Commercial stated that their recommendation was to enter into a contract with Savage, Jooste and Adams as they had agreed to all the Eskom terms and conditions. A member maintained that Dentons had the necessary experience and resource capability to lead the enquiry. In response to a query, it was stated that Dentons did not have their own audit firm and would make use of SelekaXabiso, the price impact of which, had not been factored in. Commercial highlighted that the contract would have to be structured in a manner that reflected a rate based contract and the MWP site execution team would be expected to complete time sheets and provide regular reports to ARC. A member expressed concern about entering into a rate based contract. The Chairman stated that both suppliers had indicated that the scope of the investigation was wide and they could not commit to completing the enquiry within the 3 month period. She stated that Eskom reserved the right to terminate the contract at any time pending the outcome of the interim reports. The committee then agreed that commercial re-enter negotiations with both suppliers in respect of reaching agreement on the following:

- Pricing
- Three month timeline - full deliverables as per the terms of reference
- Interim reports (bi-weekly)

A member then expressed concern about the back and forth negotiation process with both suppliers and requested that the committee reach an agreement to only engage one of the suppliers. The committee then agreed that commercial should re-enter discussions with Dentons alone. The Chairman stated that Commercial should send an urgent email to Dentons indicating Eskom's position and also get a response from Dentons in terms of the specific clauses in the standard contract that they were not comfortable with. Commercial to get an agreement from Dentons to cap their price and commit to providing regular bi-weekly reports in order to expedite the investigation so as to facilitate that the four executives promptly resume their duties in Eskom.

The Senior General Manager: Assurance & Forensic ("SGM: A&F") asked the committee to confirm if they were comfortable to proceed with Dentons who would be using an external audit firm, namely SelekaXabiso. It was stated that all audit firms, including SelekaXabiso had been compromised and had done work for Eskom in the past and hence they could not be used to conduct a review of the Eskom Commercial processes. The Committee agreed that Dentons should be made aware of this.

Resolved that:

1. Commercial to send an urgent email to Dentons indicating Eskom's position and also get a response from Dentons in terms of the specific clauses in the standard NEC contract that they were not comfortable with. Commercial to get an agreement from Dentons to cap their price and commit to providing regular bi-weekly reports in order to expedite the investigation so as to facilitate that the four executives promptly resume their duties in Eskom.



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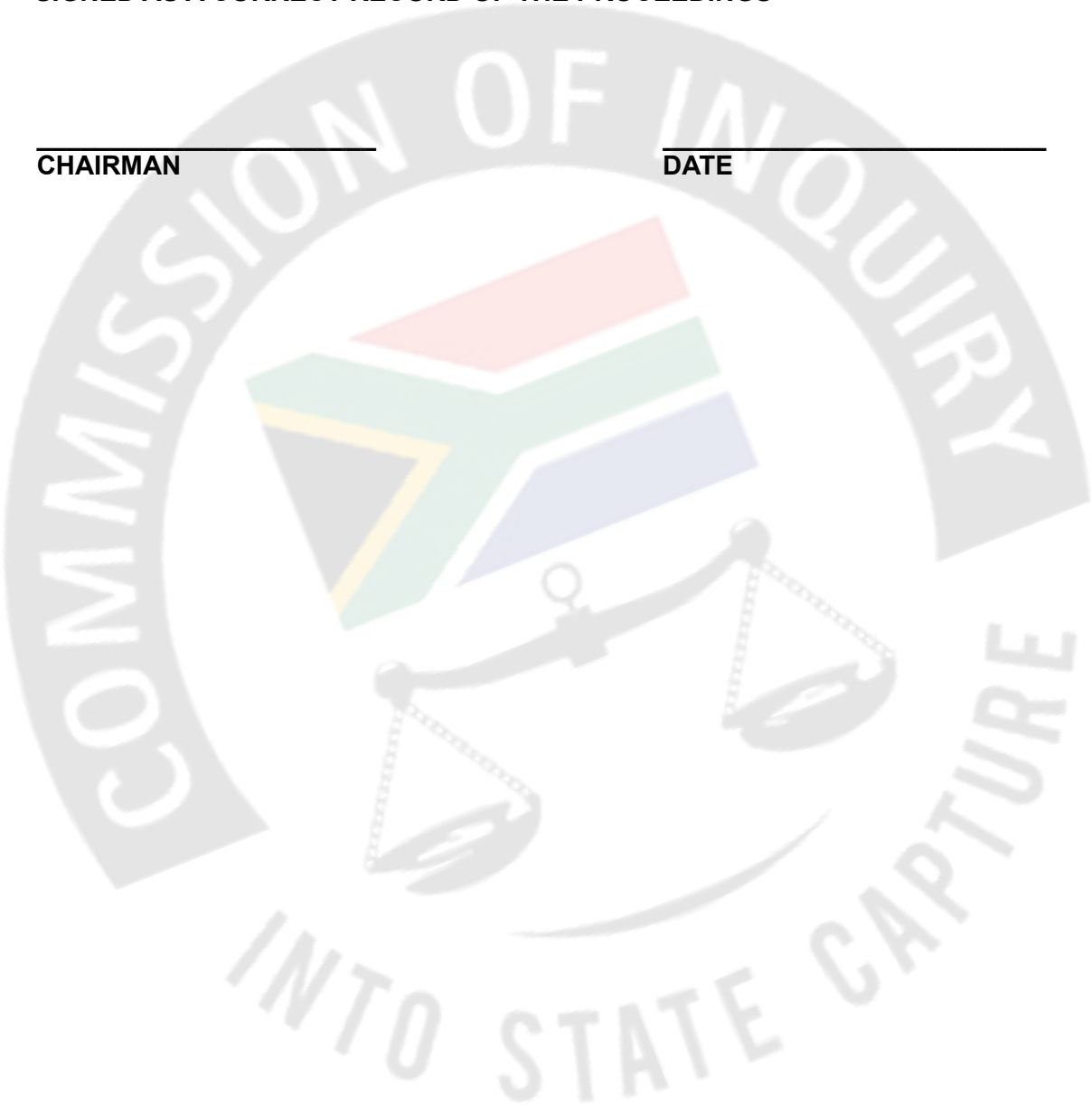
6. CLOSING

There being no further matters for discussion, the Chairman declared the meeting closed

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRMAN

DATE



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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
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IN ATTENDANCE

Mr W Venner	Committee Secretary
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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.

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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 - 2019/20 Corporate 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

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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.

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- 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

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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

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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.

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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;

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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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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.

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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.

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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.

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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.

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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


CHAIRPERSON

29/04/16
DATE

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

AFFIDAVIT

I, the undersigned,

BALDWIN SIPHO NGUBANE

do hereby state under oath that:

1. Introduction

- 1.1. I am an adult male South African citizen currently retired and self - employed.
- 1.2. The facts herein contained are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.

2. Qualifications

- 2.1. My qualifications include a Bachelor of Medicine and Bachelor of

Bug D-
Baldwin Ngubane

Surgery (MBChB) (Natal); MPRAX Med (Master of Family Medicine) (Natal); DTM&H & DPH (Diploma in Tropical Medicine & Hygiene and Diploma in Public Health) (Wits) Dip. Economic Principles (London).

2.2. I have been approached by investigators associated with the Commission of Inquiry into Allegations of State Capture, Fraud and Corruption in the Public Sector and certain Organs of State ("**the Commission**") and have been requested to provide a statement which details matters relating to my tenure as member and chairman of the board of directors ("**the Board**") of Eskom Holdings SOC Limited ("**Eskom**").

2.3. I have agreed to provide this statement as well as evidence to the Commission freely and voluntarily.

3. **Appointment to the Eskom Board**

3.1. I was appointed to the Board of Eskom during December 2014 following a nomination process initiated by the Minister of Public Enterprises ("**the Minister**"). Ms Lynne Brown ("**Ms Brown**") was the Minister at that time.

3.2. I had not known Minister Brown prior to my appointment to the Board

of Eskom. I was notified of my appointment by letter from Minister Brown.

3.3. I was initially an ordinary member of the Board but following the resignation of Mr Zola Tsotsi ("**Mr Tsotsi**") as Chairman, I was appointed acting Chairman from 30 March 2015 until October 2015 when I was appointed Chairman. I have previously stated in my statement to Parliament that I was appointed acting Chairman with effect from 15 March 2015. That was incorrect.

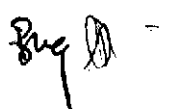
3.4. I acted as Chairman of the Board Tender Committee ("**BTC**") meeting held on 28 February 2015. This was an *ad hoc* appointment. I was asked by Mr Tsotsi to chair that meeting.

3.5. I served as Chairman of the Board until June 2017, when I resigned of my own volition.

3.6. I do not have copies of the letters appointing me as acting Chairman and later as Chairman nor my resignation letter from the Board.

4. **The suspension of the four Eskom executives**

4.1. I was not Chairman of the Board at the time of suspension of the four



executives, namely, the Group Chief Executive Officer, Mr Tsediso Matona ("**Mr Matona**"), Group Executive, Commercial and Technology, Mr Matshela Koko ("**Mr Koko**"), Group Executive Group Capital, Mr Dan Marokane ("**Mr Marokane**") and the Finance Director, Ms Tsholofelo Molefe ("**Ms Molefe**").

4.2. I shall henceforth refer to Mr Matona, Mr Koko, Mr Marokane and Ms Molefe collectively as "**the four executives**".

4.3. The suspension of the four executives came up for discussion at a board meeting which took place on or about 9 March 2015. This meeting was preceded by another, where the Board discussed, amongst others, the Minister's strategic statement of intent and other matters. I believe this may have been the board induction meeting. I do not recall the date of this meeting nor the Minister's role in it, but I recall it was the very first board meeting since our appointment.

4.4. Mr Tsotsi, convened a special board meeting on or about 9 March 2015. Minutes of this meeting are annexed hereto marked "**BSN1**". Mr Tsotsi apologised for failing to give the Board the usual notice of meeting of at least seven days before the meeting. The reason, as his resolution states, was that "*there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors*". This

meeting focused entirely on the proposed suspension of the four executives and the establishment of an inquiry into Eskom's affairs. Mr Tsotsi was asking the Board to resolve that an external independent inquiry be set up to investigate and determine the facts relating to the then current technical, commercial and structural status and any acts and/or omissions that have contributed to the deficiency of generating and distribution capacity of Eskom.


4.5. During this meeting, Mr Tsotsi reported that he had met with President Jacob Zuma at his house in Durban, who had instructed him to procure from the Board a resolution approving the establishment of an internal independent inquiry into Eskom's affairs and the suspension of the four executives. I was not part of the meeting with President Zuma and do not know who else attended the meeting.

4.6. In terms of Mr Tsotsi's proposal, the Board was to set up a subcommittee comprising Mr Tsotsi, Ms Chwayita Mabude, Chairperson of the Eskom Audit and Risk Committee (the "ARC") and Mr Zethembe Khoza ("Mr Khoza"), Chairman of the Eskom People and Governance Committee ("P&G Committee"), mandated with delegated authority of the Board to determine the terms of reference of the inquiry. The subcommittee would have the Board's delegated authority to take all such steps and measures to ensure the unfettered

fulfilment of this mandate. Also, that the Board authorised the Chairman, in consultation with the Minister and the Minister of Finance to approve expenditure sufficient to fund the inquiry. And that this inquiry shall be required to present its final report to the Board, the Minister and the Presidency by no later than the 30th June 2015. That the subcommittee would have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary, given the urgency to complete the investigation within three months and to appoint such persons or entities to conduct the inquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have an effect on the inquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations.

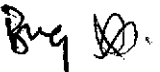
4.7. A Board member stated that he was not comfortable with making major decisions based only on a two-page document and there had been no opportunity to discuss the issue in an in-committee session. He was also against approving a resolution allowing for deviation from Eskom's Procurement Policies and Procedures.

4.8. The Chairman reported that an independent resource had been identified already by the Presidency. He reported further that the Presidency had done all the legal and governance work to facilitate the



resolution on deviation from procurement policies and procedures.

- 4.9. I recall a Board member expressed the view that the Board was being asked to approve the implementation of a subcommittee with wide-ranging powers and he felt that he could not agree with the request.
- 4.10. When Mr Tsotsi said the four executives had to be suspended, the Board differed with him because he did not give the Board cogent reasons as to why they ought to be suspended. The Board intimated to him that the reasons he was giving for their suspension were defamatory, and unsubstantiated. The Board did not support the proposed suspensions.
- 4.11. Mr Tsotsi reported that the Presidency had expressed a concern that the impact of Eskom on power shortages in the country had been understated and therefore required the Board to ensure that it received accurate information from management about those matters. He reported that the Presidency required that the inquiry be unfettered by management, the Board and other policy stakeholders and that it must be seen to be credible and objective and have a mandate that would be penetrating and unhindered.
- 4.12. The Board suggested that the four executives take special leave while

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the concerns Mr Tsotsi had raised were being investigated. Nonetheless, Mr Neo Tsolanku (**“Mr Tsolanku”**) from Legal Department at Eskom, whom Mr Tsotsi had brought with to the meeting, advised that special leave only applied in special cases, not for investigation purposes.

4.13. At this time, all of us, except for Mr Tsotsi and Ms Mabude, were newly appointed to the Board. We were therefore taken by surprise that we had to deal with an issue of such magnitude so early in our tenure.

4.14. The meeting was uneasy and tense. Members suggested that the Minister be invited to meet with the Board to explain the decisions that were required by government and the basis thereof, before the Board could consider the proposed resolutions further.

4.15. The Board specifically needed to obtain clarity from the Minister regarding the following –

4.15.1. the reasons for the establishment of the inquiry, its terms of reference and the basis of the suspension of the four executives whilst the enquiry was underway;

4.15.2. the proposal of the appointment of Mr Nick Linnell (**“Mr**

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Linnell”) to conduct the inquiry. Mr Tsotsi indicated that President Zuma required Mr Linnell to undertake the inquiry;

4.15.3. the role of the Board whilst the inquiry was underway, specifically whether the Board would be expected to continue with its normal duties during this time; and

4.15.4. the role that the Board would play in relation to the activities of the war room that had been set up to manage the power supply challenges that were facing Eskom. The Board was appraised of the War Room and its activities by the Minister when she came to speak to the Board on 11 March 2015. During this time, the Board was not involved in the activities of the War Room. The Eskom executives were responsible for the management of the affairs of the War Room. This was a matter of concern to the Board.

4.16. The meeting adjourned to allow the Minister to address the Board on these matters. The Minister came to address the Board on 11 March 2015. Minutes of this meeting are annexed hereto marked “BSN2”.

4.17. Although the Minister did not direct the Board to suspend the four executives, she raised concerns of her own against them. The concerns related to the War Room, which she suggested complained it was not receiving consistent information from management and therefore it could not develop strategies to turn around Eskom and stop load shedding. The Minister felt that the presence of the four executives might hinder the investigation.

4.18. After meeting with the Minister, it was clear to the Board that government, as shareholder of Eskom, required the inquiry to proceed and that the four executives had to "*step aside*" whilst the enquiry was underway.

4.19. The board meeting proceeded after the Minister's address. During the meeting, the Chairman provided names of persons whom he suggested the Minister had approved would act in the positions of the four executives once they are suspended. These were Mr Khoza, a member of the Board, who was suggested as acting Group Chief Executive Officer ("**GCEO**") and three others whom I cannot recall. The acrimony and mistrust that prevailed at the meeting between Mr Tsotsi and the Board was so much that because I was the eldest on the Board, I was mandated to call the Minister to inquire on the veracity of the Chairman's representations regarding the Minister's approval for the

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appointment of those persons to act in the positions that would be vacated by the four executives whilst the investigation proceeds. Minister Brown stated that she had not given any instructions as to who should fill the positions vacated by the four executives. She indicated that she would only need to be consulted by the Board in relation to the filling of the acting GCEO position, and only be informed of the Board's decision regarding the other positions.

4.20. Overall, most members of the Board were of the view that everything was happening too sudden upon the commencement of our tenure and were uncomfortable with the suspension of the four executives because there was no apparent case of wrongdoing against them. Nonetheless, appreciating that that was what the government required, the Board ultimately approved the establishment of the inquiry and the suspension of the four executives in order to address government's concerns regarding the presence of the four executives at Eskom whilst the inquiry was underway.

4.21. The Board decided that the suspension of the four executives would endure only for three months, by which time it was envisaged the inquiry would have been completed.

4.22. The Chairman proposed that Mr Linnell be appointed to conduct the

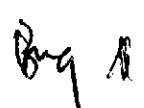


inquiry. The Board was uncomfortable with the manner in which the recommendation of Mr Linnell's appointment came about. He was proposed by the Chairman without any process nor involvement of the Board. The Board decided that instead of Mr Linnell, the inquiry would be conducted by someone appointed independently by the Board. The ARC was entrusted with the process to appoint an independent service provider to undertake the investigation. As result, following a procurement process conducted by the supply chain division, during April 2015 Eskom appointed Dentons, an international law firm based in Sandton, to conduct the inquiry. I do not have copies of the procurement documents nor the appointment letter issued to Dentons.

4.23. Apart from the name of President Jacob Zuma, which was mentioned by the Chairman when he introduced the need for the establishment of the inquiry, I do not recall any mention of, or interaction of the Board with, Ms Dudu Myeni.

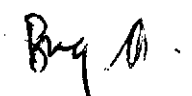
4.24. The ARC formulated the terms of reference of the inquiry conducted by Dentons and the Board approved them. A copy of the terms of reference is annexed hereto marked "**BSN3**".

4.25. The inquiry looked at, amongst others, the following key issues –



- 4.25.1. the poor performance of our coal fleet which was causing the load shedding;
- 4.25.2. the delay in the New Build programme which was characterised by billions of penalties and claims, and questioning the ability to handle contracts at Eskom;
- 4.25.3. the financial challenges of Eskom, the fact that NERSA had cut down on the tariff, and how the financial gap would be covered in terms of revenues that would be low;
- 4.25.4. the security at Eskom as a key national point; and
- 4.25.5. the integrity of the Eskom procurement process and how it complied with the rules.
- 4.26. Dentons presented the Board with a big report, which we passed on to the ARC to process and implement. The ARC was led by Ms Mabude. The ARC gave each division of Eskom issues that had to be corrected in their sphere of responsibility. By the time I left, I think about 18 of the issues had been corrected and implemented. I do not have a copy of the Dentons report.

- 4.27. The scope of the inquiry did not include an investigation into any misconduct on the part of the four executives. Upon the conclusion of the inquiry, Dentons did not find nor attribute any wrongdoing to the four executives. Nonetheless, except for Mr Koko who was keen to return to Eskom, the others were not.
- 4.28. Whilst the inquiry was pending, Mr Matona had filed a labour dispute with the CCMA against Eskom. Following the conclusion of the inquiry, Mr Matona negotiated and settled the dispute out of court and left Eskom. This process was handled by the P&G Committee. I was not involved with it.
- 4.29. Prior to that, I had been tasked by the Board to attend the CCMA proceedings which Mr Matona had instituted against Eskom. During one of my interactions with Mr Matona at the CCMA I suggested to him, at my own initiative, that he should consider returning to his position. However, Mr Matona was too upset with the whole saga and made it clear to me that he would not return to Eskom.
- 4.30. Mr Marokane and Ms Molefe also left the employ of Eskom following settlements that were reached with each of them by Eskom. This too was handled by the P&G Committee. I am not privy to the details of the settlements. I do not recall whether they too were offered the



opportunity to return to Eskom. I was not involved in any such discussions with them.

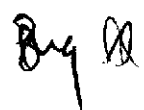
5. The removal and/or resignation of Mr Zola Tsotsi

5.1. As I have indicated previously, the relationship between Mr Tsotsi and the rest of the Board did not start off well. It was characterized by acrimony and mistrust from the onset.

5.2. This emanated from his handling of –

5.2.1. the proposal for the appointment of Mr Linnell to conduct the inquiry which had been proposed by government into Eskom's affairs without following any procurement process nor prior consultation with the Board. The board felt that he was involving himself in matters which encroached into the terrain of executive management, which he could not do as a non-executive chairman. Moreover, such appointment had financial implications, which unless implemented in compliance with the Eskom procurement policy would result in irregular expenditure;

5.2.2. the proposed suspension of the four executives without

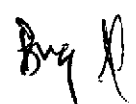


any apparent allegations of wrongdoing having been levelled against them. Inasmuch as the suggestion was that the four executives were required to “*step aside*” to allow the inquiry to continue unhindered by their presence at Eskom, the Board considered that it was a high handed approach, which was not in the interests of Eskom and the four executives; and

5.2.3. the unilateral manner which the Chairman went about nominating the people who would act in the positions that were to be vacated by the four executives whilst the inquiry was underway. The Chairman went ahead to recommend such persons to the Minister without regard to the Board.

5.3. It was because of these decisions, which he sought the Board to “*rubberstamp*” that the Board lost faith in his leadership. This conduct culminated in the decision by the Board to initiate a motion of no confidence against Mr Tsotsi, with the view to remove him as Chairman.

5.4. To my knowledge the motion of no confidence against Mr Tsotsi was a Board driven process, without any external influence from anyone. The



charges were formulated by the Audit and Risk Committee ("**the ARC**") and subsequently approved by the Board at its meeting of 14 March 2015. I agreed with the position of the Board that Mr Tsotsi had conducted himself improperly. Mr Tsotsi was asked to recuse himself when the item on his alleged misconduct came up for discussion by the Board and I was requested by the Board to chair the meeting. A copy of the minutes of meeting of 14 March 2015 is annexed hereto marked "**BSN4**".

5.5. Shortly after the decision of the Board to pass a motion of no confidence against Mr Tsotsi, I was mandated by the Board to meet with him to explore whether he would be amenable to stepping down without having to endure the specter of a drawn-out disciplinary hearing. I met with him, but he was not persuaded to follow that route. He felt the charges were without merit and that he wanted to clear his name in a formal meeting.

5.6. On 30 March 2015, the Board convened a meeting to consider, amongst others, the motion of no confidence and the removal of Mr Tsotsi as a director and Chairman of Eskom. Mr Tsotsi attended the meeting with his legal representative. Mr Mark Pamensky ("**Mr Pamensky**") was appointed to chair the meeting. At this time I was yet to be appointed the acting Chairman of the Board. The allegations of

misconduct were put to Mr Tsotsi and he placed all the allegations in dispute. Subsequently, the meeting adjourned and a discussion ensued between me, Mr Pamensky and Mr Tsotsi, during which we sought to persuade Mr Tsotsi to step down voluntarily without the Board having to vote on the matter. These discussions culminated in Mr Tsotsi's resignation as director and Chairman, on the basis that the Board would abandon its motion of no confidence against him. A copy of the minutes of meeting of 30 March 2015 is annexed hereto marked "BSN5".

5.7. The Minister accepted Mr Tsotsi's resignation and during the Annual General Meeting ("AGM") held on 31 March 2015, the Minister announced Mr Tsotsi's resignation and my appointment as acting Chairman. I do not have copies of the correspondence exchanged between Mr Tsotsi and the Minister regarding his resignation. A copy of the minutes of the AGM is annexed hereto marked "BSN6".

5.8. I do not recall at what stage the Minister was notified of the Board's decision to bring a motion of no confidence against Mr Tsotsi. I am however aware that the Minister was not opposed to the decision. I remember that during one of our meetings with the Minister, she too had been critical of Mr Tsotsi for various conduct, including his alleged interference with executive management in the performance of their



duties, for instance the award of contracts for the supply of oil and diesel, where she accused him of attempting to influence who should be awarded the contracts.

5.9. On 31 March 2015, I issued a press statement on my appointment as acting Chairman. In it, I also thanked Mr Tsotsi for his service to Eskom. I did not personally prepare the statement. It was provided to me by the Company Secretariat. Mr Phukubje Malesela was the Company Secretary of Eskom at the time.

5.10. I hasten to add that as a matter of practice, I did not prepare my own speeches or press statements at Eskom. They would be provided to me by the Company Secretariat or Corporate Affairs division.

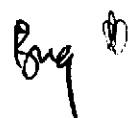
5.11. I did not have a meeting or conversation with Mr Salim Essa ("Mr Essa") regarding Mr Tsotsi's resignation from Eskom. Nor did I have any correspondence with Mr Essa regarding any appointments and resignations and movement of any employees within Eskom.

6. **The appointment and early retirement of Mr Brian Molefe**

6.1. After the suspension of the four executives, including Mr Matona, who was the GCEO, there was serious vacuum in the leadership of Eskom.



- 6.2. The Board petitioned the Minister to approve the appointment of Mr Khoza as interim GCEO, whilst the P&G Committee worked with the Minister to find someone capable of turning around institutions and whose leadership had been tested to assume the position.
- 6.3. Whilst the search for a new GCEO was underway, the Minister suggested that we consider Mr Brian Molefe ("**Mr Molefe**"). The Board was amenable to the Minister's suggestion because we knew of Mr Molefe's track record, based on his work at the Public Investment Commissioners ("**PIC**") and Transnet SOC Limited ("**Transnet**"). The Board felt that Eskom was in dire straits and needed someone with Mr Molefe's skills and experience.
- 6.4. The Minister suggested that the Board approaches Transnet to request for Mr Molefe's release to Eskom. I wrote to the chairperson of Transnet, Ms Linda Mabaso ("**Ms Mabaso**") to convey our request and the board of Transnet agreed to release Mr Molefe on a secondment to Eskom. I do not have copies of the letters exchanged between the boards of Eskom and Transnet regarding Mr Molefe's appointment nor the secondment agreement.
- 6.5. Mr Molefe was therefore seconded to Eskom as the acting GCEO on 17 April 2015, for a period of 3 months. I do not recall how the 3 months

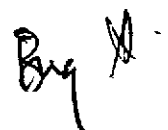


period came about.

6.6. On 23 June 2015, I addressed a letter to the Minister requesting her support for the extension of Mr Molefe's secondment as acting GCEO for a further period of 3 months. A copy of this letter is annexed hereto marked "**BSN7**". In the same letter, I informed the Minister that the P&G Committee had resolved to seek the full-time appointment of Mr Molefe to the position of GCEO and Ms Venete Klein ("**Ms. Klein**"), who chaired the P&G Committee had been tasked to procure a legal opinion on the most optimal approach to follow to give effect to the appointment of Mr Molefe. The Board did not wish to go through a public recruitment process because it had found its candidate in Mr Molefe.

6.7. The legal opinion was obtained from Bowman Gilfillan ("**Bowmans**") on 18 June 2015. A copy of the legal opinion is annexed hereto marked "**BSN8**". Bowmans advised that Eskom could appoint a GCEO without having to conduct a public recruitment process and that the Board could provide the Minister with a shortlist of one candidate only, whom the Minister could elect whether to appoint or not.

6.8. On 27 June 2015, the Minister responded to my letter agreeing to the request for the extension of Mr Molefe's secondment and also requested the Board to deal expeditiously with the appointment of a

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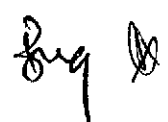
new GCEO in accordance with Eskom's Memorandum of Incorporation, Labour Relations Act and Eskom's employment policies and procedures. The Minister also requested to be provided with a copy of the complete legal opinion obtained from Bowmans on the matter. A copy of the Minister's letter dated 27 June 2015 is annexed hereto marked "**BSN9**".

6.9. On 13 September 2015, Ms Suzanne Daniels ("**Ms Daniels**") transmitted the legal opinion to Orcillia Ruthnam ("**Ms Ruthnam**"), who was at the time the Chief Director: Governance of the Legal and Governance Department at the DPE.

6.10. On 14 September 2015, Ms Ruthnam responded to Ms Daniels and enquired whether Bowmans had considered the *"Guidelines for the appointment of a Chief Executive Officer for a State - Owned Enterprise"* ("**the Guidelines**"). Ms Ruthnam also enclosed a copy of the Guidelines in her communication to Ms Daniels.

6.11. Copies of the emails exchanged between Ms Daniels and Ms Ruthnam on 13 and 14 September 2015 are annexed hereto marked "**BSN10**" and "**BSN11**", respectively.

6.12. On the same day, the Guidelines were sent to Bowmans, requesting



them to prepare a supplementary opinion having regard to the Guidelines, specifically on whether the proposed appointment of Mr Molefe on a permanent basis as GCEO was competent. A copy of the Guidelines is annexed hereto marked "**BSN12**"

6.13. On 15 September 2015, Bowmans delivered the supplementary opinion, advising Eskom that the Board was actually required to make recommendations to the Minister on the top 3 candidates in the order of priority and that any proposed deviation from that requirement required the Board to notify the Minister of such deviation in writing, together with reasons therefor. A copy of the supplementary opinion is annexed hereto marked "**BSN13**".

6.14. On 16 September 2015, the supplementary opinion was emailed to Ms. Ruthnam at the DPE. A copy of the email is annexed hereto marked "**BSN14**".

6.15. Ms Klein subsequently submitted a notification of Eskom's departure from the application of the Guidelines by way of a letter to the Minister. I understand the letter was sent to the Minister's office by Ms Daniels on 16 September 2015 with a signed version following thereafter, on 23 September 2015. The Minister did not object to the deviation.



- 6.16. Copies of the correspondence transmitted by Ms Daniels to the Minister on 16 and 23 September 2015 are annexed hereto marked "**BSN15**" and "**BSN16**", respectively.
- 6.17. In the meanwhile, on 10 September 2015, the Board resolved that the P&G Committee should submit a recommendation to the Minister for the appointment of Mr Molefe as GCEO. A copy of the minutes of this meeting are annexed hereto marked "**BSN17**". On 11 September 2015, and pursuant to the aforesaid resolution, I addressed a letter to the Minister advising her of the Board's decision to propose the permanent employment of Mr Molefe as GCEO. A draft employment contract was annexed to the letter for the Minister's consideration and approval. I attach hereto a copy of the said letter dated 11 September 2015 and the draft employment contract marked "**BSN18**" and "**BSN19**", respectively.
- 6.18. On 2 October 2015, the Minister approved the appointment of Mr Molefe as GCEO. In this regard, the Minister addressed a letter to me, copying Ms Klein and enclosing letters addressed to Mr Molefe and Mr Anoj Singh ("**Mr Singh**"), confirming their appointments as GCEO and Chief Financial Officer ("**CFO**"), respectively, with effect from 1 October 2015. The letters to each of Mr Molefe and Mr Singh did not specify the duration of their respective appointments. Copies of the said



letters are attached marked "**BSN20**" and "**BSN21**", respectively.

6.19. I do not recall how the process of appointment of Mr Singh came about. The P&G Committee managed that process. Nor do I recall whether the impact of Transnet losing both its GCEO and CFO at roughly the same time was considered or discussed with the Minister. Nonetheless, I am aware that the Board of Eskom was not opposed to Singh's appointment at Eskom. I did not know Mr Singh prior to his appointment at Eskom.

6.20. On 7 October 2015, a permanent contract of employment was prepared for Mr Molefe. A copy of the contract is annexed hereto marked "**BSN22**". The Minister's letter dated 2 October 2015 and addressed to Mr Molefe made no mention of a fixed term employment contract. The Board was advised by Mr Anton Minnaar ("**Mr Minnaar**"), Executive Remuneration Officer at Eskom, that none of the previous GCEOs of Eskom was appointed on a fixed term contract, hence the proposal to appoint Mr Molefe on a permanent contract.

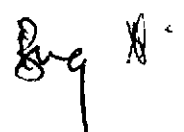
6.21. On 8 October 2015, Ms Klein received an email from Ms Daniels, drawing her attention to the exchange of email communication between Ms Daniels and Ms Ruthnam regarding the term of appointment of Mr Molefe. A copy of this email is annexed hereto marked "**BSN23**". Ms



Ruthnam advised that the Minister had approved a five-year term for Mr Molefe. Ms Daniels had requested that Ms Ruthnam verify this as Mr Molefe's appointment letter had not stipulated a five-year term and that all previous GCEOs at Eskom were appointed on a permanent basis. Ms Ruthnam advised that the five-year term was a cabinet requirement. Nonetheless, Ms Ruthnam undertook to revert on whether the Minister would need to address the Board on the issue. According to Ms. Klein, she received no further correspondence on the issue and, under the circumstances, assumed the issue was resolved.

6.22. On 16 October 2015, I addressed a letter to the Minister on the proposed terms of Mr. Molefe's appointment and remuneration. A copy of this letter is annexed hereto marked "**BSN24**". The contents of the letter were informed by various inputs which the P&G Committee had obtained from Mercer, PE Corporate and Deloitte on chief executive remuneration packages. I do not have copies of these reports. None of these inputs considered any compensation for the loss of pensionable earnings that would result from Mr Molefe's appointment on a fixed term contract. The Board's understanding was that Mr Molefe's employment would be on a permanent basis.

6.23. On 1 November 2015, the Minister responded to my letter of 16 October 2015, in which she approved the proposed remuneration package to



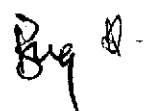
Mr Molefe, a copy of the Minister's approval is attached hereto as **"BSN25"**. The Minister further recorded that the term of Mr Molefe's appointment was for a period of 5 years, subject to annual performance reviews. I do not recall corresponding with the Minister regarding Mr Singh's appointment.

6.24. The Minister's letter of 1 November 2015 was addressed to me as the Chairperson of the Board and was received by Ms Daniels on 4 November 2015.

6.25. On 9 November 2015, I presented Mr Molefe with a permanent contract of employment. At this time, the Minister's letter to me dated 1 November 2015 had not come to my attention or that of the Board. I do not know how the letter was transmitted to Ms Daniels.

6.26. On 12 November 2015, Ms Klein received an email from Ms Daniels enclosing a draft offer of employment letter dated 13 October 2015 which specified that Mr. Molefe would enter into a fixed term employment contract with Eskom but the term was not specified. A copy of this email is annexed hereto marked **"BSN26"**. At this time I was still not aware of the Minister's letter dated 1 November 2015.

6.27. The Minister approved Mr Molefe's proposed remuneration but



indicated that the term of employment would be for a fixed term of 5 years. The Minister directed the Board to change Mr Molefe's signed contract from a permanent one to a five-year fixed term.

6.28. On or about 16 November 2015, I advised Mr Molefe of the Minister's decision. Mr Molefe was amenable to the variation of his contract of employment to a fixed term contract of 5 years. Mr Molefe however had concerns regarding the adverse impact that the variation would have on his retirement and pension benefits.

6.29. Around that time, I was advised by the head of the P&G Committee that Mr Molefe had threatened to leave Eskom if the matter was not resolved to his satisfaction.

6.30. I advised the Board of the outcome of my discussions with Mr Molefe and his discontentment with the effect of the variation of the term of the contract of his employment on his retirement and pension benefits. The Board did not wish to lose Mr Molefe. As result, myself and Ms Klein were tasked to engage with Mr Minnaar to come up with a solution. I do not recall when this discussion with the Board took place or if there are minutes of such discussion. It is unlikely that it was discussed in a formal board meeting.

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6.31. Mr. Minnaar was involved in the appointment of 7 previous GCEOs at Eskom in the six-year period prior to Mr Molefe's appointment. Mr. Minnaar advised that all Eskom's previous GCEOs were employed on a permanent contract basis and that based on the fixed five-year term contract, Mr. Molefe would not be able to accumulate an equivalent pension benefit during his service at Eskom. At this time, neither the Board nor Mr Molefe was aware that Mr Molefe could not be a member of the Eskom Pension and Provident Fund ("EPPF") unless he was a permanent employee of Eskom.

6.32. The Board then agreed that an arrangement should be put in place to ensure that Mr Molefe was not adversely affected in respect of his pension benefits. On 25 November 2015, Mr Minnaar assisted me in drafting a letter to the Minister, recommending that a retirement arrangement be reached with Mr Molefe in order to allay his pension concerns. A copy of the said letter is attached as "**BSN27**".

6.33. The arrangement proposed by the P&G Committee with the guidance of Mr Minnaar was that:

6.33.1. regardless of Mr. Molefe's age after the expiry of his five-year contract, he would be allowed to retire from Eskom's on the basis that he was aged 63;



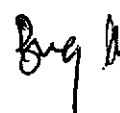
6.33.2. the penalties prescribed by the EPPF for retirement prior to the age of 63 would be waived and not payable by Mr Molefe. Eskom would then carry the costs of such penalties, which would be paid over to EPPF;

6.33.3. if Mr Molefe's employment contract was not extended beyond the five-year period, he would not be allowed to subscribe to any other state-owned companies or government pension fund; and

6.33.4. should the employment contract be extended, the costs of any subsequent penalties would decrease proportionately.

6.34. The effect of the abovementioned arrangement was such that Mr Molefe would be placed in the same position that he would have been had he retired from Eskom at the age of 63. The Board was in support of the arrangement.

6.35. On 25 November 2015, the terms of the arrangement were communicated in writing by Ms Daniels to the Minister's office. The Minister's office acknowledged receipt of the letter and undertook to bring its contents to the Minister's attention. Copies of this



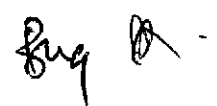
correspondence are annexed hereto marked "**BSN28**" and "**BSN29**", respectively.

6.36. As at 9 February 2016, however, a formal response to the letter addressed to the Minister had still not been received and at that time, there was no formal contract of employment with Mr. Molefe.

6.37. On 9 February 2016, the P&G Committee met to deliberate on the conclusion of a contract of employment with Mr. Molefe, including the issue relating to his pension benefits. In order to better understand the distinction between appointing Mr Molefe on a fixed term, as opposed to a permanent contract, basis and the options available to the Board for addressing Mr Molefe's concerns, the Board sought guidance from Mr. Minnaar.

6.38. Mr. Minnaar explained to the Board that due to Mr. Molefe's short term contracts with numerous public entities in which he served at executive level, he was deprived of the opportunity to grow a pension fund in a single fund.

6.39. The P&G Committee then resolved at its meeting of 9 February 2016 that:



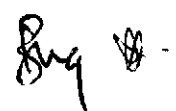
"7.5.1 the current EPPF rule that Employees may proceed on retirement from the age of 50 with 10 years' service remains applicable;

7.5.2 in cases where an Executive Director (appointed on a fixed term contract) decides to take an early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

- i. bridge the gap to make up for the 10 years;
- ii. waive the penalties applicable to early retirement;
and
- iii. refund EPPF actual costs for additional service added, plus penalties applicable to early retirement."

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

6.40. A copy of this resolution is attached hereto marked "BSN30".

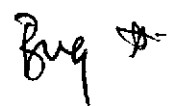


6.41. It was the intention of the P&G Committee that the arrangement had to be structured in such a way that the benefit would only accrue to Mr Molefe upon completion of his five-year term and that Mr Molefe would not be able to participate in any other government pension fund after qualifying for retirement at Eskom as per the resolution. Such intention was communicated to the Minister in my letter to her dated 25 November 2015. The practice was that the Board would take a decision on such matters and thereafter refer the same to the Minister for concurrence.

6.42. On 7 March 2016, Mr Molefe signed a second contract of employment for a fixed term of 5 years with effect from 1 October 2015 and terminating on 30 September 2020. A copy of the contract is attached hereto marked **"BSN31"**.

6.43. On 19 April 2016, the Board approved the resolution of the P&G Committee meeting of 9 February 2016. A copy of the board resolution is attached hereto marked **"BSN32"**.

6.44. On 6 September 2016, it was decided to increase the long-term incentive award for Mr. Molefe to two times the annual pensionable earnings on the basis that the amount was relatively low based on the benchmark against similar long - term incentive awards to the chief

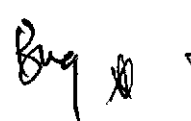


executives at his level. A copy of the resolution is attached hereto marked **"BSN33"**.

- 6.45. On 24 October 2016, the P&G Committee approved the additional award in the form of an increase to Mr Molefe's long-term incentive to two times the annual pensionable earnings. A copy of the resolution is attached hereto marked **"BSN34"**.

7. The eventual payment of pension benefits to Mr Brian Molefe

- 7.1. On 11 November 2016, Mr Molefe formally submitted his request for early retirement in terms of the EPPF rules read together with the board resolution of 9 February 2016. In the same letter, he also indicated that his last day of service would be on 31 December 2016. A copy of the said letter is attached marked **"BSN35"**.
- 7.2. On 15 November 2016, EPPF provided Eskom with the calculation of Mr Molefe's early retirement benefits on the basis that he would exit the service on 31 December 2016. It came to an amount of R25, 80 204.19.
- 7.3. On 21 November 2016, Mr Molefe's request for early retirement was discussed at a special meeting of the P&G Committee and the meeting agreed to support Mr Molefe's request and payment to him of the

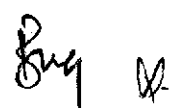


retirement benefits as calculated by EPPF. I was not at this meeting. I subsequently learned from Mr Minnaar that the meeting was not quorate.

7.4. On 24 November 2016, I wrote to Mr Molefe informing him of the approval of his request for early retirement in terms of Rule 28 and Rule 21.4 of the EPPF rules. I also confirmed that all penalties would be waived and further that his early retirement will be on the basis that Mr Molefe be deemed to have achieved the age of 63. The advice to the Board was that other senior executives had Eskom pay the penalty when they took early retirement. That was the point of departure. A copy of my approval letter is attached hereto marked "**BSN36**".

7.5. At this time I was not aware that the Minister had not responded to my letter dated 25 November 2015 regarding Mr Molefe's retirement. Mr Molefe's retirement was managed by the P&G Committee, with the assistance of Mr Minnaar. Board committees were entitled to take decisions on matters they were seized with and report to the Board on a quarterly basis in respect of resolutions they have taken. Thus, I had assumed that all was above board.

7.6. As at 23 March 2017, and pursuant to his early retirement, Mr. Molefe was paid the following amounts –



- 7.6.1. R575, 679.91 in respect of his salary up to December 2016;
- 7.6.2. R226, 278.84 in respect of leave due to him; and
- 7.6.3. R2, 110, 185.00 in respect of a short-term incentive bonus to the end of December 2016.
- 7.7. The total amount paid to Mr Molefe was the sum of R2, 912, 143.75.
- 7.8. I do not recall that the Board was consulted for approval of the above-mentioned amounts.
- 7.9. On 19 April 2017, the Minister called a meeting with me to discuss Mr Molefe's pension pay-out. It became evident at this meeting, that the Minister did not approve of Mr Molefe's early retirement arrangements as set out in my letter dated 25 November 2015. I do not have a copy of the minutes of this meeting.
- 7.10. The Minister maintained that the amount of R30, 103, 915.62 which was paid by Eskom to EPPF in respect of Mr Molefe's early was not permissible and should be repaid. I wish to point out that the Board had not been consulted for approval of these amounts. The P&G



Committee had taken this decision.

7.11. Following the meeting with the Minister, Ms Klein and Ms Daniels had a meeting later that evening with Mr Molefe to inform him of the Minister's position regarding his retirement arrangements.

7.12. According to Mr Molefe, he had received R7, 700, 000.00 from the EPPF on being admitted to the EPPF and of this sum, R4, 300, 000.00 had been transferred from the Transnet Pension Fund to the EPPF. I have not been able to verify these payments.

7.13. On 17 May 2017, the Board rescinded its acceptance of Mr Molefe's early retirement upon becoming aware that the Minister did not support it. A copy of the minutes of the Board meeting held on 17 May 2017 is annexed hereto marked "BSN37".

8. Relationship with Mr Salim Essa and/or the Gupta's

8.1. I knew Mr Salim Essa and Mr Nazeem Howa from past interactions with each of them before I was appointed to the Eskom Board.

8.2. I came to know Mr Howa when attending The New Age breakfast meetings during my time as Chairman of the South African

By M.

Broadcasting Corporation ("**SABC**").

8.3. I also knew Mr Essa prior to my appointment at Eskom. I had met him for the first time during 2011 or so when I was at the SABC. Mr Essa was on the Board of Broadband Infraco SOC Limited ("**BBI**"). I used to attend meetings with various state-owned entities, including BBI, as part of the SABC delegation, where we were discussing digital migration for the country. These were some of the occasions during which I interacted with Mr Essa.

8.4. Sometime during 2013, when I was sitting at JB's, Melrose with some people involved in the oil business in West Africa, especially Mali. Mr Essa came over to greet me. I introduced him to the people I was with. Once he knew we were talking about the oil business, he expressed an interest to participate as he too was in the oil business. He indicated that he had interests in oil blocks in other African countries. Following several interactions with me he suggested we form a new entity for oil exploration in African countries with potential oil blocks. This is how Gade Oil and Gas (Pty) Ltd ("**Gade**") came about.

8.5. Gade was a newly established entity and we each owned a 50% (fifty percent) interest. Both Mr Essa and I were directors of Gade. Mr Essa was to provide the financial capital required and arrange for our

By X

prospective exploration in Central African Republic ("**CAR**"). I was to leverage my networks from my days in the Diplomatic Corps as Ambassador to procure contracts, particularly for supply of oil to African countries in which there was need.

8.6. The venture collapsed around the time of the civil unrest in CAR during 2013 and Mr Essa resigned as director of Gade. In the end, Gade never traded.

8.7. I knew members of the Gupta family. When I was Chairman of the SABC I often met members of the Gupta family together with officials of The New Age newspaper at the business breakfasts which were arranged by The New Age and broadcast on the Morning Live programme of the SABC. My relationship with them was social, but not business related. I used to receive invitations for social events at their home in Saxonwold and attended some.

8.8. I was invited to and attended the much talked about wedding at Sun City. At that time, I was a member and Chairman of the SABC board.

8.9. I have travelled through Dubai three or four times, but never at the expense of the Guptas or at their instance. These were personal journeys to overseas countries. I did not keep a record of these travels.

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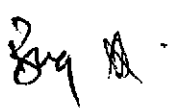
9. **Business Man email account**

9.1. I was copied on the email addressed to Ms Daniels regarding the draft statement by chairman on 11 June 2016 from "*businessman*" on the email address: Inforportal1@zoho.com. There were comments made to the media statement I was going to issue. A copy of the email is annexed hereto marked "**BSN38**".

9.2. I understood from Ms Daniels that the "*businessman*" email address belonged to Mr Richard Seleke ("**Mr Seleke**"), who at the time was the Director General ("**DG**") at DPE.

9.3. The Director General of any Government Department has a lot of influence as he/she speaks and advises the Minister directly. The DG in this instance took a keen interest in the business of Eskom, especially on how Eskom was reflected in the media. He was also very concerned that he and the Minister often saw statements issued by Eskom for the first time, in the media. I had a meeting with him at his DPE office at some point, where he expressed this concern. I cannot recall when this meeting was.

9.4. I did not share Eskom confidential or proprietary information with Mr Essa or anyone outside Eskom and the DPE.



10. T-Systems

- 10.1. I was appointed to the Eskom Board during December 2014. Soon after my appointment Mr Tsotsi asked me to chair the BTC, to which I agreed.
- 10.2. To the best of my knowledge, Eskom had commenced the procurement process which was aimed at replacing T-Systems before I was appointed to the Eskom Board.
- 10.3. During February 2015, the Executive Committee Procurement Sub-Committee ("**EXCOPS**") decided to cancel the procurement process aimed at replacing T-Systems in relation to the provision of IT services to Eskom.
- 10.4. EXCOPS' made a presentation to the BTC motivating for the cancellation of the procurement process to the BTC meeting held on 28 February 2015 I chaired the BTC meeting.
- 10.5. In my statement to Parliament I suggested the BTC meeting took place on 24 February 2015. I have now established that date was incorrect. 24 February 2015, was the meeting of the Executive Committee Procurement sub-Committee which decided on the recommendations

that were to be presented to BTC at the 28 February meeting.

10.6. EXCOPS' motivation for the cancellation of the procurement process was presented to the BTC as follows:

10.6.1. Around December 2014, more than 50% of senior Eskom employees who were critical to the management of the Eskom IT Division accepted voluntary severance packages which had been offered by Eskom to employees in general, and left Eskom;

10.6.2. The departure of the said employees resulted in depletion of skilled resources and thus a lack of requisite capacity within the IT Division, as the affected positions were quite senior. This negatively affected Eskom's Generation Division;

10.6.3. By virtue of the crisis in Eskom's Generation Division, as manifested in persistent load shedding at the time, the view was then formed that bringing in a new IT service provider, which would be unfamiliar with the Eskom Generation business, would likely exacerbate the electricity supply problem which was already prevalent

By A.

during that entire period;

10.6.4. T-Systems' continued involvement, as the incumbent IT service provider, which was already familiar with the power station system in Eskom would be in the best interests of both Eskom and the country; and

10.6.5. That under the circumstances, it made commercial sense for Eskom to extend T-Systems' contract, and to cancel the procurement process which was then aimed at replacing them.

10.7. On the strength of the abovementioned motivation by EXCOPS, the BTC approved the recommendation for cancellation of the procurement process to replace T-Systems. The procurement process was then cancelled by Eskom.

10.8. I do not have the documents pertaining to the EXCOPS decision and the procurement process under consideration.

10.9. My understanding was and still is that in terms of the Eskom SCM Procedure, Eskom was entitled to cancel any procurement processes. Paragraph 3.4.5.7 of the SCM Procedure states, *inter alia*, that

cancellation/re-issuing of tenders may occur any time after the tender has been issued to the market and before contract award.

10.10. I recall an oral opinion was expressed by Mr Neo Tsolanku, a legal adviser at Eskom, that Eskom could not cancel the procurement process because it did not meet the criteria for cancellation of tenders as stipulated in the procurement regulations. However, following extensive deliberations on the matter, the BTC decided to cancel.

10.11. I note that the minutes of the meeting of 28 February 2015 refer to change of business strategy as but one of the motivations that were presented to the BTC in support of cancellation of the procurement process. I do not recall the discussion of the BTC on that aspect nor that it was considered at all.

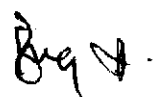
10.12. I did not discuss the cancellation of the procurement process or extension of the T-Systems contract with Mr Essa.

11. Meeting with Minister Ngoako Ramatlhodi

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

Buy

- 11.2. As Chairman of Eskom I had consistently sought to protect Eskom's generating capacity as this was critical to ensuring load shedding ends. Central to this effort was ensuring adequate supplies of the volumes of coal required, but at affordable prices.
- 11.3. I recall from the documents I have gleaned at the time that Glencore were insisting on substantial increases in the price of coal while the quality of the coal they supplied was declining. Glencore had been washing their coal to RB1 export grade and giving Eskom the middlings coming out of the wash. I learned that this had been happening from 2012 onward.
- 11.4. At some point the Energy Availability Factor ("EAF") across various Eskom power stations deteriorated by 10% from 85% to 75% due to breakdowns associated mostly with the burning of low quality coal.
- 11.5. The boiler explosion at Duvha was due to inadequately combusted coal as far as reports to me indicated. 10% of coal plants were not available at any one time.
- 11.6. At the meeting held between the Minister and the Board on 20 March 2015, the Minister insisted that she be informed of coal supplies that were in place throughout the country because the supply of coal to



Eskom could not be compromised. The meeting was to discuss *“the state of the system”* as I recall. These meetings were also attended by members of executive management. I do not have minutes of this meeting.

11.7. The Minister also wanted to be provided with the timeline generating units that were coming out of maintenance. She went on to say government’s efforts at transforming the lives of especially poor South Africans could not be frustrated. 6,000,000 households were already connected to the electricity grid and load shedding was denying them a better quality of life. I do not recall if there were minutes of this meeting. These would be briefings before the open meetings with the press.

11.8. To meet its goals Eskom was to implement cost containment measures and find a solution on pricing of coal supplies. The high cost of coal would drive up the cost of electricity.

11.9. There were six coal mines where Eskom had to provide capital expenditure (the cost plus mines), and this resulted in cost increases in relation to the coal price itself, as Eskom was required to make continuous investments to bring out the coal.

By A.

- 11.10. Despite the capital investments coal from cost plus mines was marginally cheaper than of fixed price collieries, e.g. Kusile coal (a cost plus mine) was R300/ton compared to R400 from an untied colliery.
- 11.11. On 21 August 2015 the GCEO, Mr Molefe, reported to the Board that there was a danger that the Eskom grid could lose 2000MW from the Hendrina power station which was supplied by Glencore's Optimum Colliery. Mr Molefe reported that he had had an acrimonious meeting with Glencore who wanted the price per ton increased from the contractual value of R150 per ton to R500 per ton, which he had refused. I cannot recall whether Mr Molefe's report was in writing. I am not aware there are minutes of this meeting.
- 11.12. Mr Molefe advised me that Glencore had indicated they would stop supplies to Hendrina. If executed this would result in the loss of 2000MW, which was going to reverse all the gains management had achieved in the race to stop load shedding and stop the use of very expensive diesel for the Open Cycle Gas Turbine generators, which was the last desperate effort to keep the lights on.
- 11.13. Mr Molefe further advised me that every R10 increase in the price of coal would increase the tariff by 4%. To make matters worse, Hendrina required coal which has a CV of 23 GJ while other collieries produce of

a CV of 21 GJ, therefore this higher quality CV was difficult to obtain. Hendrina was one of three best performing power stations in terms of EAF.

11.14. The fact that Optimum Colliery was being placed under business rescue also presented a risk that there would be no further coal supplies from Optimum Colliery.

11.15. In the face of all these concerns about the sustainability of coal supplies for Hendrina power station, Minister Ramatlodi had suspended the mining licence for Optimum Coal Holdings on 03 August 2015. He suspended the licences because Glencore had apparently undertaken retrenchments in a non-compliant manner.

11.16. Optimum Coal Holdings had open cast mines and a complex of Underground Mines. Among These are:

11.16.1. Kwagga Colliery;

11.16.2. Pullenshope Colliery;

11.16.3. Eckeboom Colliery;

11.16.4. Boschmanspoort Colliery; and

11.16.5. Koomfontein Colliery.

11.17. Loss of coal from all these collieries would seriously jeopardise Eskom electricity generation.

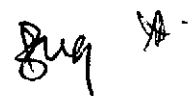
11.18. These were the concerns that drove Mr Molefe and I to request a meeting with Minister Ramatlhodi, who then was the Minister of Mineral Resources, to appraise him of the consequences of suspension of the coal mining licence. The meeting took place at Minister Ramatlhodi's offices in Pretoria. The meeting was arranged by Mr Molefe. I cannot remember the date of the meeting. Luckily Minister Ramatlhodi reinstated the mining licence on 11 November 2015

11.19. I deny Minister Ramatlhodi's account of the version of events regarding the purpose and content of my discussion with him during the meeting which was held between him, Mr Molefe and I. That was the only meeting which Mr Molefe and I attended with Minister Ramatlhodi. I do not recall there was anyone else accompanying Minister Ramatlhodi to the meeting.

12. The R1.68 billion guarantee

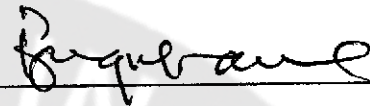
by A .

- 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**".

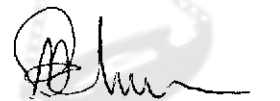


13. Conclusion

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 Umheli day of Post office 2020, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

**COMMISSIONER OF OATHS**

Sanjana Beluen
Beluen



STATEMENT BY VENETE KLEIN TO THE COMMISSION OF INQUIRY INTO STATE CAPTURE

INTRODUCTION

1. I have been approached by the Commission of Inquiry into State Capture ("the Commission") to provide input in respect of matters which form the focus of the Commission's inquiry into state capture ("the Inquiry"). I have volunteered to provide a statement in respect of the relevant matters, in the interests of fully ventilating such matters and assisting the Commission in the execution of its mandate. Although I have endeavoured to address all such matters as comprehensively as possible, this statement should not be construed as being conclusive of my position on the issues in question, nor should my failure to deal with any item in this statement be construed as a waiver of my rights in that regard, which rights remain reserved.
2. I have endeavoured to address all relevant matters (as conveyed to me by the Commission) thematically, and in a generally chronological manner. In order to deal fully with one theme at a time, this has required me occasionally to jump forwards and backwards in time when moving from one theme to another. I believe that this is the most efficient way in which to set out my statement.
3. By designation, at the relevant time, I was a Chartered Director (CD) SA and have graduated from various international executive programmes, including the Senior Executive Programme at Harvard University and the Executive Development Programme at the New School, in New York. In addition, I hold several international qualifications from MIT, INSEAD, IMD and Wits.
4. I have served as an Executive Director and Non-Executive Director on various Boards, including the Barclays Group Ltd, the Reserve Bank and Old Mutual Wealth. Until recently, I served as the Chairperson of The Institute of Directors Southern Africa. I have



garnered various achievements and awards as a result of my recognised performance in my career, including but not limited to the Business Woman of the Year Award, The Barclays International & Commercial Bank Leadership Award, the Nedcor People's Bank Top Managerial Performer Award and the Association of Black Investment & Securities Professionals Award.

5. For a full description with regards to my qualifications and employment background, I refer to my *Curriculum Vitae* ("CV") as well as my abridged CV, copies of which are annexed hereto marked "VK1" and "VK2" respectively.

APPOINTMENT TO THE ESKOM BOARD

6. I was nominated by Lionel Ricardo Adendorf to be appointed to the Eskom Board of Directors ("the Board"). I signed and dated the nomination form on 02 October 2014, a copy of which is annexed hereto marked "VK3". The nomination was made in line with the prescripts as set out in the advert that appeared in the Business Times of Sunday, 28 September 2014.
7. On 11 December 2014, I was appointed by the then Minister of Public Enterprises, Lynne Brown ("the Minister") to serve as a non-executive member on the Board. A copy of the appointment letter from the Department of Public Enterprises ("the DPE") is annexed hereto marked "VK4".
8. Eskom was at that point in dire straits, having faced going concern difficulties and with the country having been subjected to stage 3 load shedding. I felt impelled to make myself available to serve on the Board in order to lend my expertise to the cause of addressing the crisis facing Eskom and the country as a whole. I took up this position without any thought of financial gain.
9. I am unaware as to the process that the DPE followed leading up to my final appointment to the Board but would assume that it went through all the normal checks and balances.



APPOINTMENT AS THE CHAIRPERSON OF THE PEOPLE AND GOVERNANCE COMMITTEE

10. Given the sheer enormity and complexity of the business, the Board's function is largely discharged through the efforts of various standing Board sub-committees, such as the Audit and Risk Committee ("ARC"), the People and Governance Committee ("P&G Committee") and the Board Tender Committee ("BTC") etc. Each of the board subcommittees has its own chairperson, delegation of authority and terms of reference, which guide the functioning of the sub-committees in conjunction with Eskom's Memorandum of Incorporation ("MOI"), Board Charter, the King III and IV codes on Corporate Governance and applicable legislation, including both the Companies Act 71 of 2008 ("the Companies Act") and the Public Finance Management Act 1 of 1999 ("PFMA").
11. A consequence of the aforesaid is that many matters falling within the delegated authority of the various sub-committees would not necessarily serve before the full Board. Only matters which meet the specified threshold in terms of the relevant materiality framework will serve before the Board. For example, the authority to approve contracts with a value up to R750 million is fully delegated to the executive, while the authority to conclude contracts with a value of over R750 million up to "Investment Decision" or "Budget level" is fully delegated to the BTC. As a result, only contracts with a value of above "Investment Decision" or "Budget level" will come before the full Board for approval. This means that multiple substantial contracts could be approved and concluded on the authority of the executive and the BTC, without the balance of the Board ever coming to know thereof.
12. As a result, members of the Board are required to trust that the checks and balances provided by the corporate governance structures are adhered to and adequately ensure the rigour of all decision-making processes. In addition to the above, the Board members rely heavily on the institutional knowledge and guidance received from the executive in relation to all such decision-making processes, including decisions made by the Board. This reliance is in accordance with the Companies Act. This, however, can result in difficulties from a corporate governance perspective, especially when decisions are



taken based upon information and guidance received from the executive, only to discover subsequently in the media that pertinent information was omitted or inaccurately submitted to the Board.

13. In early 2015, I was first appointed as Chairperson of the Social Ethics and Sustainability Committee, at which time I also served as a member of the Investment & Finance Committee and the P&G Committee. I later became the Chairperson of the P&G Committee and a member of the ARC.
14. During the first few months of the tenure of the new board there were a number of rotations of Board members within the Board sub-committees. This was due to the rotation of Board members as a result of one Board member taking up an executive role.
15. During the course of these rotations and after the suspension of 4 executives (I address the issue in relation to these suspensions below), Mr Zethembe Khoza became Acting Chief Executive Officer and I was moved to chair the P&G Committee.
16. I am not certain of the exact date of my appointment as Chairperson of the P&G Committee, but believe it was on or about 15 March 2015. Later, in about June 2015, I was replaced as Chairperson of the P&G Committee by Ms Chwayita Mabude, only to later be reinstated as Chairperson in or about August 2015.
17. The instability regarding the members of the committees also contributed to the governance issues, as Board members were always working with new people who were not familiar with the challenges that the Board faced.
18. Furthermore, the Board struggled with not having all the required information at hand when submissions were presented. It now appears that many of the submissions that were considered in my time contained misleading information or completely omitted critical information. What compounded matters even further for me, is that there are now differing versions of matters that I previously thought that I fully understood.
19. I believed that I was part of a success story in that we went from stage 3 load shedding at a cost of *circa* R434 million per day to the economy to no load shedding in my tenure



on the Board. I regarded this as one of my finest moments in terms of contributing to the country, which, after all, was my only motivation for agreeing to serve on the Board.

20. I understand my appointment to the position of Chairperson of the P&G Committee to have been motivated by the substantial experience I have acquired in this particular field of corporate governance during the course of my career, as demonstrated above. The primary mandate of the P&G Committee is to assist the Board in dealing with the nomination and remuneration of directors, senior executives, human resources strategies and policies. The P&G Committee is also the custodian of corporate governance to the benefit of Eskom. Following my re-appointment as Chairperson of the P&G Committee in August 2015, I served in that capacity until my resignation from the Board on Friday, 12 May 2017.
21. As chairperson of the P&G Committee, I was frequently called upon to mediate at executive level when matters could not be resolved. I always endeavoured to deal with these matters as discreetly as possible in the interests of the people concerned and the organisation as a whole. Similarly, I was called upon to deal with a number of "people management" issues that were escalated to the chairman of the Board, and which I handled with the same discretion. I attended to all of my functions as Chairperson of the P&G Committee with the rigour and efficiency demanded of anyone occupying a position of that importance.

MEETINGS LEADING TO THE DENTONS INQUIRY

22. I now describe the sequence of events in terms of the Board meetings that were scheduled for the period January 2015 – March 2015. At the outset, I note that I was informed of all the meetings, as described below, by the Company Secretary.
23. The Board Induction meeting was held on 16 January 2015 and was arranged by the Company Secretary, Malesela Phukubje. The agenda items included, amongst others, a "war room"¹ update, selective demand curtailment, a financial status update,

¹ The "war room" was a crisis management body (which was being run by the then Deputy President of the Republic of South Africa and supported by a number of high ranking government officials) established to oversee




consideration of Board committee handover reports, a media communication review, risk register consideration, debt management, turnaround strategy, Eskom fleet, panel of experts/International advisory committee and the PFMA section 51 indemnity. I recall having left this meeting feeling rather concerned both by the enormity of the challenges which had correctly been highlighted by the Minister and by the fact that Eskom did not appear to have concrete strategies in place to address these concerns.

24. A meeting was also scheduled by Mr Phukubje, to take place on 26 February 2015, but was later cancelled and did not take place. The reason given was that the DPE had advised that the meeting should not proceed. I raised objections to the cancellation of this meeting in terms of section 52 of the PFMA and Treasury Regulation 29. An email dated 27 February 2015, detailing my objections is annexed hereto marked "VK5".
25. On Sunday, 08 March 2015 the Board received a request to attend a Board meeting on Monday, 09 March 2015 in order to make decisions in accordance with a Board memorandum dated 08 March 2015. The memorandum and resolutions are annexed hereto, marked "VK6". I found it concerning that we had been called to a critical meeting on less than 12 hours' notice. In any event, I had a prior engagement and I duly declined the invitation.
26. I understand that the issues raised at the meeting by Mr Zola Tsotsi, in his capacity as Chairman of the Board, were of such a nature (for example, regarding an independent investigation into Eskom) that those who attended wanted the entire Board as well as the shareholder representative, Minister Lynne Brown to be present. The meeting was therefore rescheduled for 11 March 2015. Since I had not attended the meeting on 09 March 2015, I had to rely on the minutes of this meeting, annexed hereto marked "VK7".

the implementation of the 5-point plan Government had introduced to address load-shedding, which consisted of:

- i. 30-day emergency measures;
- ii. Co-generation production;
- iii. Gas imports;
- iv. Independent Power Providers (IPPs); and
- v. Demand-side management.)



27. In terms of the memorandum, the Board was requested by Mr Tsotsi to take a resolution to commission an inquiry into the technical, commercial and structural status, as well as any acts and/or omissions which had contributed to the deficiency of generating and distribution capacity, of Eskom. Mr Tsotsi also proposed that this inquiry should be completed within a period of 3 months and that the Board subcommittee delegated to spearhead this inquiry should appoint an independent investigator, free of any influence or suspicion.
28. I found it concerning when reading the minutes of 09 March 2015 that the Chair referred to the Presidency having expressed concern, presumably to the Chair, regarding the performance of Eskom. The meeting agreed to invite the Minister to address the issues as articulated by the Chairman. I have seen two sets of the minutes of this meeting, the original unsigned minute (annexed as "VK7") mentions the Presidency, whereas the signed set of these minutes had mentions of the Presidency removed.
29. At the meeting of 11 March 2015, the erstwhile Group Chief Executive Officer, Mr Tshediso Matona, again outlined the problems facing Eskom, which included:
- a. Departures of senior executives through resignations and retirements, which required him to reshuffle the team;
 - b. Engagement with labour as staff morale was a big challenge;
 - c. Gaps in information provided to the "war room";
 - d. Unlikelihood of savings targets being met for the financial year due to serious leakage in primary energy costs;
 - e. The liquidity buffer of R20 billion had decreased to R4.9 billion as 2 expected loan amounts had not been received; and
 - f. The non-payment of substantial amounts owing by Municipalities.



30. The Minister also addressed the Board that day, once again expressing her concern around the Board getting a handle on the business. The Minister conceded that she had no right to instruct the Board on any matter regarding the conduct of Eskom's business.
31. The Minister did note a number of issues:
- a. She was aware that the Board may have been feeling that it had fallen by the wayside given the activities of the "war room";
 - b. Concern regarding the interest rates which Eskom had negotiated and agreed to in the market;
 - c. The inequality of coal price purchases, with some companies being paid more than others;
 - d. Mismanagement of the load shedding process;
 - e. The purchasing of diesel "on the hoof";
 - f. The appointment of the Board did not bring about any problems and the process ran smoothly; and
 - g. The ARC may procure the services of an independent, credible forensic investigator to undertake the inquiry proposed by Mr Tsotsi and not someone who had previous dealings with Eskom or whose independence may be in doubt.
32. The activities of the "war room" were particularly concerning as I was of the view that they were potentially instructing the Board. For example, the "war room" took the decision that the Board should not proceed with the mooted voluntary severance package process as started by the previous Board. The minutes of the meeting highlighting this are annexed hereto and marked as "VK8".



33. After the Minister left, the Board convened a Board in-committee meeting where Mr Tsotsi again presented his memorandum proposing an inquiry into corporate governance issues at Eskom and sought the Board's support in that regard. It was agreed that:
- a. A forensic inquiry would be established, and would be driven by the P&G Committee and the ARC; and
 - b. The ARC would be the custodian of the inquiry and would engage with other committees as and when necessary.
34. Mr Tsotsi proposed that those Executive Committee members who were heading up the divisions where the inquiry would take place step down during such inquiry. Mr Tsotsi (at the 11 March 2015 Board in-committee meeting) assured the Board that he had compiled a report that supported the establishment of an inquiry (I deal later with Mr Tsotsi's subsequent admission at the 19 March 2015 meeting, that such report never existed). However, the Board was concerned about the continuity challenges this would occasion, especially given the fragility of the company at the time. The members agreed that there was a trust deficit between the Board and the Executive Committee members involved in the matters forming the focus of the inquiry and that it would therefore be in the best interest of the inquiry if they were asked to step aside for the period of the inquiry in order for it to be concluded within the proposed 3 month period.
35. The Board members expressed the view that they would prefer to do a fact-finding exercise before asking the relevant executives to step aside. There was concern that acting with haste may result in Eskom finding itself in a position where it has to fight cases in the Labour Court. Mr Tsotsi explained that this would slow down the inquiry and that a lot of work had already been undertaken and that he could provide the Board with a report as per the work that had been done previously.
36. Based on that, Mr Tsotsi then advised that the Group Executive: Commercial & Technology, Group Executive: Group Capital, Financial Director & Group Chief Executive should be suspended. The reasons provided by Mr Tsotsi were, *inter alia*, that the

Financial Director had met with tenderers during a tender process, while in respect of the Group Executive: Commercial & Technology there was an allegation of misconduct which included another staff member. The minutes of the 11 March 2015 meeting are annexed hereto marked as "VK9".

37. Mr Tsotsi had recommended that Mr Malesela Sekhasumbi act as Group Executive Commercial & Technology. I found this recommendation to be concerning as Mr Sekhasumbi was on suspension and Mr Tsotsi did not share this with the Board when he made his recommendation. Later, this was one of the items that the Board charged Mr Tsotsi with prior to his removal from the Board. A letter from the attorney representing Eskom to Mr Tsotsi's attorneys regarding this issue is annexed hereto and marked as "VK10".
38. The Board, at the 11 March 2015 meeting, resolved as follows regarding the inquiry and suspensions:
- a. An inquiry shall be instituted into the affairs of Eskom and that the duration of the inquiry shall be three months. The Board envisaged that, upon completion, this inquiry would provide it with an independent view of reasons for the following:
 - i. The poor performance of Eskom's generation plant;
 - ii. Delays in bringing the new generation plant on-stream;
 - iii. High costs of primary energy;
 - iv. Eskom's financial challenges;
 - v. Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies;



- vi. Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general; and
 - vii. Security failures and accountability at Eskom as a Key National Point.
- b. The ARC shall take custodianship of the inquiry and that the P&G Committee and other committees assist where necessary and report to the Board. The ARC is mandated to draft the Terms of Reference ("ToR"). The P&G Committee was mandated to provide support; and
 - c. The key executives be put on suspension for the duration of the inquiry.
39. A meeting of the P&G Committee was convened immediately after the Board meeting to deal with the decision to suspend the executives whose areas of responsibility would be investigated for the duration of the inquiry.
40. The P&G Committee accepted the identified four executives to be suspended as:
- a. Tshediso Matona, Chief Executive Officer;
 - b. Tsholofelo Modise, Financial Director;
 - c. Dan Morokane, Group Executive: Group Capital; and
 - d. Matshela Koko, Group Executive: Technology and Commercial.
41. While on the topic of the mooted suspensions, I interpose to note the potential roles of Ms Suzanne Daniels and Mr Salim Essa in the suspensions. Ms Daniels, in her testimony before the Parliamentary Inquiry noted that she met Mr Essa on 09 March 2015 when attending a meeting with Mr Koko. Ms Daniels testified that, at this meeting, Mr Essa questioned what it would take to have employees suspended. Ms Daniels claims to have advised Mr Essa that she was a contract expert and not an employment expert.
42. At this point in time, and in line with her testimony, Ms Daniels was a senior manager, not the head of legal and the company secretary. She was only appointed as Group



Company Secretary on 01 October 2015, well after the suspensions had taken place. Yet the metadata of the pre-suspension letters for the four Executives, illustrates that Ms Daniels authored the letters and that they were last modified by Mr Essa on 10 March 2015, who she allegedly had her first encounter with the day prior. I discovered this when considering the letters for purposes of preparing this statement. The pre-suspension letters and printouts of the corresponding metadata of each letter are annexed hereto marked "VK11", "VK12", "VK13", and "VK14".

43. This is of particular concern to me as Ms Daniels, by her own admission, was at a relatively low level and should not have been drafting suspension letters. In my view this should have been done by Neo Tsholanku, the Head of Legal at the time. Of even greater concern, and frankly horrifying, is the fact that the letters were provided to and modified by Mr Essa the very day after he had enquired from Ms Daniels what it would take to have employees suspended. Mr Essa had no legitimate reason to be involved in Eskom internal processes let alone the drafting of suspension letters in respect of senior executives.
44. Returning to the process of the suspensions, the relevant executives were called into the P&G meeting (which was convened immediately after the 11 March 2015 Board meeting), chaired by Zola Tsotsi, individually and were informed of the Board's decision to launch an inquiry. They were further advised of the Board's view that their presence could hamper the said inquiry.
45. The P&G Committee, under the chairmanship of Mr Tsotsi, then gave each executive an opportunity to give the meeting any reasons as to why their presence would not hamper the inquiry. After this process was followed, the said executive were each asked to recuse him/herself in order to allow the P&G Committee to deliberate on the information and reasons provided by said executive and then make a final decision on his/her possible suspension.
46. In the cases of all four executives, the P&G Committee found that the reasons presented were not strong enough and proceeded with the suspensions. The suspensions were



deemed necessary in order to give effect to the Board's decision to proceed with the inquiry in an unfettered manner and to ensure same was concluded within the agreed three-month timeframe.

47. To my understanding, none of the suspended executives were given reasons for their suspensions. Instead, they were simply told that they were required to step aside in order for the inquiry to be speedily concluded and that they were not being formally charged.
48. It is worth remembering that none of the suspended executives were ever charged with specific wrongdoing – the reason for their suspension was purely as guided by Mr Tsotsi, namely that they might have interfered with the inquiry.
49. Besides Mr Matona and Mr Koko, I was advised that the remaining executives (namely, Mr Morokane and Ms Molefe) approached Eskom with the intention of settling, in terms of which they would resign from their respective positions and accept an exit package.
50. The Board considered these settlement requests and delegated the Acting Chairman, Dr Ngubane, myself and Mr Kumalo to enter into negotiations with the four suspended executives around their exit from Eskom and in relation to their respective exit packages.
51. The authorization provided for:
- a. The Acting Chairman, Dr Ngubane, myself and Mr Kumalo to enter into exit negotiations with each of Mr Matona, Ms Molefe, Mr Koko and Mr Morokane;
 - b. That any settlement should be within the following parameters:
 - i. The financial package to be negotiated shall not exceed a maximum amount of up to 12 months' total package;
 - ii. Any benefits due to the affected executives as per the standard conditions of employment shall be implemented according to the relevant Eskom policies and procedures; and



- iii. Settlement agreements shall set out the terms and conditions of the exit and include the relevant provisions relating to confidentiality.
 - c. That the Chairperson of the P&G Committee be authorised, with the power to delegate further, to take all the necessary and all immediate steps to give effect to the above including the signing of any agreements or other documentation necessary or related thereto.
52. To the best of my recollection, I recall that all settlement figures were provided for by Anton Minnaar, the Executive Support Manager at the time.
53. Mr Morakane requested an exit discussion, which was handled by Messrs Khumalo and Khoza.
54. Various meetings were held with Ms Molefe, some of which I was a part of, however her final exit agreement was handled by Mr Khoza.
55. Mr Matona referred his matter to the Labour Court, Johannesburg for an order to set aside his suspension and allow him to return to work. This application was brought on an urgent basis and was opposed by Eskom. At the same time, Mr Matona had lodged an unfair labour practice dispute with the Commission for Conciliation, Mediation and Arbitration ("CCMA"). The Labour Court found that there was no basis for urgency and dismissed the application in this regard. It nonetheless found in favour of Mr Matona in respect of procedural fairness of the suspension and referred the matter to the CCMA for proper handling of the issues prior to it being heard at the Labour Court.
56. My reason for supporting Mr Matona's departure was that he did not appear to have a handle on the turnaround of the organisation, which was particularly critical at that point in time. Dr Ngubane met with him and discussed his possible departure from Eskom. An agreement was subsequently reached with Mr Matona and he exited the services of Eskom.



57. With regards to Mr Koko, I was present at a meeting with him. He was the one executive who was not interested in leaving the employ of Eskom. He indicated that he wanted his job back. Upon objecting to this, I was mandated by the Board to engage with a senior partner of Dentons in order to establish whether or not Mr Koko had been, by way of the inquiry, found guilty of any wrongdoing.
58. In this regard, I contacted Mr Noor Kapdi of Dentons, who indicated that they had not found any evidence of wrongdoing by any of the suspended executives. In order to address my discomfort, I decided to engage with Mr Jerry Kaapu of Bowman Gilfillan, who advised that Eskom could not keep someone on suspension if the inquiry did not find any evidence of wrongdoing. Dentons also provided a letter confirming the above.
59. As far as I am aware, Mr Koko was reinstated in early July 2015. I refer to the 1 July 2015 meeting and minutes thereof where it is written that the fourth executive (Mr Koko) should be reinstated. This meeting was chaired by Ms Mabude. The minutes of this meeting are annexed hereto marked "VK15".
60. During this time, one of the Board members acted as Interim Chief Executive with effect from 12 March 2015 and Mr Brian Molefe was subsequently seconded to Eskom from Transnet as Acting Chief Executive. As per the Secondment Agreement between Transnet and Eskom, the duration of secondment was three months, until July 2015.
61. Acting arrangements were approved by the P&G Committee and the following executives were appointed:
- a. Edwin Mabelane (Acting Group Executive: Technology and Commercial);
 - b. Nonkululeko Velei (Acting Finance Director);
 - c. Abram Masango (Acting Group Executive: Group Capital); and
 - d. Zethembe Khoza (Interim Chief Executive).




62. The said executives were called in by the Board during a P&G Committee meeting on 12 March 2015 (chaired by Mr Khoza) and were informed of their acting positions.
63. The next relevant meeting was the Board in-committee meeting of 19 March 2015, which Mr Nick Linnell attended, as the independent consultant. I now note that the Board was introduced to Mr Linnell at the 11 March 2015 meeting (and not this meeting of 19 March 2015, which was previously my recollection). Mr Tsotsi, the Chairman, informed the Board that the consultant he had appointed (Mr Linnell) had been referred to him from higher up, in the Presidency. It was of concern to the Board that no proper process was followed to engage Mr Linnell's services. The Board accordingly expressed discomfort with the engagement of Mr Linnell. Moreover, the Board felt that the Mr Tsotsi's actions had compromised the Board as well as the integrity of the inquiry. The minutes of the 19 March 2015 meeting are annexed hereto marked "VK16".
64. Further, during this meeting, Mr Tsotsi admitted that the report he had referred to earlier (at the 11 March 2015 meeting) in support of the inquiry did not exist.
65. With regards to issues relating to the media statement that he had released earlier in March 2015, Mr Tsotsi explained that during the preparation of the media statement, he intended for it to be distributed for input by the Board and the DPE. Thereafter, it would be issued. However, and according to Mr Tsotsi, the draft media statement had unfortunately leaked to two media houses and was distributed in the public domain without receiving approval from the Board. Further, the contents of the ToR which had been prepared by the Chairman of ARC were contradicted by the contents of the media statement in that the Board had never resolved to appoint Mr Linnell or a retired judge to oversee the inquiry. The draft Terms of Reference and the media statement are annexed hereto marked "VK17" and "VK18", respectively.
66. The original ToR were sent to the Board by the Company Secretary and were then further unpacked by the ARC.




67. The Board unanimously agreed at the Board in-committee meeting on 19 March 2015 that it had lost confidence in the chairman (i.e. Mr Tsotsi) and would recommend his removal as a director due to:
- a. His failure to seek or obtain Board approval for the appointment of a consultant (i.e. Mr Linnell);
 - b. His actions in terms of the suspensions; and
 - c. Preparing and distributing a media release without Board approval.
68. This information was shared with Mr Tsotsi on his return to the meeting of 19 March 2015. Furthermore, the Board had resolved to inform the Minister regarding this breakdown between the Board and the Chairman.
69. At the meeting of 19 March 2015, the Board elected Dr Baldwin Ngubane, who at a later stage became the Chairman of the Board, to act as chairperson until we had communicated our resolution with the Minister.
70. The Board communicated its resolution to the Minister at a meeting on 20 March 2015. It was also indicated that the Board had requested the meeting in order to consult with the Minister regarding removal of a director in terms of the MOI.
71. The Board indicated that the Chairman of the Board had performed certain actions which rendered his continued directorship untenable. In the main, the actions were the following:
- a. Engagement of an external consultant (Mr Linnell, who appears from the metadata thereof, to have been responsible for drafting the resolutions that were sent to the Board for consideration on 08 March 2015) to provide services to Eskom without following Eskom's procurement processes or informing the Board of his actions;



- b. Misrepresenting to the Board that there was a Report which had been prepared by the consultant and which contains findings about misconduct by certain executives;
 - c. Preparing a media statement to be issued in the name of the Board, which contained inaccurate information as well as information which named third parties and had the potential to prejudice Eskom's interests; and
 - d. The additional charge of Mr Tsotsi misleading the board when he tried to bring Mr Sekhasumbi back from suspension to take up an executive role.
72. It was clarified at the 19 March 2015 meeting that the Board was required to act in accordance with its fiduciary duties and that if the statement had mentioned that the Board had presided over an organization fraught with corruption, fraud and other maladies, it would bring Eskom into disrepute. The Board confirmed that it was unanimous in its view regarding the steps which were to be taken against the Chairman, and the consultation with the Minister.
73. The Board felt that the suspension was further necessitated by its discomfort of where Mr Tsotsi's instructions were coming from; there were underlying tones of influence on the Board from the Presidency and the 'war-room' as described above.
74. The Minister supported the views of the Board in accordance with the MOI. The Board elected to proceed with the suspension, in accordance with the MOI, and after its consultation with the Minister.
75. The Minister was kept apprised of the developments in removing Mr Tsotsi as Chairman, at a meeting held with Eskom Board Members and the Minister on 01 April 2015, at which I was present. The minutes of the 01 April 2015 meeting are annexed hereto marked "VK19". We informed the Minister that the following steps were taken in this regard:



- a. A Notice of Meeting was sent to Mr Tsotsi on 22 March 2015, calling him to a meeting with the Board on Wednesday, 25 March 2015. The Notice outlined that the Board had lost confidence in him and that he was required to present representations to persuade the Board to reconsider its position.
- b. The meeting commenced at 18:00 on 25 March 2015 and was attended by the full Board. Mr Tsotsi was also present and was represented by Ngcebetsha Madlanga Inc Attorneys, who had briefed Mr Nazeer Cassim SC as counsel in the matter. Through his counsel, Mr Tsotsi requested a postponement of the meeting on the grounds that the notice given to him was short. They stated that, in effect, they had been given one day's notice which, for a matter as serious as that under consideration, was not fair.
- c. The Board acceded to their request and it was agreed that the meeting would reconvene on Monday, 30 March 2015 at 20:00.
- d. On 30 March 2015 at 17:00 the Board was advised through Eskom's attorneys that Mr Tsotsi had once again not had adequate time to prepare as he had spent the weekend of 27-29 March 2015 in Cape Town on Eskom business. Consequently, Mr Tsotsi's attorneys requested another postponement.
- e. The Board took the position to proceed with the meeting in Mr Tsotsi's absence as it was of the view that he was delaying the process. This was communicated to his counsel.
- f. At 20:00 the meeting commenced, and Mr Tsotsi was in attendance with his legal team. Together with his counsel, Mr Tsotsi presented his version in response to the allegations which had been made against him.
- g. After conclusion of the presentation, Mr Tsotsi asked the Board to consider the impact his removal from the Board would have on his life and on his family, as well as on his ability to earn a living. He was then asked to recuse himself so that the Board could consider everything that had been presented.



- h. After significant deliberation – after which it became clear that the Board was still of the same view of no longer having confidence in Mr Tsotsi – the Board decided that it would engage Mr Tsotsi directly in terms of how it ought to disengage, being cognisant of his request to consider his interests.
- i. Two Board members were nominated to have an offline discussion with Mr Tsotsi – expressing the Board’s view and encouraging him to disengage/resign rather than put this matter to a vote. After a lengthy dialogue, Mr Tsotsi addressed the full Board together with his legal representatives and advised the Board that:
- i. He had decided to resign with immediate effect as both Chairman of the Board and as a non-executive director;
 - ii. He wished to be afforded a few days to empty out his office of personal belongings;
 - iii. He wished to be supported with payment for his legal representatives – which was standard practice at Eskom at the time; and
 - iv. He wished to be paid an amount equivalent to 3 months’ board fees, taking into account that his tenure would have ended at the AGM.
- j. The Board accepted points i – iii but pointed out that point iv would require consultation with the Minister and her approval. I note that the Minister later declined to pay the amount Mr Tsotsi requested.

THE DENTONS INQUIRY

76. As I alluded to earlier, the process of appointing Dentons and finalising the ToR was handled under the custodianship of the ARC, which was chaired by Ms Mabude. I only became a member of ARC on or about June 2015.



77. The original Draft ToR was sent to the Board by the Company secretary, Mr Phukubje on 14 March 2015, which I also received. I was comfortable that the original intent was covered and therefore did not add anything.
78. The 14 April 2015 meeting of the ARC articulated the process followed in appointing Dentons. As my first ARC meeting was only in June 2015, my only exposure to this meeting was in terms of the minute, a copy of which is annexed hereto marked "VK20".
80. Dentons gave a presentation of its report to the Board on 25 June 2015, wherein issues related to timing, costs and extending the inquiry beyond three months were discussed.
81. Dentons made numerous recommendations in their report relating to various aspects of Eskom, including commercial, generation, group capital, finance, and group security. The Dentons recommendations as well as the ARC table tracking Eskom's progress in addressing each of the recommendations is annexed hereto marked "VK21".
82. To make the process more manageable and to keep an accurate record of events, the recommendations were broken down into their respective group divisions. The Board was then provided with feedback through every ARC meeting.
83. The Board eventually declined to extend the Dentons investigation due to the agreed timeframe of three months expiring. This is consistent with the original decision as distributed on 08 March 2015. Further, the budgetary constraints played a big role in the allotted time being strictly adhered to.
84. I am aware that three reports were issued by Dentons:
- a. The first report was that presented at the June 2015 meeting, and was collected and shredded. This report included allegations against individuals and companies that had not yet been investigated. Eskom was uncomfortable




releasing the names of those individuals and companies mentioned in the report that had *not* been investigated by Dentons;

- b. The second report was that of 02 July 2016, that had the names of the above individuals and companies removed. This was a version of the report that the Board felt comfortable releasing to the public; and
- c. The third version of the report was the 02 July 2016 report which was redacted heavily by Suzanne Daniels. At this point in time (early 2017), there was a lot of pressure to release the report. A meeting was therefore held with Ms Daniels to discuss the most effective way to release the approved 02 July 2016 version of the report. This was an informal meeting; hence I do not have any minutes for it, and I recall certain (but not all) Board members attending it. Those I can recall in attendance were Dr Ngubane, Mr Singh, Dr Naidoo, Mr Khoza and myself. It was agreed that the 02 July 2016 version of the report (not the redacted version prepared by Ms Daniels) would be released at a media briefing the day after this meeting. At the end of the meeting Ms Daniels asked to consult with counsel to get an opinion on releasing this version of the report. I did not hear back from Ms Daniels regarding the advice she received from counsel. The next morning at the media briefing, Ms Daniels proceeded to explain to the media that she could only release the redacted version of the report (i.e. the version prepared by her) as per the advice she had received from counsel. This was the first time that I or the other Board members present had become aware that Ms Daniels was releasing her redacted version of the report rather than the 02 July 2016 version of the report. This came as a shock to me and the other Board members.

MATTERS RELATING TO BRIAN MOLEFE

85. Brian Molefe and Anoj Singh were seconded to Eskom by Minister Brown. I welcomed the secondments. I have noted, in great detail, the appointment of Mr Molefe, his resignation, and his pension pay-out in my affidavit to the Hawks. The affidavit I submitted to the Hawks covering these subjects is, annexed hereto marked as "VK22".





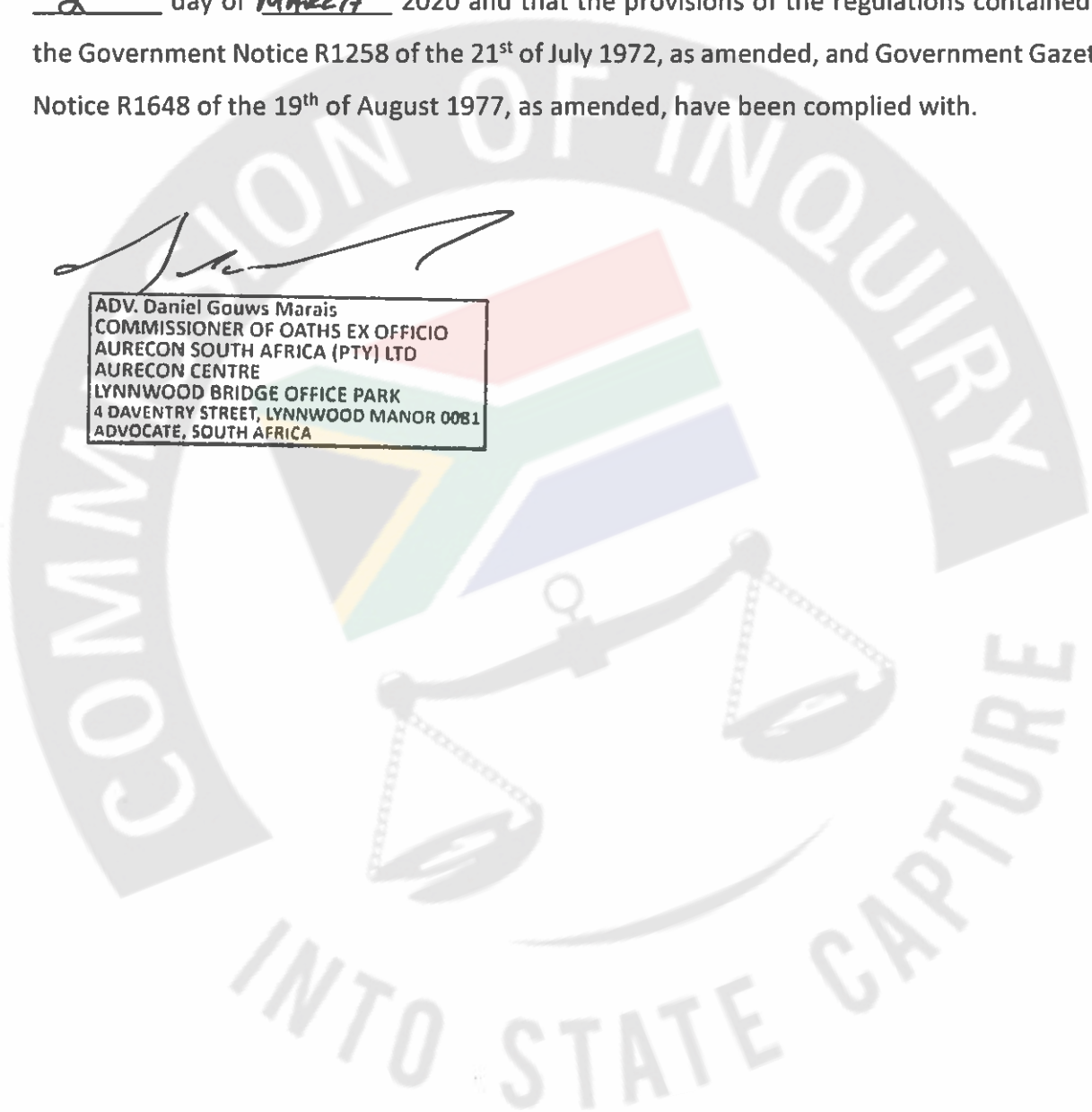
VENETE JARLENE KLEIN

DEPONENT

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposed before me at PRETORIA on this the 2 day of MARCH 2020 and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



ADV. Daniel Gouws Marais
COMMISSIONER OF OATHS EX OFFICIO
AURECON SOUTH AFRICA (PTY) LTD
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**SUBMISSION BY THE CHAIRMAN OF THE BOARD OF ESKOM
TO THE ZONDO COMMISSION OF INQUIRY**

I, the undersigned,

JABULANE ALBERT MABUZA

do hereby make oath and say that:

1. I am the Chairman of the Board of Eskom Holdings SOC Limited ("Eskom"). Eskom has been requested to answer certain questions posed by the State Capture Commission of Inquiry ("the Commission"). As the Chairman of the Board of Directors of Eskom ("the new Board") I have been asked by the new Board to make this Submission on behalf of the new Board.
2. In providing a response to the Commission Eskom has placed its personnel and resources fully at the disposal of the Commission and in this regard the Commission has interviewed various personnel from Eskom and has received statements from these personnel. The Commission has also informally requested and received a substantial volume of documents from Eskom. Much of this is documentation that has also been provided to the various other investigations and enquiries mentioned below. Some of the requested documentation has been attached to the statements and have already been given to the Commission by individuals interviewed by the Commission. An index of additional documents submitted to

the Commission is attached as **Annexure B**. In addition, Eskom is providing a flash disk with information to the Commission that is relevant to the matters specifically addressed in this Submission and is listed in **Annexure C**.

3. This Submission focuses on informing the Commission on the steps that the new Board has taken since its appointment. In so far as historic matters are concerned these are generally not within my own personal knowledge and experience or that of other members of the new Board.
4. This Submission provides an overarching framework and high-level summary of the matters which the Board has been asked to consider, it references the statements submitted by individuals (current or previous Eskom personnel) in response to the Commission's questions. These statements, however, by their very nature reflect the personal perspective of the individuals in question and are not Eskom's position or formal response to the Commission's questions and are not incorporated into this Submission itself.

I. BACKGROUND AND INTRODUCTION

5. On 2 November 2016, the Office of the Public Protector of the Republic of South Africa released a *"Report on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of State-Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's business"*, being the **"The State of Capture Report"**.



6. Among the recommendations made in The State of Capture Report was that a commission of inquiry headed by a Judge nominated by the Chief Justice of the Republic of South Africa should be established by the President to investigate matters raised in The State of Capture Report pertaining to malfeasance and maladministration in state owned companies.
7. Eskom is listed as a major public entity in terms of Schedule 2 of the Public Finance Management Act No.1 of 1999 ("PFMA"). The main business and objective of Eskom is to provide electricity and related services including the generation, transmission, distribution and retail thereof. Eskom is one of the state owned companies that are mentioned in The State of Capture Report.
8. Pursuant to the release of The State of Capture Report and after much public disquiet and scrutiny regarding The State of Capture Report, the President of the Republic of South Africa appointed a Judicial Commission of Inquiry Into State Capture, Corruption and Fraud In the Public Sector Including Organs of State in terms of section 84(2)(f) of the Constitution of the Republic of South Africa by way of Proclamation No.3 of 2018 published in the Government Gazette of 25 January 2018 (Government Gazette No. 41436).
9. The questions attached as **Annexure A** were posed to Eskom on 29 October 2018 (the "Commissions Questions").

II. CONTEXT FOR THIS SUBMISSION BY THE CHAIRMAN OF THE NEW BOARD ON BEHALF OF THE NEW BOARD

10. The new Board was constituted on 19 January 2018, as set out in paragraph 15 below.
11. The members of the new Board face some difficulty in providing an "Eskom" response to the Commission's Questions as the majority of the persons involved in these issues are no



longer in the employ of Eskom. Furthermore, the Board members themselves do not have personal insight into the matters undertaken before their tenure.

12. There are a number of ongoing public investigations into the matters covered by the Commission's Questions. These include those conducted by Public Protector (in respect of The State of Capture Report), the National Treasury investigations as reflected in the Final Report: Forensic Investigation into Various Allegations at Transnet and Eskom in respect of Tender Number NT 022-2016 RFQ26-2017 commissioned by National Treasury and conducted by Fundudzi in November 2018 and the ongoing investigation of the Special Investigating Unit ("SIU"), the Parliamentary Report of the Portfolio Committee on Public Enterprises on the Inquiry into Governance, Procurement and the Financial Sustainability of Eskom, dated 28 November 2018, the Directorate for Priority Crime Investigation (the "Hawks") and the work undertaken by this Commission.

13. Eskom is cooperating with all relevant authorities regarding these ongoing investigations. The new Board needed to strike a balance between addressing the past problems at Eskom and moving forward to build a strong, solvent, motivated organization able to carry out its public mandate. The new Board has undertaken multiple "clean up" and consequence management processes related to past practices (described further below), these relate to a myriad of past governance failures and not all are related to matters within the Commission's mandate. In the context of all of the ongoing external enquiries and investigations the new Board did not consider it a prudent use of Eskom's limited resources to commence with multiple forensic investigations of the matters related to state capture in an instance where this may hamper the process, or lead to a duplication of efforts of the investigations already underway. The new Board has been advised that the SIU has requested that Eskom does not conduct further investigations into the matters relating to



state capture as this may interfere with and impede with the SIU's ongoing criminal investigation and may hamper official evidence collection efforts. As such, the new Board does not necessarily have specific insight into these matters beyond what is in the public domain and what has been specifically uncovered in the context of disciplinary processes and other internal audit recovery processes detailed further in this document.

14. The new Board has however undertaken a number of disciplinary processes and measures of reform in order to address the past unlawful practices and governance failures within the organization. Information on these is also provided with this Submission.

Appointment of the New Eskom Board Members in January 2018

15. In terms of the Eskom Conversion Act 13 of 2001 and the Companies Act 71 of 2008 ("the **Companies Act**"), Eskom is a public company and the sole shareholder of Eskom is the Government of the Republic of South Africa. In accordance with Eskom's Memorandum of Incorporation, the Government as the sole shareholder, acting through the Minister of Public Enterprises, has the exclusive power to appoint directors of Eskom pursuant to the provisions of section 66(4)(a)(i) of the Companies Act and section 63(2) of the PFMA.
16. At the time of the Board's appointment to Eskom on 19 January 2018 the company was undoubtedly facing one of the most difficult times in the organisation's 95-year history, experiencing a tumultuous year, characterised by weak financial ratios, coupled with leadership and governance issues. A number of the challenges were widely stated to have stemmed mainly from the qualified audit incurred in the year ended 31 March 2017, which were due to:



- a. incompleteness of the irregular expenditure information in terms of PFMA requirements;
- b. the many allegations of financial mismanagement and corruption against executives and senior management; and
- c. a myriad of other issues related to lapses in governance processes and other internal controls.

17. These challenges, amongst others, were widely stated as the biggest contributors to the deterioration of confidence in Eskom by financial markets which constrained access to funding, leading to a liquidity crunch and consequently being a contributory factor towards serious concerns regarding the long-term financial viability and the going-concern status of the group. Eskom needed to raise loans of R20 billion in the period 1 February 2018 to 31 March 2018 after having had no access to funding since July 2017.

18. It was against this backdrop - in the wake of various ratings downgrades, facing a potential JSE delisting of its bonds and funders calling for change in governance structure and leadership that the then Deputy President of the Republic of South Africa, Mr Cyril Ramaphosa announced the appointment of a new Board and Interim CEO on 20 January 2018 with a clear mandate to stabilise Eskom and to deal decisively with governance lapses.

19. The non-executive directors and members of the Board of Eskom in January 2018 were as follows including their dates of appointment:

Name of Director	Date of Appointment	Resignation Date
Jabulane Albert Mabuza	19 January 2018	n/a
*Jacky Molisane	19 January 2018	18 September 2018



Dr Pulane Molokwane	23 June 2017	n/a
Sifiso Dabengwa	19 January 2018	n/a
Busisiwe Mavuso	19 January 2018	n/a
Nelisiwe Magubane	19 January 2018	n/a
Sindisiwe Mabaso-Koyana	19 January 2018	n/a
Dr Rod Crompton	19 January 2018	n/a
*Mark Lamberti	19 January 2018	6 April 2018
*George Johannes Sebulela	19 January 2018	19 October 2018
Professor Malegapuru Makgoba	8 December 2017	n/a
Professor Tshepo Mongalo	8 December 2017	n/a
Dr Banothile Makhubela	23 June 2017	n/a

Note: Directors whose names bear asterisks have since resigned for various reasons, which will be shared with the Commission herein below.

20. Mr Mark Lamberti resigned on account of a High Court judgment which suggested that he discriminated and ill-treated a black woman and overlooked her for appointment when she was suitably qualified and had the requisite experience for the job.

21. Ms Jacky Molisane resigned owing to a decision taken by the Minister of Public Enterprises not to have any of his staff as Board members of state owned companies.

22. Mr George Johannes Sebulela resigned as a result of an undeclared conflict of interest related to his company, Sebtech (Pty) Ltd.

What the New Board Found at Eskom

23. Immediately after its appointment in January 2018 the Board was confronted with the following challenges at Eskom:

- liquidity crisis with no access to funding;
- unsatisfactory sales revenue generated by Eskom;
- low investor confidence as evidenced by the credit rating downgrades;
- increasing municipal and Soweto debt;
- deteriorating EBITDA margins;
- ballooning capital expenditure;
- high operating expenditure;
- high debt servicing costs;
- high costs of maintenance;
- a myriad of allegations of mismanagement and corruption against Senior officials;
- breaches of the PFMA and lapses of governance systems and controls;
- delayed financial results on the back of going concern challenges; and
- low staff morale.

24. Eskom is a major driver of the South African economy and its direct impact on the South African GDP as a result of its operational and capital expenditure is approximately 3%. Eskom is a key driver of the development of new industries in South Africa, both through its localization programme and by providing electricity for the establishment of new businesses. It is also one of the largest employers, employing over 48 000 people directly, and one of the largest buyers of goods and services in the country.



25. The extent of the challenges was almost insurmountable. However, the Board decided to prioritise the following critical and inter-related issues seen as underpinning stabilisation:

- a. addressing the many governance-related matters as a matter of urgency – this was also a key condition to solve our lack of access to funding;
- b. finding solutions to the liquidity issues in the face of credit downgrades and zero funding appetite by markets; and
- c. releasing the then delayed interim results and in the process addressing the “going concern” issues which were at risk of triggering defaults on existing funding facilities.

26. To pass the “going concern” test, Eskom needed to be liquid and solvent. To meet its financial obligations, it needed to be capitalized. To obtain external capital, the providers of capital needed to gain comfort, not only about Government support and the new Board appointments, but in regard to action that was also going to be taken to improve the corporate controls and more importantly to deal decisively with the many allegations of malfeasance and corruption against a number of its executives and management.

27. In line with the above and to execute on its mandate, the Board looked to expedite investigations into the said allegations and to take corrective action within the legal framework. Immediately disciplinary processes were instituted against certain managers and are set out in the section below.

28. The Board also became aware that there were also various commercial transactions and disciplinary proceedings that were worrisome. The Commission has specifically asked Eskom for information regarding The New Age Media transaction and the Optimum Coal Holdings Limited (“Optimum”) and Tegeta Exploration and Resources (Pty) Limited (“Tegeta”) (Brakfontein Colliery) transactions. Others identified by the Board and referred to in this Submission include the McKinsey/Trillian transactions, dealings between Eskom



and Impulse International, Nkonki, the Huarong transaction. Others such as the SAP and T-Systems transactions previously raised in the public domain will be dealt with by Eskom at a future date. Although the Commission has not requested information on these at this stage, these are briefly discussed herein and can be canvassed in more detail if required by the Commission in future. There could well be other transactions of relevance and interest to the Commission and Eskom will provide all relevant information on such other transactions as requested by the Commission.

III. CORPORATE GOVERNANCE PROTOCOLS AND PRACTICES FOLLOWED BY THE NEW BOARD

29.A set of the relevant Eskom Policies and Procedures referenced in this document is included in Annexure D of this Submission.

30.As is explained elsewhere the new Board's mandate is to stabilize Eskom. In its first year the new Board has undertaken this mandate through numerous interventions within the organization and taken forward this mandate across the various committees of the Board.

In this regard the following is a record of the meetings held by the Board and Board committees since January 2018.

BOARD	ARC Audit & Risk Committee	BTC Board Tender Committee	IFC Investment & Finance Committee	P&G People & Governance Committee	SES Social,Ethics & Sustainability Committee	STRATCOM Board Strategy Committee	TOTAL
19	11	9	7	8	3	4	61



Probity checks required to be undertaken by the appointing authority

31. In accordance with Eskom's Memorandum of Incorporation, the Shareholder appoints Board members. The appointment process as well as fit and proper testing of directors is conducted by the Department of Public Enterprises ("DPE") and guided by the:

- a. Protocol on Corporate Governance in the Public Sector and Board induction and orientation toolkit- issued by DPE.
- b. Handbook for the appointment of persons to Boards of SOE's and state controlled institutions- issued by the Department of Public Service and Administration.

Probity checks required to be undertaken by Eskom

32. Eskom is required by section 217 of the Constitution and section 51(1)(iii) of the PFMA to have an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective. In order to ensure and manage full adherence to the legislative provisions above and the principles of the King IV Report, all potential conflicts of interests must be declared by suppliers and employees in the prescribed manner. Such declared interests must then be assessed to ensure that they do not prejudice the procurement process or negatively influence it in any manner. For this reason, probity reviews and other related reviews are performed to identify and report potential conflicts of interests and other risks throughout the Eskom procurement value chain.

33. At present, probity reviews are performed by the Assurance and Forensic Department of Eskom for all transactions valued at R500million and above. The Assurance and Forensic Department provides an assurance function in respect of compliance with legislation, policies and procedures, in accordance with Eskom's Code of Ethics 'The Way Policy'. The



probity reviews are performed to identify conflicts of interests between the supplier's directors and members, and officials of the Eskom governance and approval committee (board, board tender committee, Exco tender committee and divisional tender committee), cross functional team members (employees involved in the procurement transaction), commercial team members and all their respective spouses/partners. The probity also extends to any shareholder of the supplier who has a shareholding interest in excess of 20% (20% being the percentage that is considered reasonable to balance the number of shareholders reviewed and cost of the reviews).

34. Probity reviews are also performed for modifications (no modifications as to contract value are conducted but only for extension of time) for transactions entered into with Eskom subsidiaries or any state owned companies and any sole source. The Eskom group commercial department performs *ad hoc* probity reviews on commercial staff from time to time.

35. The Eskom Secretariat Management Procedure is attached as **Annexure E**.

Declaration of Interests required by Board members

36. The new Board members of Eskom are aware of the obligations imposed on them by the Companies Act in so far as declaration of personal financial interests and management of conflicts pertaining to those personal financial interests are concerned.

37. The new Board members of Eskom are also aware of the provisions of section 75(5) of the Companies Act which provides that if a director of a company, other than a company contemplated in subsection (2)(b) or (3), has a personal financial interest in respect of a matter to be considered at a meeting of the Board, or knows that a related person has a personal financial interest in the matter, the director –



- (a) must disclose the interest and its general nature before the matter is considered at the meeting;
- (b) must disclose to the meeting any material information relating to the matter, and known to the director;
- (c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors;
- (d) if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraphs (b) and (c);
- (e) must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c);
- ;
- (f) must not execute any document on behalf of the company in relation to the matter unless specifically requested or directed to do so by the Board.

38. In addition to the provisions of the Companies Act dealing with personal financial interests, the new Board of Eskom is aware of the Conflict of Interest Policy and the Declaration of Interest Procedure of Eskom. The policy statement of the Conflict of Interest Policy (32-173) of Eskom, which is contained in paragraph 2.1, provides as follows:

"2. Policy Content

2.1 Policy Statement

Eskom subscribes to ethical values and legal principles. This requires that Eskom, its directors, employees, customers and suppliers to act with integrity and create public confidence by conducting business in a fair, impartial and transparent manner. For this reason, Eskom makes every effort to ensure that conflicts of interest do not compromise or are not perceived to compromise its business decisions and actions.

Eskom is also committed to fair, objective and transparent business dealings, and for this reason care must be taken when accepting or offering any business courtesies. Business courtesies are used to build good relationships and are



offered as a kind gesture and to show courteousness or respect and may only be offered or accepted for these reasons.

The employee and director have the obligation to declare and manage conflict of interest. This process is critical to ensure that the objectivity and integrity of the employee or director are not compromised, that the employee or director acts in Eskom's best interest, and that Eskom avoids situations where it can be accused of improper or unfair conduct.

In support of its vision, values and statutory responsibilities, Eskom will take all steps within its reasonable control to manage conflict of interest throughout Eskom."

39. Despite the clear and unambiguous provisions of the Conflict of Interest Policy of Eskom, the practice before January 2018 among Eskom employees, executives including erstwhile directors was the opposite. In terms of the Conflict of Interest Policy (and paragraph 2.6.2 of the Declaration of Interest Procedure), the monitoring of declarations submitted by the Board of Eskom rests with the Chairman of the Board, supported by the Company Secretary. The Conflict of Interest Policy clearly sets out the manner and nature of the declarations which are required to be made in respect of conflicts of interest, including that all conflicts of interests, directorships, related or inter-related persons must be disclosed and such conflicts must be managed appropriately and responsibly. Importantly, the employee or director may not participate in any decision relating to the matter in which there is a conflict.

Declaration of Interests required of Board members prior to meetings:

40. The *pro forma* agenda in respect of procurement transactions is sent to Assurance and Forensics and Governance to conduct a probity check and investigate for any conflict by a Board member.

41. In the event that there is a potential, perceived or actual conflict of interest, the Chairman of the Committee and the Group Company Secretary are advised. The Chairman then discusses the matter with the conflicted Board member. The treatment thereof is then in



terms of section 75 of the Companies Act. Should a conflict be identified, the Board member will not be provided with the information pertaining to that matter and will be required to recuse him/herself from the proceedings when the matter is discussed.

Declaration of Interests required of Board members at meetings:

42. The procedure for declaring conflicts of interest at meetings is set out in the Declaration of Interest Procedure. Directors of Eskom, including Executive Directors, have access to an electronic declaration of interest register through the Board website. In terms of this procedure, Directors are required to disclose a conflict of interest in respect of a matter to be considered at a meeting, before the matter is considered at the meeting, together with any material information related in respect of that matter.
43. Board Members complete and sign a declaration of interest form before the commencement of every Board and Committee meeting. Further, the Board member is required to verify the information provided on the current Declaration of Interest form at every meeting. This is to ensure that the information at hand is current and that there are no conflicts, which may have arisen immediately prior to the meeting.
44. In addition to completing and signing the register, the Board members are required to formally state as part of the meeting proceedings if they have any conflict in relation to matters being discussed in the meeting as stated on the agenda or any items that may be agreed to be added to the agenda. In accordance with paragraph 3.1.2.2 of the Declaration of Interest Procedure, "Declarations of Interest" is a standing agenda item at all Eskom

¹ See paragraph 3.1.2 of the Declaration of Interest Procedure.

² see paragraph 3.1.1.1 of the Declaration of Interests Procedure.

³ paragraphs 3.1.2.1.1 and 3.1.2.1.2 of the Declaration of Interests Procedure.



Board and Committee meetings to ensure that members have an opportunity to consider and declare any conflicts, as well as to discuss issues of ethics they might have at the start of each meeting. Any conflicts are recorded as part of the proceedings and in accordance with Eskom's policies and procedures and the applicable legislative and regulatory guidelines.

Declaration of interests required of Board members after meetings:

- 45. The register is reviewed by the designated Ethics Officer in the Office of the Company Secretary to establish whether there are any changes that members may have indicated on the register. If there are any changes, the electronic register is updated.
- 46. An electronic web based system is available to any of the Board members and can be accessed at any time to update and amend the information. This enables any member to access their own or other member's interest should the need arise. This is monitored by the designated Ethics Officer to ensure that records are up to date.

● **Declaration of interests required by employees and related conflicts**

- 47. Whilst the policies and the law sought to deal with the declaration of personal financial interests, the Board discovered that it was a norm at Eskom for employees including executives to be directors and shareholders in entities who were also suppliers to Eskom without declaring these interests. Some executives would even receive directors' fees without disclosing the fees to Eskom.



48. Based on the Special Investigating Unit Report under Proclamation No.R2 of 2012 which was finalized in December 2017 but only released to Eskom on 4 October 2018 by the President of the Republic of South Africa through the Minister of Public Enterprises, some 3 475 (three thousand four hundred and seventy five) Eskom employees have faced disciplinary action for having failed to declare their personal financial interests over a number of years.

49. The new Board on 24 January 2018 passed a resolution prohibiting any Eskom employee from being a director and shareholder in entities that are suppliers to Eskom. The Eskom employees had to decide whether they wanted to be employees of Eskom or suppliers to Eskom, as they could not have it both ways. This decision culminated in numerous resignations by Eskom employees as directors from these supplier entities with some employees instead resigning from Eskom to pursue their business interests. As a result of this discovery, the new Board engaged the services of Bowman Gilfillan Inc. trading as Bowmans to assist with a review of the conflict of interests' policy to align it to international best practice. The revised conflict of interest policy is currently going through the internal governance structures of Eskom for approval.

50. In addition to the foregoing, the new Board took a decision that the Board members must not be involved in bidding for Eskom tenders and further that all Eskom employees, starting with the executives and senior management should be subjected to lifestyle audits. To this end, Edward Nathan Sonnenbergs Inc. trading as ENS Africa was appointed in July 2018 to conduct lifestyle audits of executives including senior management and Eskom awaits their final report before the end of March 2019. The interim report has revealed that some executives have thus far refused to comply with the instruction to submit themselves to a



lifestyle audit. Consequently, disciplinary proceedings are being brought against such employees.

IV. INITIAL DISCIPLINARY PROCESSES UNDERTAKEN BY THE NEW BOARD

51. When the Board took office in January 2018 there were Executives who had been identified in the public domain and in internal investigations undertaken previously within Eskom whose disciplinary processes had not been actively pursued by the previous Board.

52. The following Executives were facing serious allegations of misconduct, some believed to be linked to the controversial state capture related transactions and as such the process of finalizing their respective disciplinary processes was of critical importance:

- a. Matshela Koko (Former Acting Group Chief Executive and former Head of Generation)
- b. Edwin Mabelane (Former Chief Procurement Officer)
- c. Charles Kalima (Former Acting General Manager Sourcing)
- d. Anoj Singh (Former Chief Financial Officer)
- e. Prish Govender (Former Head of Group Capital)
- f. Abram Masango (Former Group Executive Group Capital)
- g. Suzanne Daniels (Former Company secretary and Head of Legal)

53. Except for Abram Masango and Suzanne Daniels all the other executives mentioned above resigned from Eskom in the face of disciplinary processes that were instituted. As a result it was only the initial charges against Mr Masango and charges against Suzanne Daniels



that were tested in an independent disciplinary process, these processes are discussed below.

54. Mr Maritz the former Acting Group Chief Executive was also placed in suspension and resigned shortly after the new Board took office and his disciplinary process is also discussed below.

55. The following table summarises the processes followed in relation to these executives facing charges in January 2018 – details on other executives who have faced disciplinary action since January 2018 are dealt with in different parts of this submission:

	Individual	Hearing date	Status
1.	Mr MM Koko Former Acting Group Chief Executive and former Head of Generation (Formal charges made against Mr Koko in 2018 related to various matters including failure to give an honest account to Parliament, disclosure of confidential information to a third party, McKinsey and Trillian and conflicts of interest. Additional charges brought in 2017 related to Impulse dealt with at discredited disciplinary hearing. Further charges related to Optimum and Tegeta have emerged since Mr Koko resigned and are under investigation by the authorities.)	Suspended 29 January 2018. Detailed charges and evidence bundle provided 7 February 2018 Disciplinary hearing scheduled for 16 and 17 February 2018 Mr Koko resigned with immediate effect half an hour into the disciplinary process.	Completed Outstanding matter: Eskom to determine whether it has a claim against Mr Koko for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
2.	Mr M Maritz Former Acting Group Chief Executive, and former Chief Information Officer (Charges related to HEA/Huarong, McKinsey and Trillian)	Suspended 31 January 2018 Detailed charges provided 26 February 2018 Disciplinary Hearing Scheduled for 8 and 9 March 2018 Mr Maritz resigned with immediate effect 27 February 2017.	Completed Outstanding matter: Eskom to determine whether it has a claim against Mr Maritz for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
3.	Mr A Singh Former Chief Financial Officer (Charges related to various matters including Optimum/Tegeta, Trillian and McKinsey and conflicts of interest.)	Suspended 2017 Resigned with immediate effect 22 January 2018.	Completed – no referral to CCMA. Outstanding matter: Eskom to determine whether it has a claim against Mr Singh for

			losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
4.	Mr P Govender Head of Group Capital (Charges related to Trillian and McKinsey.)	Suspended 2017. Reinstated after suspension at the end of December 2017. Resigned with immediate effect approximately 24 January 2018.	Completed – no referral to CCMA. Outstanding matter: Eskom to determine whether it has a claim against Mr Govender for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
5.	Mr E Mabelane Chief Procurement Officer (Charges related to Trillian and McKinsey.)	Suspended 2017 Letter of Termination sent 24 January 2018 following ultimatum. 22 February 2018 referral to the CCMA for unfair dismissal seeking reinstatement. Offered reinstatement and disciplinary hearing seeking summary dismissal. Offer refused. CCMA arbitration not pursued within the relevant time period. No communication since 14 March 2018.	Completed Outstanding matter: Eskom to determine whether it has a claim against Mr Mabelane for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
6.	Mr C Kalima Former Acting General Manager Sourcing (Charges related to Impulse, Trillian and McKinsey.)	Suspended 2017 Resigned 23 January 2018 Claimed constructive dismissal. Initiated a CCMA process and reinstated following offer of disciplinary hearing. Final charges and evidence bundle provided to him 24 April 2018. Resigned 30 April 2018 with immediate effect.	Completed Outstanding matter: Eskom to determine whether it has a claim against Mr Kalima for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.

7.	Mr A Masango Suspended Group Executive Group Capital (Mr Masango's initial charges were unrelated to the Trillian, McKinsey, HEA and Impulse matters.)	Suspended 2017 Disciplinary Charges put to him on 27 February 2018 Disciplinary Hearing heard in March 2018 before Independent Chairperson from the Johannesburg Bar. Independent Chairperson found Mr Masango not-guilty and he was reinstated in May 2018. Further charges put to him in November 2018. Resigned with immediate effect 16 November 2018.	Completed Outstanding matter: Eskom to determine whether it has a claim against Mr Masango for losses suffered as a result of his actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.
8.	Ms S Daniels Company Secretary and Head of Legal and Compliance (The charges related to Optimum/Tegeta, Trillian and McKinsey, sharing of confidential information with a third party and PFMA breaches related to payments on behalf of Mr Ben Ngubane.)	See below.	Ongoing Outstanding matter: Eskom to determine whether it has a claim against Ms Daniels for losses suffered as a result of her actions. Criminal case under investigation related to the relevant transactions and all relevant information shared with the authorities.

Ms Suzanne Margaret Daniels – Head of Legal and Company Secretary

56. As this matter progressed to a disciplinary hearing it is set out separately in this Submission.

57. Ms Daniels was on suspension with full pay when the new Board was appointed. She had approached the CCMA to challenge her suspension alleging that her suspension was substantively and procedurally unfair and the CCMA subsequently ruled in her favour and ordered that she be reinstated in March 2018.

58. Due to new and further evidence emerging, Ms Daniels was again placed on suspension on 19 March 2018 and subjected to a disciplinary hearing facing four charges of: (1) distribution of confidential and proprietary information belonging to Eskom to a third party



who ought not to have received the information, this was reasonably believed by Eskom to be to Mr Salim Essa, a Gupta associate; (2) authorizing Eskom to pay the legal fees of Dr Ben Ngubane pertaining to a Parliamentary enquiry into his role as the SABC Chairperson from Eskom funds; (3) her involvement in the Tegeta guarantee and prepayment for coal and various other transactions which extended the contractual dealings of companies in the Optimum and Tegeta group with Eskom; and (4) her involvement in the McKinsey and Trillian transactions, such as supporting payments to Trillian and settlement of the matter in the face of legal advice.

59. An independent chairperson, Adv. Nazir Cassim SC, was appointed to preside over Ms Daniels' disciplinary hearing and after the hearing he found Ms Daniels guilty on 20 July 2018 on all four charges. Ms Daniels was summarily dismissed on 20 July 2018 as recommended by Adv. Cassim SC.

60. Adv. Cassim SC in his findings further recommended that the Eskom Board should consider the role played by suppliers to Eskom such as Cliffe Dekker Hofmeyr ("CDH") in the Tegeta and McKinsey transactions. In considering this the Board took a decision that Eskom should sever ties with CDH. CDH is currently not a supplier to Eskom.

61. Ms Daniels is currently challenging her dismissal in the CCMA and referred Adv. Cassim to the General Council of the Bar.

Other disciplinary processes

62. The Submission has highlighted in the preceding section the disciplinary action taken immediately upon appointment involving Executives within Eskom. There were many other disciplinary processes which were undertaken during the Board's first year in office related



to questionable activities taken at all levels of the organization. Some of these are discussed in the sections that follow in this document and are included in the discussion of processes concerning individuals involved in Tegeta and Optimum transactions and the Impulse transactions (amongst others). The Submission also mentions below certain individuals involved in specific transactions in case the Commission wishes to call the relevant individuals or wishes to obtain more information where this is relevant to the specific transactions.

V. FIDUCIARY BREACHES AND PFMA BREACHES BY PREVIOUS BOARD MEMBERS AND EXECUTIVES

63. In the internal and external processes undertaken by Eskom to date, specific breaches of the fiduciary duties and obligations found under the PFMA of the previous Board of Eskom have been revealed and indicate that certain members of the previous Board and executives played an intrinsic role in ensuring that payments were advanced in circumstances where they should not have been advanced.

64. These breaches have been raised by Eskom where relevant in the context of the litigation and disciplinary processes which Eskom has initiated, including the Eskom Review Application (brought in the North Gauteng Division of the High Court under Case Number 22877/18) and the Koko and Daniels, disciplinary charges and hearings (the other disciplinary matters did not progress beyond the stage of the levelling of charges). These records will all be made available to the Commission.

65. The breaches identified related to a wide range of transactions including the Optimum and Tegeta transactions, the McKinsey and Trillian contracts and payments and the Huarong

transaction. A number of the records and recordings of the Board Tender Committee meetings and Board meetings which were accessed for purposes of these litigation and disciplinary matters, reveal the corporate governance failures within Eskom at the time and reveal the breaches of duties by a number of individuals within Eskom including members of the Board and Board Tender Committee. All implicated Board members had left Eskom by the time the new Board took office.

66. For the reasons set out above, once the relevant disciplinary processes discussed herein were completed and all implicated Executives had left the organization the Board handed the full record of such proceedings and related documentation over to the relevant authorities and to avoid duplication and fruitless expenditure did not undertake further independent investigations into the actions and omissions of the executives and previous Board members. Eskom has however opened its records up to the Commission and other State investigative bodies to allow all relevant investigations to be undertaken and is happy to offer further assistance in this regard.

VI. DEFICIENCIES WITH PAST PROCUREMENT SYSTEMS:

Modifications and expansion of Eskom supplier contracts generally

67. A particular deficiency in past practices that has been investigated and dealt with by the new Board is the manner in which the Eskom procurement policy framework allowed for contracts that have been concluded for various products and services to be modified or expanded within the legal and policy framework.

68. In practice such modifications and expansion can take the form of any of the following:



- a. time modifications being amendments to the envisaged duration to completion of a contract project or delivery of a service;
- b. value modification being a change in the originally quoted and contracted value of a project, product or service outside of any contingencies that may have been provided for;
- c. expansion of the agreed contract scope; and
- d. any other changes to what the originally contracted service offering or product including any related costs thereto.

69. Whilst modifications and expansions in themselves are not an incorrect or unknown practice, the volume and values of these became a cause for concern for the new Board, in light of the following:

- a. The definition of a modification in terms of the policy had no limitation which resulted in the new Board being asked to approve modifications as much as 300% of the original contract provisions.
- b. This means there was a culture of poor planning and contract management to begin with which amounts to poor business practice.
- c. This also lead to governance risks in that while contracts are approved in line with the Delegation of Authority but the modifications are not looked at in aggregate and as such not escalated to the correct approval platforms.

70. The new Board believes there is a high risk of mismanagement in that contracts may be priced incorrectly so as to obtain approval at lower levels of the delegated authority, with subsequent modification that see values increase to levels that, had they been priced in initially, would have required approval at higher levels of authority including the Board itself.



71. The modification and expansion of contracts were a norm and not an exception at Eskom.

Contracts were not managed properly and processes to replace existing contracts in a timely manner were not followed, because of the strong possibility that existing contracts would be extended or modified.

72. The previous Board was often under pressure to approve modifications and expansion because the contracts in question are for the so called 'essential services' which if not in place may have an adverse impact on the business' ability to effectively run operations.

73. In the past, modifications and expansions of contracts were undertaken without the National Treasury approval. Please see attached hereto a schedule of modifications and expansions of contracts for the period 2016 to 2018 marked **Annexure F**.

74. There was neither a culture nor a practice of consequence management relating to these transgressions – seemingly because this was considered a normal business practice.

75. The new Board, in light of the above and as a part of its clean-up programme, took a resolution to cease entertaining any modifications and/or expansions to contracts without sufficient justification of their exceptional nature. It also decided to enforce consequence management for breaches of governance and the PFMA.

76. Pursuant to this, 1049 historical cases relating to modifications and expansions of contracts were identified and reported to the new Board and to the Parliamentary Standing Committee on Public Accounts ("**SCOPA**") on 28 August 2018 attached. 822 of these 1049 cases have since been addressed through disciplinary processes resulting in 97 employees exiting Eskom. A remainder of 227 of the 1049 cases are not yet finalised. See **Annexure G** for a progress report on these processes.



77. The new Board found that Eskom's policies allow for what is termed "emergency procurement" which tended to be the tool used by executives when there was a push back by the new Board on approving modifications.

78. In response to all of the above, the new Board resolved to complete an overhaul of the procurement policy framework to ensure that it is supportive of the required business and financial discipline and less conducive to financial mismanagement and ill business discipline. This work is currently underway.

79. The new Board and Eskom management are also working closely with the National Treasury to align the policies of Eskom to the National Treasury practice notes and ensure adherence to the PFMA.

VII. SPECIFIC CONTRACTS ON WHICH THE ZONDO COMMISSION HAS REQUESTED INFORMATION

The New Age Media (Pty) Ltd

80. The new Board has not undertaken any independent investigation of the New Age Media (Pty) Ltd contracts which were not current when the new Board commenced.

81. Individuals who have knowledge of this matter have been asked to cooperate with the Commission and have had various interactions with the Commission. Various statements of the individual's knowledge of the matter have been submitted to the Commission, and these individuals would be able to provide further information and clarification if required. These will include statements from Mr Pieter Pretorius (Senior Manager: Corporate Affairs Division), Mr Freddy Ndou (formerly employee of Eskom - Divisional Executive: Strategy



Support) and Mr Chose Choeu (employee of Eskom at the time he made his statement - Divisional Executive: Corporate Affairs Division). Of these individuals only Mr Pieter Pretorius remains in the employ of Eskom, Mr Ndou and Mr Chose are no longer employed by Eskom. I understand that the Zondo Commission is obtaining additional statements from various individuals.

82. The new Board has been able to establish the following which has been shared with the authorities, the SIU and the Hawks are conducting further investigations:

- a. The New Age Media (Pty) Ltd ("TNA") was introduced to Eskom through the office of the then Group Chief Executive, Mr Brian Dames, by Messrs. Nazeem Howa, Jacques Roux and Ajay Gupta. The TNA had a newspaper publication whose circulation figures could not be verified through the Accredited Bureau of Circulation ("ABC").
- b. TNA was introduced to Eskom and became a supplier without an open procurement process through the Media Shop, a supplier to Eskom, and the arrangement between Eskom and TNA was disguised as a sponsorship agreement. The first so called sponsorship contract was entered into in 2012 for over R10 million.
- c. The corporate affairs division ("CAD") of Eskom in 2012 neither had a strategy nor a budget targeted at the kinds of services TNA offered, but the budget was nevertheless found through the then Group Chief Executive Officer's office paying for televised breakfast shows on SABC2, two 10 seater tables and 6 pull up banners at these breakfast, events. This was contrary to section 38(2) of the PFMA.
- d. The Public Protector on 3 September 2013 sent a letter to Eskom querying the funds spent by Eskom on TNA publications. Her view was that it was fruitless and wasteful expenditure. This view was disregarded by the then Eskom executives.



- e. The second so called sponsorship contract between Eskom and TNA was also not procured through an open tender process. Instead it was executed by Eskom directly with TNA and valued at R1.2 million. Mr Chose Choeu signed on behalf of Eskom for four breakfast shows.
- f. In 2014, Eskom, acting through Mr Colin Matjila who at the time was the Interim Group Chief Executive of Eskom executed a three year so called sponsorship contract with TNA valued at R43.2 million.
- g. To date the new Board has not taken further action regarding this matter which was not an ongoing matter when it took over but will follow the recommendations of the SIU and or the Zondo Commission in this regard.

Optimum and Tegeta

83. Eskom's dealings with Tegeta from approximately 2013/2014, Tegeta's acquisition of Optimum in 2015/2016 and Eskom's further dealing with the companies in the Optimum group thereafter have been the subject of numerous enquiries and investigations, including this latest investigation by the Commission.
84. Eskom has supplied a large volume of documentation to these various enquiries and investigations including to the Commission. The list of additional documents supplied to the Commission is attached as **Annexure B**.
85. The new Eskom Board has not undertaken any further independent investigation of Eskom's dealings with Tegeta, Tegeta's acquisition of Optimum and Eskom's further dealing with the companies in the Optimum group. These transactions were however relevant to and canvassed in the disciplinary proceedings and charges levied against



various people who have been dismissed or are no longer in the employ of Eskom, these include:

- a. Matshela Koko (various positions including Group Executive: Commercial & Technology, and / or Group Executive: Generation, and/ or interim Group Chief Executive resigned at the commencement of his disciplinary hearing into a range of disciplinary charges including related to communications with external parties reasonably believed to be Gupta associates. As Mr Koko resigned he did not face the further charges that emerged after the Board was able to access Eskom's records which showed Mr Koko's collaboration with various parties including private email communications with Department of Mineral Resources ("DMR") officials, communications with Mr Eric Wood and Mr Salim Essa regarding the R1,68 billion December 2015 prepayment/guarantee, Mr Koko was shown to be involved in the facilitation of this prepayment/guarantee internally and externally. Mr Koko is also implicated in a number of other dealings between Eskom and Gupta associated companies and their facilitation of his travel to Dubai);
- b. Anoj Singh (CFO resigned in the face of disciplinary charges, implicated in the issue of the R1.68billion guarantee in December 2015 without Board approval and the facilitation of the prepayment of R659 558 079.00 in April 2016);
- c. Ayanda Nteta (resigned in the face of disciplinary charges, the supply of coal fell under her portfolio at the time, and was involved in preparing the submission made to the previous Board in respect of the prepayment of R659 558 079.00 which was issued and various other dealings detailed in the Fundudzi report to National Treasury dated November 2018);



- d. Edwin Mabelane (various positions including Chief Procurement Officer employment terminated, involved in preparing the submission made to the previous Board in respect of the prepayment of R659 558 079.00 to Tegeta for coal);
- e. Suzanne Daniels (various positions including Senior Manager to the Office of the Chairman, Company Secretary, Head of Legal, dismissed following guilty finding of independent disciplinary hearing on a range of charges including preparation with Mr Koko, Mr Singh, Mr Mabelane and Ms Nteta of various Board and Board Tender Committee submissions related to the Optimum and Tegeta matters, such as involvement not previously disclosed in preparing the April 2016 Board Tender Committee prepayment submission and the procurement of a guarantee of R1.68 billion for Tegeta from Eskom in December 2015; communication with external parties reasonably suspected to be Gupta associates regarding these and other matters; failure to disclose the involvement of Mr Eric Wood/Regiments Capital/Trillian in advising on the December 2015 submission to the Board for the prepayment of R1,68billion to Tegeta in April 2016);
- f. Maya Bhana/Naidoo (General Manager – Office of the Chief Financial Officer) resigned in the face of an impending disciplinary process. Involved in and facilitated many of the Optimum, Tegeta, McKinsey and Trillian and Huarong payments and related transactions (amongst others).

Brian Molefe also appears to be implicated in this matter particularly the decision not to negotiate with Glencore regarding Optimum but left the employ of Eskom before the matter was properly canvassed. In addition, it appears that Regiments Capital/Trillian advised on the prepayment/guarantee of R1.68billion and various communications and arrangements were made between Eric Wood (who is also implicated at the heart of the



Trillian / McKinsey matter), Mr Koko and Mr Singh, in order to facilitate this in December 2015.

86. Of specific relevance to the Commission is the evidence and information which was found in emails on Eskom's server regarding communications between Mr Koko, Ms Daniels and members of the Eskom Board with third parties including persons reasonably believed to be associates of the Gupta family such as Mr Salim Essa and Mr Naseen Howa regarding these transactions and Eskom's public position on these transactions from at least July 2015 to August 2016. These server emails also show the involvement of Regiments Capital/Trillian (which was owned by Mr Salim Essa), represented by (amongst others) Mr Eric Wood in the formulation of these transactions and advice to the Board on the transactions in December 2015. In addition, the letter from the DMR in December 2015 which 'required' Eskom to prepay for the coal from the Tegeta/Optimum mine, was shown to be constructed between Ms Daniels, Mr Koko and an official from the DMR by way of an e-mail to the DMR official's private e-mail address.

87. Individuals still within Eskom who have knowledge of this matter have been asked to cooperate with the Commission and have had various interactions with the Commission. Various statements of the individual's knowledge of the matter have been submitted to the Commission, and these individuals would be able to provide further information and clarification if required. In this regard Eskom is aware of statements prepared by Dr Mark Van der Riet, Mr Dan Mashigo, Mr Gert Opperman and Mr Snehal Nagar. Eskom understands that the process of taking statements is ongoing.

88. A criminal case was opened regarding this transaction at the Sandton Police Station. The SIU and the Hawks are conducting further investigations.



89. The SIU issued proceedings in December 2018 to set aside certain of these contracts but to date Eskom has not been updated on these proceedings by the SIU and is in the process of sourcing the relevant information.

VIII. ADDITIONAL CONTRACTS WHICH ARE RELEVANT TO THE ZONDO COMMISSION

90. The new Board understands that the Commission's Questions posed to date are the first phase of its investigations and further matters will be dealt with in future. This section deals at a very high level with additional transactions in which the new Board has identified that previous executives and Board members allowed third parties particularly associated with the Gupta group of companies and others to unlawfully influence its decisions and or to facilitate substantial unlawful payments to parties within the Gupta group of companies.

McKinsey and Company Africa (Pty) Ltd ("McKinsey") / Trillian Management Consulting (Pty) Ltd (and other Trillian group companies) ("Trillian")

91. This matter is an important one for investigation by the Commission as substantial payments were made to a Gupta owned company unlawfully and without Eskom receiving value.

92. This matter has previously been investigated in some detail by Eskom and a detailed record of all documentation relevant to it has been prepared for the purposes of the Review Application which Eskom launched in March 2018. The full record and pleadings of this matter will be provided to the Commission with this Submission and is included in Annexure



C. This matter has also featured in a number of the disciplinary processes which Eskom undertook including those detailed below.

93. This matter involved numerous executives and Board members from Eskom in irregular activities. The matter concerned the misuse of the sole source basis of procurement of suppliers and the irregular and unlawful awarding of the contract to McKinsey for the provision of consulting services, (including under the Master Services Agreement (“MSA”)) and irregular and unlawful direct payments to Trillian which was apparently owned by Gupta associate Salim Essa.

94. The various contracts were negotiated and concluded without Eskom engaging in any open and competitive tender process. Under the MSA, McKinsey was to receive risk based remuneration entitling it to a share of any savings it secured for Eskom. This was a substantial departure from the National Treasury's Instructions for the remuneration of external consultants, but Eskom failed to seek or obtain National Treasury's approval for it. In addition, this matter pertains to unlawful and irregular payments effected by Eskom to Trillian with the connivance of a number of executives and the approval of Board and Board Tender Committee members when there was no contract between the two and no existing subcontracting arrangement between McKinsey and Trillian.

95. McKinsey was paid over R1 billion in “settlement” despite the substantial irregularities with the contractual and internal approval processes which were known at the time of the settlement. Trillian was irregularly and unlawfully paid R600 million without a contract with Eskom or McKinsey when the irregularities were known at the time of payment. Eskom, working together with the Asset Forfeiture Unit of the National Prosecuting Authority (“AFU”), managed to recoup a payment of R902 274 123.31 on 7 July 2018 from McKinsey



with an additional R99 741 407.00 on 23 July 2018 towards interest. In total Eskom recouped R1 002 015 530.31 from McKinsey.

96. Eskom, in March 2018 launched a review application at the Gauteng Division, Pretoria High Court aimed at setting aside its own decisions in terms of section 1(c) of the Constitution and recovering all funds paid out under the unlawful transactions. With the payment of R1 002 015 530.31 received from McKinsey Eskom is pursuing the recovery of R600 million irregularly paid to Trillian. Eskom, working with the AFU and Interpol are also looking for Trillian's assets at other jurisdictions outside the country.

97. This matter and charges related to this matter have featured in the disciplinary processes regarding at least the following Eskom Executives and Employees:

- a. Mr Matshela Koko (various positions including Group Executive: Commercial & Technology, and / or Group Executive: Generation, and/ or interim Group Chief Executive resigned at the outset of his disciplinary hearing at which he faced charges related to this transaction including initiating and facilitating Eskom's sole source dealings with McKinsey in September 2015, initiating and facilitating dealings with Trillian between July 2015 and December 2015, including with Mr Eric Wood and approving, alternatively failing to prevent payments to Trillian in February 2017 in the face of knowledge of their unlawfulness while Acting Group Chief Executive and carrying the Board mandate for these payments);
- b. Mr Anoj Singh (CFO resigned in the face of charges related to this transaction including Eskom's sole source dealings with McKinsey in September 2015, supporting various payments to McKinsey and Trillian in February 2017 in the face of knowledge of their unlawfulness);



- c. Mr Edwin Mabelane (various positions including Chief Procurement Officer dismissed in the face of charges related to this transaction);
- d. Mr Prish Govender (various positions including Executive: Group Capital resigned in the face of charges related to this transaction);
- e. Ms Suzanne Daniels (various positions including Senior Manager to the Office of the Chairman, Company Secretary, Head of Legal, dismissed following guilty finding of independent disciplinary hearing on a range of charges including facilitating and supporting payments to Trillian in December 2016 and February 2017 in the face of knowledge of their irregularity and unlawfulness.)
- f. Mr Sean Maritz (Interim Group CEO charged for his withdrawal of a letter of demand to McKinsey and Trillian and his involvement in undermining efforts to deal with these unlawful transactions, resigned with immediate effect.)
- g. Maya Bhana/Naidoo (General Manager – Office of the Chief Financial Officer) resigned in the face of an impending disciplinary process. Involved in and facilitated McKinsey and Trillian payments and related transactions (amongst others).

98. Criminal cases have been opened regarding these transactions at the Sandton Police Station. This case is currently being investigated by the SIU and the Hawks.

Impulse International (Pty) Ltd ("Impulse") / ERI and Eskom

99. This matter involved emergency purchases through round robin approvals by Eskom Executives, sole source procurement and fraudulent subcontracting. Eskom employees, particularly Mr Matshela Koko colluded to ensure that Impulse enjoyed unfair and continued enrichment at ERI (a subsidiary of Eskom) and at Eskom across multiple power stations



using their influence and position. Mr Matshela Koko, a group executive of Eskom and member of the ERI Board at the time failed to declare an interest that his step daughter was a shareholder of Impulse which was a beneficiary of lucrative contracts at ERI and Eskom.

100. A discredited disciplinary process in late 2017 cleared Mr Koko of charges related to Impulse but this remains under investigation by external parties and Eskom is cooperating in all such investigations.

101. Eskom took steps in July and August 2017 to terminate all agreements with Impulse and related companies.

102. Various disciplinary processes were followed and are ongoing against individuals within Eskom, across various power stations and ERI who allowed and facilitated Impulse transactions. More information on these disciplinary processes can be provided if necessary.

103. A criminal case was opened against employees involved in the fraudulent scheme. The SIU and the Hawks are investigating this matter further.

104. Please let us know if you would like us to make any documentation available to the Commission regarding these transactions.

Nkonki Inc. Accountants (KPMG amongst others)

105. It appears that Eskom executives sought to unduly influence the appointment of Nkonki Inc. Accountants as a subcontractor. Nkonki Inc was shown to be acquired by Gupta associates in approximately 2016/2017.

106. Eskom has concluded an investigation regarding Nkonki Inc's appointment as a subcontractor by KPMG. There may have been other questionable subcontractor appointments for Nkonki and enquiries into this are ongoing.



107. Eskom paid R63 005 770.00 to Nkonki Inc. as a subcontractor to KPMG which was flagged as an irregular expenditure.
108. A criminal case has since been opened regarding this transaction at the Sandton Police Station. The SIU and the Hawks are investigating this matter further.
109. The New Board noted the weaknesses on panel approvals and management of subcontracting processes and enhanced the control systems in the panels.
110. Please let us know if you would like us to make any documentation available to the Commission regarding this.

Huarong

111. Eskom commenced negotiation with the Chinese Huarong Energy Africa Proprietary Limited ("HEA") regarding a finance agreement styled as an Asset Development Framework Agreement ("ADFA") in late 2016 for funding from Huarong Asset Management ("Huarong"), one of the largest asset companies from China. The relationship between HEA and Huarong was not clear.
112. An RFI process was undertaken during this period. HEA submitted a response to this RFI but Eskom officials engaged with Huarong and HEA prior to this and concerns were raised internally with this process.
113. A Request for Proposals process was also followed in 2017 which in May 2017 authorized negotiation but not conclusion of an agreement with HEA. However, prior to this the former CFO, Mr Anoj Singh, signed a term sheet in March 2017 binding Eskom to a US\$1.5 Billion facility.



114. Under ongoing pressure from Mr Ben Ngubane the Chairman of the Eskom Board at the time and following a meeting with Ms Lynne Brown, former Minister for Public Enterprises the former Interim Group Chief Executive of Eskom, Mr Sean Maritz, executed the ADFA in October 2017 (shortly after Mr Johnny Dladla was removed as the Interim Group Chief Executive Officer) in the face of internal advice against this and without the requisite authority and approvals from the board, the Minister of Public Enterprises or National Treasury. The ADFA was for a framework to enable future negotiation on a US\$ 500 000 000.00 asset development loan facility with Huarong ostensibly to assist with Eskom's liquidity position at the time. Mr Maritz also signed a Fee Letter on the same day committing Eskom to an immediate payment to HEA of US\$21 888 000.00 or approximately R340 million.
115. Both Mr Singh and Mr Maritz resigned when they were confronted with this transaction, the latter after the commencement of a disciplinary process in which charges were made against him related to the conclusion of the ADFA and Fee Letter. No payments were made to HEA under the Fee Letter.
116. Eskom does not consider itself bound by the ADFA or the Fee Letter and this was communicated to HEA by the newly appointed CEO Mr Phakamani Hadebe.
117. This case is currently being investigated by the SIU and the Hawks.
118. Please let us know if you would like us to make any documentation available to the Commission regarding this transaction.



Dongfang

119. This matter is the subject of ongoing assessment and investigation including by the SIU and the Hawks.

120. Eskom awarded the tender for the Duvha Unit 3 Recovery Project to Dongfang after an open tender. The contract was signed on 28 March 2017. Alstom t/a General Electric (GE), an unsuccessful tenderer, brought an urgent court application against Eskom to stop Eskom and Dongfang from implementing the contract awarded to Dongfang pending the review application which seeks to set aside the award. Murray & Roberts Shanghai Electric Consortium (MRSEC), another unsuccessful tenderer, intervened in the application for the same purpose.

121. The BEE Commission also issued a draft report with findings that Dongfang did not comply with the BBBEE Act on 12 March 2018. The recommendation made in this draft report have been implemented by the New Board.

122. The matter is still proceeding in the Pretoria High Court and additional information can be made available on request.

IX. CONCLUDING COMMENTS BY THE BOARD

123. The new Board's observation is that there was previously a culture of corrupt practices, mismanagement and malfeasance that has been inculcated in Eskom by certain individuals in Eskom over a period of time. The issues of impropriety within Eskom seemingly extend



beyond the matters which are under investigation by the Commission. This was clearly a pervasive culture and was sanctioned from within the Board, the Executive and Senior Management. The 'fish rots from the head'.

124. The new Board had to strike a balance between dealing with the past irregularities which it found at Eskom and building a capable, strong organization able to carry out its public mandate.

125. In addition to what has been described above, the audit qualification recovery program was a key part of Eskom's efforts to rectify past irregularities, this has seen a greater number of irregularities surface, the new Board has come to understand the following:

- a. Procurement processes and people are at the centre of the challenges;
- b. The internal controls have not been effective;
- c. The system and practices are not set up for proper accountability and consequence management;
- d. Some of our policies are too vague and lend themselves to loopholes that can be abused; and
- e. There were lapses in governance wherein the roles of the shareholder, the board and the executive often overlapped and flouted best corporate governance practices.

126. Any process of renewal and ridding the organization of impropriety, whether state capture related or not, needs to solve the aforementioned. An Audit recovery Progress Report dated 24 December 2018 is attached for information marked **Annexure H**.

127. The new Board continues to focus on rooting out impropriety and dealing decisively with affected and implicated employees through internal processes and also in partnership with law enforcement agencies when our ambit is limited.



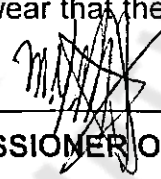
128. The new Board believes that much has been and will be revealed through the various inquiries but would recommend that the Executives listed above referred to law enforcement agencies, be brought to account as soon as possible. Not least as the financial markets upon which Eskom is dependent, desire to see legal consequences for the malfeasance revealed.

129. The new Board also believes that the previous board members of Eskom need to answer questions about their decisions that were not in compliance with the law and the fulfilment of their fiduciary duties questioned.

130. The challenges that Eskom faces today which pose systemic risks to the economy, have had a lot to do with decisions that were made, not in the interests of the company but instead to further certain other interests and for that reason there must be accountability by those involved.


JABULANE ALBERT MABUZA

I CERTIFY that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 16th day of January 2019 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God".


COMMISSIONER OF OATHS
Name :
Address :
Capacity :

MOHAMMED YOUSUF RAVAT
LEGAL CONSULTANT LARGE BUSINESS
COMMISSIONER OF OATHS EX OFFICIO
SARS LARGE BUSINESS CENTRE
MEGAWATT PARK
MAXWELL DRIVE
SUNNINGHILL
2157

16/01/19

WRITTEN SUBMISSION OF MR MATSHELA MOSES KOKO

I, the undersigned,

MATSHELA MOSES KOKO

hereby state that:

INTRODUCTION

1. I am an employee of Eskom Holdings SOC Limited ("Eskom") of 23 years standing. I have been employed by Eskom since the beginning of 1996, and even before that, while I was an engineering student, I worked for Eskom during university vacations. I had with the assistance of Eskom obtained a place at the University of Cape Town to study engineering, for which Eskom provided financial assistance.
2. I qualified with a B.Sc. degree in chemical engineering at the University of Cape Town at the end of 1995. I additionally have a Master of Business Leadership (MBL) degree from the University of South Africa, conferred in 2016.
3. More information regarding my career with Eskom can be gleaned from document MMK 1 in the accompanying bundle¹, a document that Eskom put out on its website.
4. My current permanent position with Eskom is that of Group Executive: Generation, i.e. head of Eskom's Generation Division. The Generation Division comprises Eskom's electricity generation assets. My permanent post was previously that of Group Executive: Generation and Technology, i.e. the head of Eskom's Generation

¹ MMK 1, bundle p 1.

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and Technology Divisions, but due to recent restructuring, I am now responsible for the Generation Division only. I first became responsible for Generation on 1 October 2015, when it was added to my responsibilities as head of Technology.

5. To provide context to what I refer to below I provide a brief synopsis of material events relating to the positions that I held in recent times, and to whom I reported from time to time.
6. I was appointed to the position of Group Executive: Generation and Technology in October 2015. The Technology Division provides engineering designs and support for the Generation, Transmission and Distribution Divisions. My previous position was that of Group Executive: Technology and Commercial to which I was first appointed in an acting capacity when the Technology and Commercial Divisions merged in April 2014. I was permanently appointed to the post in November 2014. Before that, from 2010, I held appointment as a Divisional Executive: Technology. During the period from 20 July 2015 to the end of September 2015 I was responsible for Technology only, Commercial having been assigned to the Chief Financial Officer. Generation was added to my portfolio with effect from 1 October 2015.
7. I was appointed as Eskom's interim Group Chief Executive ("Group Chief Executive" or "GCE") during early December 2016 arising from the resignation of Mr Brian Molefe. Mr Molefe left Eskom in November 2016. Eskom's board of directors ("Eskom's Board" or "the Board") then appointed me in December as interim GCE pending a recruitment process for the eventual appointment of a new GCE.

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8. I was during 2017, on 16 May 2017, placed on special leave pending the outcome of an investigation that had been undertaken at the behest of Eskom's Board by attorneys Cliffe Dekker Hofmeyr ("CDH"), acting in conjunction with the forensic investigation arm of auditors' firm Nkonki Inc. ("Nkonki"), to investigate the veracity of newspaper reports that alleged that I had, arising from interests that my wife's daughter from a previous marriage had in March 2016 unbeknown to me obtained in an Eskom contractor, Impulse International (Pty) Limited, acted in breach of the fiduciary duties that I owed Eskom and Eskom's policies and procedures. I was subsequently, on 1 August 2017, placed on suspension pending finalisation of disciplinary proceedings that Eskom's Board then decided had to be instituted against me. This occurred despite the findings of the investigators in terms of their report dated 13 June 2017 that:

"There is no evidence that supported and/or indicated that Mr Koko committed an act which undermined the internal control system of Eskom and no action in terms of Section 15(1) of the Public Finance Management Act was therefore required from the accounting authority relevant to the conflict of interest matter",

which was supported by a memorandum to similar effect, dated 14 June 2017, from the attorneys, CDH.

9. Eskom's pursuing the disciplinary enquiry despite CDH/Nkonki's findings apparently arose from a report made to Eskom's Board by Mr Khulani Qoma, General Manager in the office of the Chairman of Eskom's Board, on 14 June 2017 to the effect, among other things, that *"(t)he findings of the investigation on the alleged conflict of interest relating to the Impulse International should be viewed within the prisms of the public sentiments as opposed to solely focusing on the legal rationale"* and that I should be dismissed regardless, in conjunction with a memorandum subsequently obtained from a senior advocate of the Johannesburg Bar that was to the effect

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that, despite the findings of CDH/Nkonki that had exonerated me, I should answer certain questions in the forum of a disciplinary enquiry².

126. The disciplinary proceedings commenced only on 18 October 2017 before Adv. M. Mthombeni, a member of the Johannesburg Bar, and ran their course on and off until the beginning of December 2017. It became apparent during the proceedings that my issuing instructions early in 2017, after I had been appointed interim GCE, that corrupt senior officials charged with overall responsibility for the Medupi and Kusile projects be moved, pending investigation, from their posts to posts where they would no longer be able to continue with their harmful conduct, was the precipitating turn of events that eventually culminated in my being subjected to disciplinary proceedings. It led to information about my having declared the interests of my stepdaughter in Impulse International (Pty) Ltd in terms of Eskom's policies and procedures being fed to the Tiso Blackstar group of newspapers by the very corrupt officials against whom I had acted. They had realised that I was coming for them, and connived with the journalists who then launched a campaign of vilification of me based on falsehoods and distortions of the truth, which is still continuing. Ironically, charges for misconduct were even added during the disciplinary process relating to the action that I had taken to stop the corruption at Medupi and Kusile. These arose from alleged "whistleblower reports" that had been made by the corrupt officials themselves, who then, eventually, refused to testify before Mr Mthombeni.
10. I was on 29 December 2017 supplied with Mr Mthombeni's findings (that had already been issued on 14 December 2017). I was in terms of these found not

² As opposed to simply being given the opportunity to provide explanations in respect of the questions that the advocate had posed, whether to Eskom's Board, CDH/Nkonki, or whomever.

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guilty on all the charges that Eskom had chosen to prefer against me.³ My suspension was at the same time lifted and I have since 8 January 2017 been rendering service to Eskom in my permanent (albeit in the interim restructured) position of Group Executive: Generation.

11. Previously, during the period from 11 May 2015 until 15 July 2015⁴, while I was serving as Group Executive: Technology and Commercial, I together with 3 others of my then colleagues⁵, was also placed on suspension. That was supposedly to allow an “*unfettered enquiry*” while a so-called “*Forensic Fact Finding Enquiry ... into the status of the business and challenges experienced by Eskom*” by the Cape Town law firm, Dentons South Africa, was taking place. Dentons had been appointed by Eskom’s Board to investigate, among other things, “(t)he poor performance of Eskom’s generation plant” and the “(i)ntegrity of the procurement processes and compliance with legislation as well as Eskom’s procurement policies”. I shall refer in greater detail to the events that gave rise to my suspension below. However, our supposedly being suspended to allow an “*unfettered enquiry*” was simply a ruse and attempt by the Eskom Board, as constituted at the time, to pressurise us to accept separation packages and leave Eskom.⁶ This had been engineered by the then Chairman of the Board, Mr Zola Tsotsi. The Chairman of the Board, Mr Tsotsi, resigned shortly afterwards and in the ensuing period the

³ Which was not surprising as there was, despite the relentless continuation of the vicious trial by media campaign against me in, principally, publications of the Tiso Blackstar media group on the basis of false and misleading reporting, never a *prima facie* case against me for misconduct, as put across to Eskom’s Board already in June 2017, as referred to above.

⁴ I returned to the office on 20 July 2015.

⁵ The then Group Chief Executive, Mr Tshediso Matona, the Group Executive: Group Capital, Mr Dan Marokane and the then CFO and Director of Finance serving on Eskom’s Board, Ms Tsholofelo Molefe (the latter’s suspension by the Board occurred a few days after that of Messrs Matona, Marokane and myself).

⁶ Which was, for the most part, effective in the end. I was the only one who refused to accept the separation packages offered to us while we were on suspension. Concomitantly, I was the only one of the four who returned to work when Dentons reported on 15 July 2015 that they had found no wrongdoing on our part.

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other members of the Board, with three exceptions⁷, resigned or were replaced by the shareholder.

12. As interim Group Chief Executive I reported and was responsible directly to Eskom's Board. Dr Baldwin (Ben) Ngubane was the Chairman of the Board during the period that I actively rendered service as interim Group Chief Executive from December 2016 to 16 May 2017.
13. In my position as Group Executive: Generation and Technology I reported to the Group Chief Executive. From April 2015 until December 2016, the Group Chief Executive was Mr Brian Molefe. He was previously the Group Chief Executive of Transnet SOC Ltd. He was first appointed on an interim basis, on secondment from Transnet (as far as I am aware), but permanently in October/November 2015. Before that, from 2010, the GCE was Mr Brian Dames, who, however, retired during 2014. He was succeeded as GCE by Mr Colin Matjila in an acting capacity. Mr Tshidiso Matona was then permanently appointed as GCE during or about November 2014. He resigned shortly after he was suspended (with me and 2 others, as referred to above) on 11 March 2015. He then returned to Government where he is now the secretary of the National Planning Commission. Mr Zithembe Khoza acted as GCE for a short period before Mr Brian Molefe was appointed in an acting capacity.

⁷ Mr Zithembe Khoza, Ms Venete Klein and Prof Pat Naidoo.

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INVITATION TO APPEAR BEFORE THE PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES

14. I received an emailed letter from the chairperson of Parliament's Portfolio Committee on Public Enterprises ("the Portfolio Committee" or "this Committee"), Ms Mnganga-Gcabashe on 14 November 2017.⁸
15. The letter invited me in my capacity "*as the former acting group chief executive of Eskom*" to appear before the committee to testify "*on issues related to the governance at Eskom*". These issues (in respect of which I was requested to make a written submission) are in terms of the letter referred to a:
- "1. *The purchase of Optimum Coal Holdings by Tegeta from Glencore.*
 2. *The pre-payment of the coal supply extension at a Board Tender Committee meeting of 11 April 2016.*
 3. *Corporate governance at Eskom."*
16. The original date of the enquiry was communicated to me as 21 November 2017, but in subsequent communications I was requested to respond to the invitation at the continuation of the proceedings of the Portfolio Committee on Wednesday, 24 January 2018. This document serves as the written submission that the Portfolio Committee has required me to make.

⁸ MMK 2, bundle pp 2 – 3.

“THE PURCHASE OF OPTIMUM COAL HOLDING BY TEGETA FROM GLENCORE”

Introduction

17. My assumption is that this issue relates to the acquisition by Tegeta Exploration & Resources (Pty) Limited (“Tegeta”)⁹ of the shares and claims on loan account held by Optimum Coal Holdings (Pty) Limited (“OCH”)¹⁰ in certain of OCH’s subsidiary companies, including Optimum Coal Mine (Pty) Limited (“Optimum”)¹¹, Optimum Coal Terminal (Pty) Limited and Koornfontein Mines (Pty) Limited (“Koornfontein”)¹². My understanding (derived from the internet) is that Optimum Coal Holdings (Pty) Ltd is still a subsidiary of Glencore Operations South Africa (Proprietary) Limited, the South African subsidiary of the London listed Glencore plc¹³.
18. The essentials of the agreement at issue were described in a press release that the business rescue practitioners at the time of OCH and Optimum, Messrs Piers Marsden and Peter van den Steen¹⁴, issued when the (then conditional) transaction was concluded. A copy is document MMK 3 in the accompanying bundle.¹⁵ Greater particularity regarding the transaction is provided in the “*Reasons for Decision*” of the Competition Tribunal of South Africa, issued on 12 April 2016, in

⁹ At the time jointly controlled by Oakbay Investments (Pty) Ltd and Mabengela Investments (Pty) Ltd. It is now, according to what I could source from the internet, a subsidiary of Shiva Uranium (Pty) Ltd, of which Oakbay Investments (Pty) Ltd is apparently still a shareholder.

¹⁰ At the time in business rescue.

¹¹ Also at the time in business rescue.

¹² Which were the operating companies in the OCH group. Optimum’s mining operations comprise opencast and underground coal mining operations near Middelburg. Koornfontein mining operations are conducted as underground mining operations near eMalahleni, the erstwhile Witbank.

¹³ With secondary listings on the Hong Kong Stock Exchange and the Johannesburg Securities Exchange.

¹⁴ The independent business rescue practitioners that had been appointed for OCH and Optimum when the boards of directors of those companies, at Glencore’s behest, on or about 4 August 2015 opted for that avenue to avoid the arbitration proceedings that were pending between Eskom and Optimum.

¹⁵ MMK 3, bundle pp 4 – 5.

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terms of which that body explained the reasons for its approval on 22 February 2016 of the agreement(s) that had been concluded and the resultant merger.¹⁶ What is relevant to what I state below is an understanding that the transaction included Koornfontein. Koornfontein enjoyed the benefit of a lucrative coal price agreed with Eskom for the supply of thermal coal to Eskom's Komati Power Station.

19. On 14 November 2016, *Business Report*¹⁷ published a so-called "opinion piece" that I had written, titled "*Eskom Tegeta deal is in the interest of South Africa*".¹⁸ It was published after Eskom's Board had at a press conference that was held in November 2016 put out details of agreements that at that time existed between Eskom and Tegeta for the supply of coal. These transactions included a long-standing coal supply agreement that related to the supply of coal for the Hendrina Power Station ("the Hendrina Coal Supply Agreement"), that Tegeta had (via Optimum) become party to arising from the transaction referred to above and had undertaken to honour. The press conference arose to address questions and speculation that had been raised in the media in relation to, among others, the Hendrina Coal Supply Agreement. The article provides some information about the background to the transactions concluded, including those between OCH, represented by the business rescue practitioners, and Tegeta that had been concluded with Eskom's and Glencore's approval. I stand by what I stated at the time.

¹⁶ MMK 4, bundle pp 6 – 11.

¹⁷ A section of the daily newspapers that are published by the Independent News & Media media group.

¹⁸ MMK 5, bundle pp 12 – 14.

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20. The upshot of the overall deal that was struck was that from December 2015 until the expiry of the Hendrina coal supply contract in December 2018, Eskom would derive a real benefit of R3.39 billion from the OCH/Tegeta deal.
21. In his submission to the Portfolio Committee Mr Piers Marsden, one of the independent business rescue practitioners of OCH and Optimum, conveyed that throughout the negotiations with the business rescue practitioners after they had been appointed Eskom exhibited a determination to maximise its economic benefits from any deal to be struck. Mr Marsden was quite correct in what he stated.
22. The benefits derived from the overall deal arose from Eskom's insistence that Optimum continue to deliver coal to it at R150 per tonne until December 2018 in accordance with the Hendrina Coal Supply Agreement that has existed between Eskom and Optimum since 1983 (with effect from 1969 and amended on occasions subsequently).
23. In comparison Glencore, by way of a letter from Optimum to Eskom, dated 30 June 2015 (i.e. shortly before OCH and Optimum went into business rescue)¹⁹, had tabled an offer at a doubled price of R300 per tonne until contract expiry in 2018, "*to allow it (i.e. Optimum) to continue operating*". Glencore also proposed that as part of a package deal the contract be extended to 2023 and the price be increased to R570 per tonne from 2019, to be done without Eskom going through any open tender process. The Optimum letter of 30 June 2015, was written after an apparently acrimonious meeting that had taken place on 11 June 2015 between, among others, Mr Brian Molefe, then acting GCE of Eskom, and Mr Ivan Glasenberg, CEO of Glencore.

¹⁹ MMK 6, bundle pp 15 – 17.

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24. In another letter to Eskom, dated 17 September 2015 (i.e. after Glencore had put OCH/Optimum into business rescue),²⁰ the independent business rescue practitioners proposed a deal that would result in a weighted average price of R443 per tonne until 2023. In terms of this proposal, Eskom would continue to pay R150 per tonne for coal until December 2018, but the contract would be extended until 2023 at a price of R630 per tonne.
25. Eskom rejected both the above proposals, insisting that Optimum honour the Hendrina Coal Supply Agreement (as amended in 1993 and again in 2011) until its expiry during 2018.
26. The fundamental considerations for Optimum Colliery's agreeing amendments to the Hendrina Coal Supply Agreement in 1991 can be gleaned from Schedule 7 of the Hendrina Coal Supply Agreement. These considerations informed my thinking throughout insofar as I participated in negotiations during the business rescue process of OCH and Optimum²¹, as from the time when I first became involved in late August 2015, after I had returned from suspension on 20 July 2015, and then subsequently, when I was appointed the head of Generation with effect from 1 October 2017. By the time I became involved, however, OCH and Optimum had already been placed in business rescue. Insofar as I refer below to what had occurred before my involvement commenced, I rely on what I gleaned from the historical documents, put in context also by what I learnt from my colleagues who had been involved before.

²⁰ MMK 7, bundle pp 18 – 22.

²¹ That formally commenced on 4 August 2015.

The Optimum operation commenced in 1969 and converted from a single product operation to a multi-product operation in 1983

27. The Optimum Colliery's coal mining operations came into being in the 1960's, at the beginning of 1969 as I have it, as part of, as far as I am aware, the operations of Trans-Natal Coal Corporation Ltd. Trans-Natal Coal was at the time (or at some subsequent stage became) part of the General Mining and Finance Corporation Ltd (Gencor) group of companies, that, eventually, fell to the BHP Billiton group. This resulted in Optimum Colliery operating as a division of BHP Billiton Energy Coal South Africa (Pty) Ltd, known as BECSA. Optimum acquired the Optimum Colliery in 2008 as part of an acquisition of business agreement that it concluded with BECSA. Optimum was at the time part of OCH. OCH was at the time referred to as a newly formed black empowerment consortium led by Mr Eliphus Monkoe, apparently a previous Chief Operating Officer of BECSA.
28. The Optimum Colliery's operations were originally launched to serve Eskom's Hendrina Power Station exclusively "for the life of the plant", i.e. 50 years. That rendered the Optimum Colliery's mining operations a "single product operation" or a supplier to the "domestic tied market", i.e. tied to Eskom as the colliery's single domestic customer.
29. The contractual relationship between Eskom (then the Electricity Supply Commission) and Optimum Colliery was initially on a cost plus basis. The relationship was recorded in the Hendrina Coal Supply Agreement that was originally concluded on 24 June 1983 (applying with retrospective effective back to 1969, and to endure until the end of 2018).

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30. Eskom had, however, earlier in 1983, on 7 January 1983, approved that the Optimum Colliery could, despite what had been agreed originally, supply coal not only to Eskom, exclusively for the Hendrina mine, but also to the export market. This agreement allowed Optimum Colliery's operations to be converted from a "single product operation" (i.e. supplying thermal coal only to Eskom in the "tied domestic market") to a "multi-product operation".
31. The upshot of the January 1983 agreement was that the mining assets and infrastructure utilised until then by Optimum Colliery for purposes of mining coal exclusively for supply to Eskom, could as from that time be utilised also for purposes of mining export coal.

Optimum Colliery's changing to a multi-product operation was dependent upon the continued supply of coal to Hendrina Power Station, but also benefitted Eskom

32. Arising from the January 1983 agreement Optimum Colliery had to invest additional capital in mining and rehabilitation assets to enable it to produce an additional 6.5 million tonnes per year run-of-mine coal for the export market.
33. The coal supply to Eskom for the Hendrina Power Station in terms of the Hendrina Coal Sale Agreement provided revenue security for Optimum Colliery that enabled it to create and maintain the infrastructure and achieve the economies of scale required to enable it to export coal. Without the security of the long-term agreement that was in place with Eskom (until the end of 2018), Optimum Colliery would not have been able to invest in this manner.

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34. The benefit to Eskom was an enlarged opencast mine with improved economies of scale, bringing the cost per tonne down, and making it unnecessary for Optimum Colliery to reopen prior (operationally more expensive) underground mining operations to supply Eskom.
35. The working cost projections at the time were based on the assumption that opencast mining operations would continue into the indefinite future for the duration of the agreement (corresponding with the notional 50 year life of the Hendrina Power Station, i.e. until the end of 2018).

The basis of coal supplies from Optimum Colliery changed from a cost plus arrangement to a fixed price arrangement in 1993

36. Eskom and Optimum Colliery in 1993 agreed a new pricing structure for the Hendrina Power Station coal offtake. This was specified and agreed in terms of amendments to the 1983 Hendrina Coal Supply Agreement that changed the basis of supply from a cost plus basis to a fixed price basis.
37. BECSA, the owner of the Optimum Colliery prior to 2008, never after 1993 raised the issue of hardship as a result of changed market circumstances that at later times made the fixed price that had been agreed for the Hendrina coal seem low. BECSA executives were aware of the background and context of the pricing structure that had been agreed, as were the executives of its 2008 successor.

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38. The base price was agreed anew with Optimum as recently as in 2011, when it was by agreement determined at R115 per tonne as at 1 April 2011²², with a minimum annual offtake of 1 million tonnes and a maximum offtake of 5.5 million tonnes.
39. The base price of R115 per tonne agreed with effect from 1 April 2011 accordingly still reflected the benefits that the Optimum Colliery derived from the multi-product operations that Eskom had allowed since 1983. This was well-understood by all the parties involved at all relevant times before 2012 and Optimum never raised any issue about the level at which the base price was agreed.
40. Optimum Colliery and its owners from time to time, including Optimum, had the benefit of participating in the export market since 1983 by utilising coal reserves originally earmarked solely for Eskom (and, to some extent, using Eskom's infrastructure) to supply the export market.
41. Eskom had furthermore by agreement with BECSA during 2006/2007 consented to the release for export of Koornfontein coal reserves which were originally also to have been dedicated to Eskom in terms of the relevant coal supply agreement. The benefit of this concession also fell to OCH eventually.

Optimum claims hardship and institutes arbitration proceedings; the parties agree in terms of the Co-operation Agreement to maintain the *status quo* pending negotiations to resolve all issues that had arisen after Glencore became involved

42. Glencore became involved in March 2012, after it had, with Shanduka Resources as a BEE partner, acquired OCH and through it, control of Optimum. Optimum later

²² In terms of clause 3.5 of the Second Addendum to the 1983 Hendrina Coal Supply Agreement, read with schedule 8 thereto.

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stated²³ that Glencore “*shortly thereafter identified the risk presented by (the) Hendrina coal supply agreement to the viability of OCM*” and “*shortly thereafter raised the issue with Eskom, but Eskom was not willing to entertain any amendments to the agreement*”.²⁴ In other words, according to Glencore, it became involved with Optimum without realising the implications of the Hendrina Coal Supply Agreement, allegedly only (shortly) afterwards identifying these. I respectfully state that that is hardly likely. That Optimum very shortly after Glencore’s takeover started complaining about the agreed price and demanded that it be increased, despite its getting involved with Optimum via OCH with open eyes, is telling. It is more likely²⁵ that Glencore from the very outset knew what it was letting itself in for, and simply thought that it would be able to arm-twist Eskom into agreeing to an increased price.

43. OCM subsequently issued a “hardship notice” in terms of the amended Hendrina Coal Supply agreement. It did so on 3 July 2013. This occurred while discussions between Eskom’s management and that of Optimum about the Hendrina Coal Supply Contract were ongoing. In terms of these discussions Optimum’s stance that it would be unable to continue its operations unless a substantially increased price for the Hendrina coal was agreed was made apparent again and again.
44. The long and short of Optimum’s approach was to try and hold Eskom to ransom with its threats that Glencore would simply cease Optimum’s operations with, quite obviously, very severe potential consequences for Eskom in relation to the generation of electricity at Hendrina at a time when it had already become apparent

²³ See MMK 9, referred to below, bundle pp 30 – 35.

²⁴ MMK 9, bundle p 32, 2nd to 4th paragraphs.

²⁵ Confirmed by what happened when OCH and Optimum went into business rescue, when OCH wanted to jettison Optimum, but retain Koornfontein.

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that Eskom's generation capacity was going to run short in the not too distant future. Glencore's approach was presumptuous and paid no heed to the fact that Eskom was itself financially constrained as a result of, among others, an increasingly assertive approach towards Eskom tariff increases applied by NERSA, the National Energy Regulator of South Africa.

45. Optimum on 28 February 2014, pursuant to the prior "hardship notice" of 3 July 2013, instituted arbitration proceedings in terms of the Hendrina Coal Supply Agreement. Optimum's hardship claim did not attack the base price, but the escalation factors (PPI 60%, 30% CCI (Coal Cost Index) and fixed price 10%) that had been agreed.
46. This gave rise to Eskom's and Optimum then, on 23 May 2014, entering into an agreement referred to as a "Co-operation Agreement".²⁶ This agreement specified a process directed at addressing and settling outstanding issues relating to Optimum's alleged hardship arising from the fixed price at which it had agreed (as recently as 2011) to supply coal to Hendrina in terms of the amended Hendrina Coal Supply Agreement. The Co-operation agreement also addressed the disputes about penalties that Eskom sought to impose arising from sub-specification coal that Optimum had been delivering over an extended period of time since early 2012. It established a time table that (optimistically) posited that the issues it identified would be susceptible of resolution by early 2015.
47. In terms of the Co-operation Agreement Eskom undertook that it would from 1 May 2014 until termination of the negotiation and settlement process that the agreement envisaged, suspend all penalties that applied to Optimum in terms of the Hendrina

²⁶ MMK 8, bundle pp 24 – 29.

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Coal Supply Agreement, which penalties had a substantial monetary value, albeit that Eskom had not yet finally calculated and specified the aggregate sum at issue.

Glencore continues to try to hold Eskom to ransom with its threats of business rescue and liquidation, settlement does not come about and Eskom terminates the Co-operation Agreement; Glencore puts OCH and Optimum in business rescue to avoid arbitration

48. It is apparent from the documentation that is available that the negotiations (to which I was not a party) did not make much progress towards resolution. This was simply because of the approach that Optimum still pursued, i.e. that Glencore would close Optimum down and put it into liquidation if Eskom did not agree to a substantial increase of the Hendrina coal price (by way of applying much steeper escalation rates to the 1 June 2011 base price) and Eskom's waiving its penalty claims (which claims Optimum posited as a breach of contract entitling it to cancel the Hendrina Coal Supply Agreement altogether). This was confirmed and exemplified in the letter that Eskom received from Optimum on 13 November 2014, supposedly to put forward settlement proposals, but that actually served to threaten Eskom in quite unequivocal terms at a time when load shedding had just started.²⁷ I refer the Portfolio Committee in this regard specifically to the first two paragraphs of the letter, as well as the last paragraph thereof. The letter also recorded that as at that time Eskom's negotiators had developed and expressed a strong mistrust of Optimum's professed *bona fides* in the negotiations.

²⁷ MMK 9, bundle pp 30 – 35.

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49. Optimum sent another letter to Eskom of similar import on 22 May 2015.²⁸ The letter recorded that Eskom had at that time exhibited a willingness to try and assist Optimum with the price for the Hendrina coal, but also that Mr Brian Molefe had on 18 May 2015, allegedly, taken a harder line on the basis that Eskom still intended to enforce the Hendrina Supply Agreement. The letter conveyed Optimum's position that business rescue of Optimum was on the cards and that Optimum would inevitably be liquidated unless Eskom increased the price (despite stating that Optimum "*fully appreciates Eskom's difficult financial position and the consequences of increasing the price under the agreement*").
50. Optimum closed its export operations in July 2015.²⁹ This was, apparently, due to "*depressed coal prices and ongoing losses*" that Optimum had suffered in its export operations. However, such prices had reigned for a substantial period, since well before Glencore became involved with OCH and Optimum.
51. Eskom terminated the Co-operation Agreement by letter delivered to Optimum on 22 June 2015.³⁰ In his submission to the Portfolio Committee Mr Molefe confirmed what was stated in the letter, i.e. that Eskom terminated the Co-operation Agreement because of its constrained financial position at the time. The letter was, apparently, originally drafted as a response to Optimum's letter of 22 May 2015³¹, but was only delivered 11 days after the meeting that took place on 11 June 2011, attended also by Glencore's CEO, Mr Ivan Glasenberg. Although I did not myself attend the meeting³², I later learnt that the meeting did not go well and that Mr Brian

²⁸ MMK 10, bundle pp 36 – 38.

²⁹ See 6th bullet point of paragraph 1 on page 2 of MMK 7, bundle p 19.

³⁰ MMK 11, bundle p 39.

³¹ MMK 10. MMK 11 is dated 10 June 2015

³² Still being on suspension at the time.

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Molefe took strong exception to the “*Old South Africa tactics*” that Mr Glasenberg adopted in its course.

52. The letter, MMK 11, had the effect of reinstating operation of the provisions of the Coal Supply Agreement and its addenda, including those relating to price adjustments for sub-specification coal. It also restarted the arbitration process that had been shelved in April 2014.
53. Optimum had for a continuous period from 1 March 2012 to 31 May 2015 failed to supply and deliver coal to Eskom that complied with the quality specifications specified by clause 3.4 of the First Addendum to the Hendrina Coal Supply Agreement. I again point out that the supply of sub-specification coal was already an issue of long standing, as reflected also in the Co-operation Agreement of 23 May 2014, MMK 8.
54. As a result Mr Thava Govender (Eskom’s Group Executive: Transmission), in the capacity as acting GCE³³, authorised that a letter of demand be sent to Optimum. The Eskom memorandum in terms of which Mr Govender approved that a letter of demand be sent speaks for itself insofar as it sets out the motivations that applied.³⁴ It carried the approval of the executives who had been involved with the negotiations with Optimum until that time.

³³ Mr Molefe must have been away.

³⁴ MMK 12, bundle pp 40 – 41.

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55. CDH, acting on behalf of Eskom, issued the letter of demand on 16 July 2015.³⁵ The letter of demand specified Eskom's claim for penalties in terms of the Coal Supply Agreement as a claim for nearly R2.18 billion.³⁶
56. Paragraph 3 of the letter of demand recorded that, *"In the event that Optimum disputes the aforementioned claim, we submit that this letter shall constitute a referral of the dispute to arbitration as contemplated in clause 6.3 of the First Addendum"*.
57. In these circumstances the boards of directors of Optimum and OCH on 31 July 2015 adopted resolutions to initiate business rescue proceedings in terms of the Companies Act, 2008. Mr Piers Marsden testified to this committee that the business rescue proceedings (that suspended legal proceedings) were commenced to avoid the arbitration proceedings. The business rescue formally commenced on 4 August 2015, as stated before, and came to an end on 31 August 2016.

The value of Eskom's penalty claim

58. Ms Daniels stated before this Committee that the original penalty calculation was overstated by some R1 billion as a result of what she referred to as a "spreadsheet error".
59. Mr Clinton Ephron, a director of Optimum and OCH, in a one-on-one meeting that I had with him, conveyed to me that Eskom would be lucky if it came away with its penalty claim for R800 million. My view on the matter, which I had inherited when,

³⁵ MMK 13, bundle pp 42 – 43.

³⁶ That claim had, apparently, been computed from figures that had been determined by an employee in the Primary Energy department, part of the Commercial Division, who went to work for Glencore.

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after I had come back from suspension, I became responsible for Generation, was very simple, and I expressed it to Mr Ephron at the time. It was that the final figure had to be determined by the arbitration process that the Hendrina Coal Supply Agreement specified. Mr Ephron, however, made it clear that from Optimum's perspective the value of the claim was actually irrelevant. Optimum's position, representing also that of Glencore, was that Eskom had to waive the penalty claim altogether.

60. Mr Marsden informed the Portfolio Committee that his estimate of the value of Eskom's penalty claim was approximately R700 million.
61. I believe that the Eskom employee from whose figures the calculation of the original claim were done, had gone to work for Glencore. That may explain why Optimum's representatives were able to put figures to the claim that were much lower than the sum for which the claim was instituted – they knew what we did not.
62. The Eskom claim was, eventually, during March 2017, settled at the arbitration hearing at R577 million. The settlement occurred in accordance with a mandate that Eskom's Board had given to Ms Suzanne Daniels, then Eskom's acting Company Secretary and Corporate Counsel. She testified to that effect before this Committee. Ms Daniels was expert regarding Eskom's coal supply agreements and Eskom was represented in the arbitration proceedings by CDH and senior counsel. Although I was not involved, I have no reason not to accept that the settlement was in the right ballpark.
63. I wish again to bring to the attention of this Committee that I was on suspension from 11 March 2015 until 15 July 2015, returning to work from suspension on 20

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July 2015. That was after Dentons had on 15 July 2015 issued a report to the effect that it had in its investigation not found any wrongdoing on my part (or on the part of the other 3 executives suspended with me). It is during this period that the Optimum penalty claim was quantified at R2.18 billion and formally instituted, as is reflected in MMK 12 and MMK 13.

64. I was reinstated to the position of Group Executive: Technology. When I was suspended on 11 March 2015 my position was that of Group Executive: Technology and Commercial, but restructuring had occurred in the interim. Responsibility for the Commercial Division had been transferred to the Chief Financial Officer as his ultimate responsibility.
65. As referred to already, Mr Molefe had in the meantime been appointed as acting GCE, being appointed on a permanent basis during October/November 2015. I had never met or dealt with Mr Molefe before.
66. Mr Molefe undertook some further restructuring of the top executive posts within Eskom. The Board, on his recommendation, appointed me as Group Executive: Generation and Technology, in other words Generation was added to my responsibilities (after Commercial had been assigned to the Chief Financial Officer during the period that I was on suspension, as referred to before).
67. Load shedding commenced in South Africa during November 2014 as a result of a lack of generation capacity. Load shedding was still a matter of overriding importance at the time when I was appointed to the position of Group Executive: Generation. In relation to the issues that had arisen in years and months past regarding Optimum and the Hendrina Coal Supply Contract, I had to acquaint

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myself with the background facts and deal with the matter in circumstances where Eskom's available generation capacity could not meet demand.

68. Arising from Optimum's being put in business rescue on 4 August 2015 the supply of coal from Optimum to the Hendrina Power Station ceased. The Hendrina Power Station then had to rely on its emergency stockpile of coal for purposes of keeping the power station going during the month of August. However, this impacted on Hendrina's ability to continue supply electricity into the national grid going forward. What would happen if Hendrina's electricity generation came to a halt was a matter of major concern and a talking point within Eskom's managerial echelons at the time.
69. There was no meaningful engagement or communication between the business rescue practitioners that had been appointed and Eskom's management during August 2015 regarding the resolution of the Hendrina Coal Supply Agreement pricing dispute and the penalty issues that had arisen since Glencore had become involved with Optimum. However, shortly before 3 September 2015 I received a call from Mr Clinton Ephron, a director of both OCH and Optimum. I knew him because of my having dealt with him previously in my capacity as the Group Executive responsible for Technology and Commercial. He suggested that we find a solution, at least in the short-term, to enable coal supplies to Hendrina to be restarted. I discussed the matter with Mr Molefe and arranged a meeting between Mr Molefe and Mr Ephron. It took place on 3 September 2015. This resulted in a short terms arrangement for the renewed supply of coal to Hendrina at the contract price of R150 per tonne in accordance with the terms of the Hendrina Coal Supply

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Agreement. The terms of the arrangement were recorded and confirmed in a letter compiled by CDH, dated 19 September 2015.³⁷

70. The Hendrina coal supply arrangement was short term (after the first 60 days, it was from month to month) and precarious. Overt and veiled threats were still being made not only by the directors of OCH and Optimum still participating in communications and negotiations, but also now from the side of the business rescue practitioners. These were the same as before, i.e. that Glencore would put Optimum into liquidation, unless Eskom came to terms with it, encompassing that Eskom had to agree to a higher price for the Hendrina coal and waive its rights to the penalties that Eskom sought to recover. The continuation of the month to month arrangements was subject to uncertainty and, accordingly, very troubling - the continuing possibility that Glencore would on short notice pull the plug and implement the threats that had been conveyed to Eskom so often since Glencore's involvement had commenced early in 2012 was of major concern.
71. A further concern was that the Department of Mineral Resources had also become involved because of its officials' concerns about whether, given Optimum's apparent precarious financial status, safety and environmental standards continued to be met at Optimum's operations. The Department had for that reason at a stage suspended the relevant mining licence. Mr Molefe had to approach the Minister to ask that the matter be dealt with very carefully in the light of the circumstances that existed, more particularly, Eskom's generation constraints and load shedding that was costing the national economy dearly. As a result the suspension was withdrawn on or about 7 August 2015.

³⁷ MMK 13.1, bundle pp 44 – 46.

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72. Such communication with the Department of Mineral Resources was not out of the ordinary, usually occurring at the most senior levels. Eskom and the mining companies that supply coal to it exist synergistically and Eskom has always had regular and ongoing interaction with the Department of Mineral Affairs where its interests required it, including sometimes to seek the Department's assistance to iron out difficulties that had arisen with the miners, and sometimes to act as the miners' interlocutor.
73. Eskom's stance had never changed since even before Mr Molefe's meeting with Optimum's CEO on 18 May 2015. Eskom's stance was simply that it was, despite running short on generation capacity, not going to succumb to Glencore's strong arm tactics, but:
- 73.1 Fully expected OCM to comply with the Hendrina Coal Supply Agreement until its expiry at the end of 2018 at the agreed price of R150,00 per tonne;
 - 73.2 Was not going to waive its penalty claim, but would pursue it to arbitration;
 - 73.3 Was not willing to engage with Optimum at that stage regarding a package deal in terms of which the supply contract was extended until 2023 at a substantially increased price per tonne without going to market.
74. Eskom had, on that basis, rejected the proposals contained in the letter of 17 September 2015³⁸ received from the business rescue practitioners. In these circumstances, the business rescue practitioners (of OCH and Optimum) indicated that they were seeking a buyer for Optimum. This was recorded in their first

³⁸ MMK 7, bundle pp 18 - 22.

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Business Rescue Status Report issued on 4 November 2015, as referred to in their second report of 4 December 2015.

75. Even before that, on 28 October 2015, I had a meeting with Messrs Marsden and Van den Steen during which we discussed the avenues that could, potentially, be followed to resolve matters. I was told during the meeting that there was still a third party who was possibly interested in acquiring Optimum's business.³⁹ The name of the third party was not disclosed during the meeting. I subsequently, on 29 October 2015, received a letter from Messrs Marsden and Van den Steen that recorded the options that had been mooted.⁴⁰ It also disclosed Oakbay Investments (Pty) Ltd ("Oakbay") as the potential buyer that the business rescue practitioners could bring to the table.
76. On 24 November 2015 a meeting took place at Megawatt Park when the business rescue practitioners did actually bring representatives of Oakbay to the table. Besides myself, Ms Suzanne Daniels attended the meeting and also Ms Ayanda Nteta, who drafted the minutes of the meeting.⁴¹ Ms Daniels, as referred to already, was regarded as Eskom's expert on its coal supply contracts and had throughout been involved as adviser to the executives dealing with the matter from the time, after Glencore had become involved, when the difficulties with the Hendrina Coal Supply Contract started. Ms Nteta was at the time the acting General Manager: Primary Energy (Fuel Sourcing) in the Commercial Division. The document is an important document insofar as it contemporaneously recorded the status at the time and what the stance was that had been adopted by each of the various parties.

³⁹ The business rescue practitioners had conveyed to me earlier that there were buyers that were interested in Optimum. At first they said that discussions were ongoing with three potential buyers, then later, with two potential buyers and eventually with only one.

⁴⁰ MMK 14, bundle pp 47 – 49.

⁴¹ MMK 15, bundle pp 50 – 52.

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77. At the meeting the business rescue practitioners again conveyed (it had been put across to me before), that their intention was to “rescue” Optimum first and that OCH would come later. At that stage that was to occur by selling Optimum’s business, i.e. its coal mining operations, as a going concern. OCH’s other assets, including Koornfontein, would then be addressed and, potentially, disposed of, separately. Oakbay’s representatives were introduced as representing the remaining potential buyer of Optimum, who was, as I recall, disclosed as intended to be Tegeta, a company within the Oakbay group that already supplied coal to Eskom from its Brakfontein mine.
78. On the basis of the fact that Glencore, Optimum and the business rescue practitioners had regularly before recorded that Optimum was not a viable standalone business, I questioned the viability of its being disposed of separately, given that the Hendrina Coal Supply Agreement had to be honoured⁴². I accordingly conveyed that, although Eskom would support an Optimum sale to Oakbay/Tegeta, a separate disposal of only Optimum or only its business would not be supported by Eskom.
79. Arising from what I conveyed not only the business rescue practitioners and Glencore (representing OCH and Optimum, but also Koornfontein), but also the representatives from Oakbay knew what Eskom’s position was. Arising, however, from the fact that no final conclusions could be reached then and there regarding the way forward in that regard, I requested that the business rescue practitioners indicate what would happen after the end of November 2015 regarding Optimum’s supply of coal to Hendrina. The response was that funding had been obtained to

⁴² Which I am recorded to have confirmed as one of the three issues on which Eskom was not going to change its position.

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keep Optimum going and that the coal supply would continue until 15 December 2015, which was the date that the Oakbay/Tegeta representatives indicated as the date by when they aimed to have a deal finalised. In other words, the status remained a precarious and uncertain short-term one. I, accordingly, requested clarity regarding what would happen after 15 December 2015.

80. The conclusion of the meeting of the 24th was that discussions were to occur later on the same day between the business rescue practitioners, Glencore and Oakbay/Tegeta to explore how the issue that I had raised, i.e. that a sale of Optimum's business alone would not be acceptable to Eskom, could be addressed. I later learnt that in these and later discussions a composite sale of OCH's assets, i.e. its holdings in its subsidiaries, including in not only Optimum, but also Koorfontein, was tabled and being negotiated as the deal that would have to be made to achieve business rescue by way of a sale to Oakbay/Tegeta.
81. On 1 December 2015 I received a letter from Werksmans Attorneys, acting on behalf of the business rescue practitioners.⁴³ It stated that coal supplies to Hendrina were confirmed until 31 January 2016. Mr Piers Marsden shortly afterwards came to see me, either on the 1st or the 2nd December. He was accompanied by a representative from Glencore, but I am not now sure whether it was Mr Ephron, or Mr Shaun Blankfield (who had attended the 24 November meeting as Glencore's representative). They informed me that Glencore had decided to take the Optimum companies out of business rescue and to honour the Hendrina Coal Supply Agreement in its terms, i.e. until 2018. That was a major relief to me. It also had as concomitant that the disputed issues that had arisen

⁴³ MMK 16, bundle p 53.

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since 2012 would be resolved in accordance with the resolution mechanisms specified in the agreement.

82. On Friday the 4th of December 2015 Eskom received an update from the business rescue practitioners, represented by Mr Marsden, by way of their second “Business Rescue Report” in relation to Optimum.⁴⁴ It is document MMK 17 in the accompanying bundle. It was directly contradictory of what had been conveyed to me two days before. It was to the effect that the business rescue process of Optimum would continue and that *“the negotiations with the party who expressed an interest in OCM would continue”*, but that *“there is no certainty regarding whether a deal will be concluded and the timing of any deal”*. It again conveyed what had been stated in MMK 16, i.e. that supplies of coal to Hendrina could only be assured until the end of January 2016 (incorrectly recorded as 31 January 2015 in paragraph 4.2 of the report).
83. The change of attitude exhibited (after two days) created major new uncertainty for Eskom, represented by Mr Molefe, who I kept abreast of communications and developments, and me. At this time, as referred to already, Eskom had already communicated with the Department of Mineral Resources regarding its suspension of Optimum’s mining licence and its concerns regarding whether safety requirements were being complied with in Optimum’s constrained circumstances, as well as about potential retrenchment of workers if the situation could not be saved and the availability of financial resources for rehabilitation, among others. The Department of Mineral Resources was accordingly already “in the loop”.

⁴⁴ MMK 17, bundle pp 54 – 57.

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84. Between myself and Mr Molefe we decided that we needed to keep the Department of Mineral Resources up to date on the developments that had occurred and to request its assistance, by the means they had, to facilitate a resolution of the impasse that quite clearly still existed despite the potential sale to Oakbay/Tegeta. From our perspective the matter had now to be brought to conclusion one way or the other, i.e. either by sale of Optimum or its business on a viable basis, or Glencore's bringing the business rescue to an end and matters continuing on the basis of the existing Hendrina Coal Supply Agreement.
85. We requested Ms Daniels to draft the required letter. I received a first draft at 18h46 on Friday, 4 December 2015 and after discussion of its contents with her, a second draft on Sunday, 6 December 2015 at 19h55, despatching it by email to the Director General of the Department of Mineral Resources the same evening. Ms Daniels' initial draft with the covering email she sent me is document MMK18 in the accompanying bundle, the covering email for the final draft is document MMK 19, and the letter that went out is document MMK 20.⁴⁵
86. Suggestions have been made that our letter to the Department of Mineral Resources was in some or other manner irregular. I deny that that is the case. We had previously intervened with the Department regarding the suspension of Optimum's operations and it presented an avenue to try to exert influence to bring matters to some form of finality to ensure continued coal supplies to Hendrina. The manner in which we dealt with the matter after receiving MMK17, over the weekend of 4 to 6 December 2015, rather indicates the major concern we had about the continued uncertainty regarding coal supplies to Hendrina, also in the context of further coal supply uncertainties that were looming at other power stations.

⁴⁵ MMK 18, MMK 19 and MMK 20, bundle pp 58 – 63.

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87. The Director General of the Department responded to my letter, as I recall, on Monday, 7 December 2015. His letter is document MMK 21 in the accompanying bundle.⁴⁶ The letter indicated that the Department favoured a sale and transfer of the relevant Optimum mining right. The Department was, clearly, abreast of ongoing developments and of the identity of the potential buyer. The Director General stated that the Department had already been in contact with the Competition Commission “to go and plead the case” and referred to a necessity for “the project to proceed”. It went on to request as follows:

“In return for the new owners honouring the current contract up to 2018, and for driving transformation we would like to propose that consideration be made for some pre-payment to be made for up to one (1) year of coal supply, understanding the upfront capital injections to be made to ramp up production to meet coal supply requirements from these mines. We firmly believe that every possible angle must be considered and offered to ensure that supply is guaranteed at the contracted price for all of these critical mines, thereby averting any national crisis that we as South Africa can ill afford.”

88. The suggestion from the Department of a prepayment of a substantial sum to the buyers of the OCH mines made sense in the circumstances that prevailed, but it had to be given careful consideration from a legal and practical viewpoint. I, accordingly, forwarded the Director General’s letter to Ms Daniels and discussed with her later that she had to prepare a submission to the Eskom Board for the Board to consider and potentially approve a transaction with Oakbay/Tegeta as had been discussed on 24 November, but on the basis of a deal that included Koorfontein and on the basis that Eskom would prepay for coal to be acquired during the first year, as had been suggested by the Department.

89. My belief at the time was that if that was what was going to be required to save the situation, that was what had to be done, taking into account that prepayments for

⁴⁶ MMK 21, pp 64 – 65.

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coal to be supplied in the future (albeit not to the extent that the Department had suggested) was not out of the ordinary in Eskom's operations. The proposal however had to be analysed, assessed and set out in greater detail so that it could be put before Eskom's Board for consideration and approval, also regarding how it would be financed. I requested Ms Daniels to prepare such a submission for the Board's consideration and she did so. I approved the final "*Submission Document*" presented, after she and I had discussed her prior drafts. The document that was produced drew heavily from her expertise and understanding of coal supplies to Eskom, proposing that the prepayment be financed by somewhat decreasing coal stockpiles at other power stations (by for a short while buying less coal from the coal suppliers). The submission eventually, after it had also been approved and agreed to by the Chief Financial Officer, served before and was approved by the Board by way of a round robin resolution.⁴⁷

90. The prepayment authorised in terms of MMK 22 was never implemented. That was because the assumptions on which it was based were not met, particularly that OCM had to be taken out of business rescue. That could not be achieved as a pre-condition to the prepayment being made.
91. The deal for the sale of OCH's interests in its subsidiaries was concluded between OCH and Oakbay/Tegeta shortly afterwards, I believe on the 10th of December 2015. It was announced by the business rescue practitioners in terms of MMK3.⁴⁸ The transaction was subject to Eskom's formal approval, which was given by the Board.

⁴⁷ MMK 22, bundle pp 66 – 70.

⁴⁸ MMK 3, bundle pp 4 – 5.

**“THE PREPAYMENT OF THE COAL SUPPLY EXTENSION AT A BOARD TENDER
COMMITTEE MEETING OF 11 APRIL 2016”**

Eskom’s presentation to SCOPA

92. Eskom on 30 May 2017 presented submissions to Parliament’s Select Committee on Public Accounts (“SCOPA”) regarding Eskom’s procurement of coal from Tegeta. Ms Daniels, in her capacity as Eskom’s acting Corporate Counsel, participated in the drafting of the relevant PowerPoint presentation that was made to SCOPA, as well as in the actual presentation thereof. I did not participate. I had been placed on special leave on the 15th May 2017. The presentation was spoken to by Mr Brian Molefe (who had at the time returned to Eskom).
93. A draft of the final presentation specifying Ms Daniels’ comments and suggestions that were incorporated into the final version, is document MMK 23 in the accompanying bundle.⁴⁹
94. Part of the presentation addressed criticism that had come from various quarters regarding contracts for the procurement of coal that Eskom had concluded with Tegeta. The presentation dealt with these matters and served to explain also the motivation for and basis upon which agreement was concluded with Tegeta in April 2016 for the supply of coal for the Arnot Power Station, in respect of which Eskom made a prepayment. What was conveyed to Parliament in this regard was in all material respects correct.

The 2008 mandate given by the Board Tender Committee

⁴⁹ MMK 23, bundle pp 71 – 105.

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95. Eskom's Board of Directors Tender Committee ("the BTC"), a sub-committee of Eskom's board of directors, adopted a resolution during August 2008 that specified a mandate given to the Group Chief Executive "*to negotiate and conclude contracts on a medium term basis for the supply and delivery of coal to various Eskom power stations for the period October 2008 to March 2018*" ("the 2008 mandate"). The 2008 mandate is reflected in the submission made to the BTC. It is the document MMK 24 in the accompanying bundle.⁵⁰
96. The Board Tender Committee approved the 2008 mandate to conclude contracts on a medium term basis for the supply and delivery of coal to various power stations for the period October 2008 to March 2018 in terms of MMK 24. This mandate authorised the Group Chief Executive (at the time Mr Dames) to make advance payments to suppliers up to the value of R700 million to enable them to provide Eskom with the required quantities (subject to approval in accordance with Eskom's "*Delegation of Authority Policy*"). The 2008 mandate was updated in 2014 in terms of document MMK 25 in the accompanying bundle.⁵¹
97. The 2008 mandate was issued during the coal crisis of 2008 to ensure security of coal supply for the period that it covered and to prevent load shedding during high demand periods (often in winter) arising from circumstances that compromise the usability of coal stockpiles acquired in terms of long term contracts (e.g. excessive rainfall). Approval by the BTC of the procurement of 1.2 million tonnes of coal from Tegeta on 11 April 2016 occurred in accordance with the 2008/2014 mandate.
- 98.

⁵⁰ MMK 24, bundle pp 106 – 136.

⁵¹ MMK 25, bundle pp 137 – 168.

The shortage of coal for the Arnot Power Station; the suppliers who could fill the gap

99. As from 2008 Eskom regularly executed assessments of its coal burn requirements for set periods in the future. An assessment of the 2016 winter supply plan was conducted during 2015. This indicated a shortfall of 2.1 million tonnes of coal at Arnot.
100. A coal emergency for Arnot Power Station was declared by Eskom's Primary Energy Division Tactical Command Centre on 23 December 2015. The minutes of the meeting at which this occurred is document MMK 26 in the accompanying bundle.⁵²
101. The emergency had to be addressed by the Primary Energy (Fuel Sourcing) department of the Commercial Division, i.e. Ms Nteta's department. Its representatives approached existing Arnot coal suppliers to make offers to increase their supply to mitigate the load shedding risk that the estimated shortfall at Arnot presented.
102. Delivery time and the quality of coal on offer were the overriding determining factors that governed who the successful offeror suppliers would be.
103. Only two of the Arnot suppliers, Tegeta and Umsimbithi Mining (Pty) Limited, were able to source and supply the volumes required and meet the delivery time and quality requirements.

⁵² MMK 26, bundle pp 169 – 171.

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104. Tegeta was at the time already a coal supplier to Eskom elsewhere. Tegeta owned a coal mine, Brakfontein Mine, that supplied coal to the Majuba Power Station on a long term contract. As buyer in terms of the 10 December 2015 deal with OCH it was also at that stage likely to become party, via Optimum, to the Hendrina Coal Supply Agreement enduring until the end of 2018.
105. Tegeta supplied coal to Arnot from coal sourced from Optimum's export coal stockpile. It had purchased the coal in terms of two agreements, each for fixed tonnages of coal, which, however, had fixed termination dates. These contracts had been concluded with the business rescue practitioners of Optimum.⁵³ The last of the two agreements expired on 15 April 2016.
106. Mr Piers Marden confirmed before this committee that:
- "Optimum Coal Mine never supplied coal to Eskom. We supplied coal to Tegeta on a 30-day payment terms. So the prepayment was a transaction between Tegeta and Eskom..."*
107. Umsimbithi operates the Wonderfontein Colliery that supplies coal to Arnot. It also had a short term contract with Eskom that would expire during June 2016.
108. The offers for the increased coal supply encompassed that the short term contracts with Tegeta and Umsimbithi had to be extended. In Tegeta's case that required that a contract for an extension be negotiated and agreed between Eskom and Tegeta and that Tegeta secure the coal with Optimum.
109. I learnt from Ms Nteta that Tegeta had requested a prepayment in respect of the to be extended short term coal supply agreement. It made a case in this regard on the

⁵³ Optimum remained in business rescue until 31 August 2016.

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basis that the prepayment would enable it to meet Arnot's requirements from the coal it could source and secure from Optimum's export coal component. This was discussed with me by Ms Nteta and also Ms Daniels and I had no problem with it - securing an adequate coal supply to Arnot for the immediate future was of critical importance at the time.

110. On 11 April 2011 I received a submission that had been prepared in Ms Nteta's department. I first received it in draft form by email in the morning. Ms Nteta brought a hard copy to me for signature later in the day. She explained to me that it was to serve before the BTC on that day. She had signed it, as had Mr Edwin Mabelane, the acting Chief Procurement Officer. I called Mr Mabelane into the meeting and Ms Nteta, Mr Mabelane and I had a further discussion about the contents thereof. I was quite happy to support the submission and I appended my signature. The signed document is document MMK 27 in the accompanying bundle.⁵⁴

The BTC authorised the prepayment on 11 April 2016 for good reason arising from Arnot's coal supply shortage; I signed the relevant agreement with Tegeta and it was implemented in its terms

111. A R659 million prepayment (R578 million exclusive of VAT) was authorised by the BTC on 11 April 2016 on the basis of, and in accordance with, the 2008 mandate, which was updated in 2014. The approval was on the basis that adequate and appropriate security had to be provided by Tegeta. It eventually did so in the form of a limited guarantee and pledge of the issued shares of Tegeta.

⁵⁴ MMK 27, bundle pp 172 – 175.

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112. The meeting of the BTC on 11 April 2016 took place by teleconference at 21h00. It was set up by Ms Daniels. I received an email in this regard after I had left the office. It is document MMK 28 in the accompanying bundle.⁵⁵ I did not participate in the meeting, which, according to MMK 28, was called at the behest of the chairman of the BTC, then Mr Zithembe Khoza. The relevant minute is document MMK 29 in the accompanying bundle.⁵⁶
113. I was subsequently, on 13 April 2015, required to sign the contract document that had been prepared by Primary Energy. I had a discussion about it with Ms Daniels before signing it. She had, apparently, reviewed and authorised it and I was on the basis of that discussion quite happy to sign it. The agreement is document MMK 30 in the accompanying bundle.⁵⁷
114. A 3.5% discount was negotiated with Tegeta for the 5 month early payment that was agreed.
115. The prepayment to Tegeta was not unique - numerous prepayments to coal suppliers had been made since 2008 in terms of the 2008 mandate.
116. Ms Daniels testified before this Committee that it was quite permissible for Eskom to prepay suppliers for future coal deliveries. Ms Daniels also testified that it was perfectly legitimate given the circumstances to contract with Tegeta to supply coal to Arnot and to prepay Tegeta. I agree.

⁵⁵ MMK 28, bundle pp 176 – 177.

⁵⁶ MMK 29, bundle pp 178 – 181.

⁵⁷ MMK 30, bundle pp 182 – 186.

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117. Other than prepayments for coal Eskom had prepaid other suppliers sums amounting to R3.5 billion during the financial year ending 31 March 2016.⁵⁸
118. Cost plus coal mines also enjoy upfront investment of Eskom capital in mining plant and equipment infrastructure at their mining operations – the future investment requirement as at this time is R38 billion that Eskom must pay upfront to secure future coal supply from cost plus mines.
119. An internal audit verification that Eskom conducted subsequently revealed that the prepayment made to Tegeta was fully recovered by coal delivered by Tegeta by 31 August 2016.
120. The other potentially available option at the time, as opposed to acquiring coal from Tegeta and Umsimbithi for Arnot, would have been to buy in diesel for Eskom's open cycle gas turbines ("OCGTs") to ensure no load shedding during the 2016 winter. This option would have been by far the most expensive option as the cost of the coal acquired from Tegeta was, comparatively speaking, R277/MWh and the cost of diesel for the same generation output would have been R2 245/MWh.
121. A further consideration in this regard was the record of decision issued by NERSA on Eskom's 2013/2014 Revenue Claw Back Application in which the NERSA completely disallowed costs of diesel used to generate electricity as a cost recoverable from the consumer. Consequently, the use of diesel had to be the very last option that Eskom would employ.

⁵⁸ That appears from Eskom's 2016 annual financial statements.

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122. Additional security was derived from the other underlying contracts for coal supply of Tegeta with Eskom – e.g. the Brakfontein contract extending over 10 years, for a value of approximately R4 billion, against which set-off could, potentially, occur if Tegeta defaulted on the extended Arnot short term contract.
123. I supported the recommendation of 11 April 2016 to the Board Tender Committee to prepay Tegeta. I was alive to the board mandate of 2008 and it was urgently necessary to do so to secure coal supplies to Arnot.
124. As I have referred to already, Ms Daniels had reviewed the submission document before I signed it. Ms Daniels also testified before this committee that she approved of the prepayment agreement with Tegeta which I signed on 13 April 2016.

Carte Blanche

125. I was a couple of months later, in mid-2016, requested by Carte Blanche to participate in a filmed interview that would be broadcast at a later date. Carte Blanche is a business that has a contract with the M-Net television channel to produce a programme for broadcasting on a weekly basis. The interview was broadcast on 13 June 2016.
126. I have since the broadcasting of the interview been publicly vilified on a regular, relentless basis and at every turn, not only by Carte Blanche, but by the media of all stripes and also within Eskom and elsewhere, for, supposedly having lied during the interview, on camera, about the prepayment for coal to Tegeta, or, as it has often been presented, to a Gupta-linked company. This vilification has been baseless. I did not lie “on camera” at all.

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127. During the interview Ms Govender asked me whether Eskom had prepaid Optimum (for coal). I responded that it did not. That response was quite correct. Eskom did not prepay Optimum for coal. The agreement that the BTC approved on 11 April 2016 was for prepayment for coal to Tegeta, which was an entity distinct from Optimum, for coal that Tegeta was able to secure and source from Optimum.
128. It would have been irregular for Eskom to have paid Optimum for coal for Arnot Power Station – Eskom had no contract with Optimum for the supply of coal to Arnot.
129. I was surprised and taken aback when the Carte Blanche interviewer, Ms Govender, then produced a document with my signature that she then suggested confirmed that Eskom had prepaid Optimum. She did not during the recorded interview give me opportunity of checking the full text of the document that she produced, showing me only the last page, which did have my signature on it, at arms' length. The document was document MMK 30 in the accompanying bundle.⁵⁹
130. It is quite apparent from MMK 30 that it is by no means an agreement for any prepayments to Optimum, but to Tegeta, in accordance with the BTC's approval of 11 April 2016. In other words, the Carte Blanche interviewer misrepresented the nature and tenor of the document that she showed to me. I did not recognise the document at the time. I could not recollect at all having signed an agreement with Optimum for the supply of and prepayment for coal, but accepted the interviewer's *bona fides* when she put across that I did, believing at the time that it must somehow have slipped my mind.

⁵⁹ MMK 30, bundle pp 182 – 186.

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131. Subsequently, Carte Blanche broadcast bits of the visual parts of the interview many times, but invariably with a voice over stating that I had denied that Eskom had prepaid Tegeta for coal. This maliciously misrepresented what had occurred during the interview, conveying time and again to the viewing public that I had lied and had falsely denied that Eskom had prepaid for coal purchased from Tegeta.
132. I invite the Joint Committee to view the video recording of the 13 June 2016 broadcast (which I am aware is available to the Committee). It will show that Ms Govender asked me during the interview whether Eskom had prepaid Optimum for coal, which I (quite correctly) denied. When she produced the document, showed me where my signature appeared on the last page and then said that it proved the contrary, I, quite clearly, started entertaining doubt about whether my previous denial (that Optimum had been prepaid for coal) was correct, reluctantly conceding that it might not have been. I was, however, not at all asked, nor did I deny, that Eskom had prepaid Tegeta for coal and insofar as Carte Blanche has repeatedly put out broadcasts that I had, it has maliciously committed a fraud on the viewing public at my expense.

CONCLUSION REGARDING THE ABOVE TWO TOPICS

133. The narrative that has been spun by the media and others is that Optimum was driven into business rescue by Eskom with the intention to enable Tegeta to acquire OCH's assets, and that when Tegeta by April 2015 fell short in putting up the money, Eskom made a prepayment to Tegeta to enable it to make payment. Eskom then, moreover, in 2017 knocked down its penalty claim from R2,18 billion to less than R600 million further to assist Tegeta, all as part of an overall strategy to establish Tegeta as a substantial player in the coal mining sector.

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134. As I have made apparent already, I was for a large part not party to the series of events that gave rise to Tegeta's acquiring OCH's assets, but I nevertheless deny that any such overall strategy ever existed. Eskom's instituting its penalty claim against Optimum, which did lead to Glencore's putting OCH and Optimum into business rescue, was an event quite distinct from what happened subsequently. Oakbay/Tegeta as acquirer of, at first, only Optimum's mining operations was introduced and brought to the table by the business rescue practitioners. The proposal of a deal regarding Optimum and/or OCH did not to my knowledge in any manner or way originate from Eskom.
135. I have no knowledge that the prepayment to Tegeta in April 2016 for the emergency coal for Arnot was made at the time that it was, coinciding, apparently, with the time when Tegeta had to pay for acquiring the shares and loan accounts in OCH's subsidiaries (including Optimum), so as to enable or assist Tegeta to stump up the money that it needed to perfect the 10 December 2015 deal made with the business rescue practitioners of OCH and Optimum. I was not party to setting up anything of the sort. From my perspective the prepayment was made to enable Tegeta to secure urgently required coal for Arnot from Optimum. If, however, others within Eskom were party to arrangements to get the money to Tegeta to enable Tegeta to make payment in terms of the 10 December 2015 deal, it would be troubling to me - that was not what had been put across to me at the time.
136. The settling at an even later time of the penalty claim (in respect of which Optimum under Glencore's control had not been willing to pay even a cent), occurred at a figure that was reasonably in the correct ballpark, after it had, apparently, during the build-up to the arbitration proceedings become apparent that a substantial miscalculation of the penalties had occurred originally.

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137. I have been the subject of a still-ongoing trial by media by journalists and others, spearheaded principally by journalists employed in the Tiso Blackstar media group, including some, as identified and referred to in Mr Jacques Pauw's book, *The President's Keepers*, who "have contributed greatly to ending the careers of dedicated civil servants". The public and others in government and elsewhere have been taken in by the many falsehoods and misleading reports published about me, that are, on my reading, part of a frenzied campaign calculated to break Eskom and to discredit the Government. I have been caught in the crossfire and, arising from the simple magnitude of the campaign, have been unable to defend myself against it. It has all been very, very hurtful.

"CORPORATE GOVERNANCE AT ESKOM"

138. Insofar as I have been requested to make a written submission to Eskom regarding "corporate governance at Eskom", I am somewhat at a loss to understand what I am required to provide to the Portfolio Committee. Eskom, as a corporate entity, is governed in terms of detailed written policies and procedures that are, in the usual course, regularly reviewed in three year cycles and subjected to renewed approval at various levels within the organisation. The most important of these is probably Eskom's "Delegation of Authority Policy".

139. Eskom's policies and procedures are carefully crafted documents that have been compiled on the basis of Eskom's institutional knowledge accumulated over many decades, sound business practices and a legal environment constituted of a wide array of regulatory provisions arising in terms of primary and subordinate legislation.

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140. In any organisation, and possibly more so in an organisation of Eskom's size, extent and geographical reach, policies and procedures that seek to achieve sound corporate governance can be undermined and circumvented by dishonest and corrupt officials at various levels within the organisation. Such conduct also occurs at Eskom and has, unfortunately, occurred also at senior levels of management within Eskom. I have referred to that already in the context of the action that I took at the beginning of 2017, after I had become Eskom's interim GCE, pending investigation to move senior officials away from the positions where they were able to carry out their corrupt activities (which then, however, backfired on me, as I have referred to already).
141. I can make no further comment save to state that I have throughout my career strived to comply and enforce compliance with Eskom's policies and procedures and have resisted attempts e.g. by a previous Chairman of the board, Mr Zola Tsotsi, as referred to below, to pursue avenues that do not accord with Eskom's internal rules. I continue to subscribe to best practice corporate governance.

ALLEGATIONS MADE ABOUT ME IN THE PROCEEDINGS BEFORE THE PORTFOLIO COMMITTEE

127. I now wish to address statements made regarding me before the Portfolio Committee by certain individuals that have testified before it which were false or misleading and calculated to damage my reputation.

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Mrs Venete Klein

128. Mrs Venete Klein was appointed director of Eskom during or about November 2014. She resigned during May 2017. Mrs Klein was during her tenure as a director of Eskom at a stage the acting Chairperson of the People and Governance Committee of the Eskom Board.
129. Mrs Klein testified before the Portfolio Committee to the effect that the Eskom Board appointed me as interim group executive despite the board's knowledge that I had "defects", supposedly a history of dictatorial conduct in respect of employees reporting to me by moving them around or having disciplinary action taken against them and that by my moving Messrs Abram Masango and France Hlakudi I "*went too far*". This was followed by the evidence leader suggesting to Mrs Klein that I was a "*Hitler*", to which she agreed.
130. Mrs Klein's statement suggesting that I habitually acted in a dictatorial manner vis-à-vis my subordinates in any period relevant to my appointment as interim Group Chief Executive was untrue and simply made to cast me in a bad light.
131. During my tenure as Group Executive: Technology and Commercial, I was involved in disciplinary proceedings against three executives, being Messrs Sal Laher, Willy Majola and Malesela Sekhasimbe.
132. Mr Sal Laher's position was that of Chief Information Officer. He was well-qualified, competent and a strong personality. He a very good friend of mine within the Eskom employment context.

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133. Mr Tshediso Matona,, at the time the Group Chief Executive had received a letter of complaint from Mr Mongezi Ntsokolo, the Chairman of the Executive Committee Tender Committee (known as EXCOPS), alleging that Mr Laher had not complied with Eskom's prescribed commercial procedures. The letter, dated 13 November 2013, is document MMK 31 in the accompanying bundle.⁶⁰ Mr Matona handed it to me. He asked me to address the complaint and to take it up with Eskom's Industrial Relations Department. I did so and the representatives of that department requested that, pending investigation of the complaint by the department, Mr Laher should be suspended. I on that basis did suspend Mr Laher.
134. Mr Laher in 2015, while still on suspension, requested a separation package that Eskom agreed to. I was at that time also on suspension. After Mr Laher's leaving Eskom he emigrated from South Africa. I regarded his leaving Eskom as very unfortunate and a real loss. However, apart from acting in relation to Mr Ntsokolo's complaint at the request of Mr Matona, I had nothing to do with his leaving Eskom.
135. It has been suggested during the proceedings of the Portfolio Committee that I was party to forcing Mr Laher out of Eskom to enable a contract for information technology systems with an entity referred to as T-Systems, allegedly a Gupta-linked business, to be extended for two years. The suggestion was unsubstantiated and incorrect. I was not party to anything of the like and do not have knowledge that anything of the like occurred.
136. Mr Willy Majola was again a very good friend and associate of mine within our work context. His position was that of a Senior General Manager in Generation. He had been charged for an act of negligence relating to the reliability of information that he

⁶⁰ MMK 31, bundle pp 187 – 188.

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had provided. He was found guilty and the disciplinary enquiry Chairman recommended that he be cautioned and reprimanded. I felt that that sanction was too light in all the circumstances that prevailed at the time, including a complaint from the Minister of Public Enterprises that information emanating from Eskom was often unreliable. After discussion with Mr Majola I applied a more severe sanction of two weeks' suspension of his employment without pay (which is permissible in terms of Eskom's employment policies and procedures). The letter to Mr Majola in that regard, dated 24 February 2017, is document MMK 32 in the accompanying bundle.⁶¹ Mr Majola served his suspension, came back to work and that was that. We continued to work together without difficulty or lingering resentment from his side after his return.

137. In regard to the disciplinary action taken against Mr Sekhasimbe I did play a decisive role.
138. The context was that Mr Zola Tsotsi, then the Chairman of Eskom's Board, came to see me during or about June 2014 to request that I should approve payment of a sum of some R69 million on the basis of invoices that a Japanese company, Sumitomo Corporation, had rendered to Eskom in respect of transformers that it had allegedly manufactured for Eskom that Eskom had not taken delivery of. The issue was that Eskom had never contracted with Sumitomo for the manufacture of the transformers or issued a purchase order for the supply of these. My staff in the Commercial Division was, as a result, not willing to process any payment to Sumitomo.

⁶¹ MMK 189, bundle p 189.

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139. I told Mr Tsotsi quite unequivocally that I could not recommend or approve any payment to Sumitomo for equipment that Eskom did not contract and issue a purchase order for. I conveyed to him that I was not going to intervene and that Sumitomo's request for payment had to be dealt with appropriately in terms of the prescribed procedures. That included, potentially, that the matter be submitted to the relevant tender committee for consideration, which would be the only means through which any informal arrangements that might have been made with Sumitomo could be regularised and any payment could be approved. Mr Tsotsi was not happy with my response.
140. It subsequently came to my attention that, despite the fact that no purchase order had been issued to Sumitomo to manufacture and supply the transformers, Mr Sekhasimbe played an active part to procure that a letter be sent by Mr Tsotsi, in his capacity as Chairman of Eskom's board, to Sumitomo Corporation stating that Eskom would pay for the transformers. Such a letter being issued by the Chairman was irregular for a host of reasons, primarily that no contract existed, no purchase order had been issued and that the letter went out without the matter having been placed before the relevant tender committee to consider in terms of the prescribed procedures and then to approve or reject.
141. In these circumstances I did insist that disciplinary action be taken against Mr Sekhasimbe. He was, as a result, suspended on 2 March 2015. A disciplinary hearing was convened towards the end of 2015 under the chairmanship of an independent chairman, Advocate Afsal Mosal, of the Johannesburg Bar. He found Mr Sekhasimbe guilty of misconduct. Mr Mosal's finding is document MMK 33 in

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the accompanying bundle.⁶² He later recommended Mr Sekhasimbe's dismissal, which recommendation I accepted and effected.

142. The matter, however, had adverse consequences for me because of my resisting Mr Tsotsi's attempts to persuade me to act in a manner that was not compatible with Eskom's policies and procedures. While Mr Sekhasimbe was on suspension, on Sunday 8 March 2015, Mr Tshediso Matona, the CGE, spoke to me. He told me that he had been instructed by the chairman, Mr Tsotsi, that Mr Sekhasimbe had to be "unsuspended". I told Mr Matona that there were good reasons for Mr Sekhasimbe's facing disciplinary proceedings and informed him of what it was all about. I conveyed that I was not going to take action to "unsuspend" Mr Sekhasimbe. Mr Matona then informed me that we would then be suspended. My response was that there was no reason whatsoever for my being suspended and I was, in any event, not going to succumb to any threats in this regard emanating from the (non-executive) Chairman.
143. It was this event that led to my and, probably, Mr Matona's, suspension on 11 March 2015, engineered by Mr Tsotsi, supposedly to allow Dentons to conduct an "*unfettered*" investigation.
144. It is possibly relevant that Mrs Klein's testimony before this Committee was to the effect that Mr Tsotsi, after our suspension, proposed to the Board that Mr Sekhasimbe be "unsuspended" and be appointed as acting GCE. The Board, apparently, refused.

⁶² MMK 33, bundle pp 190 – 207.

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145. Two months later, during the first week of May 2015 and while I was still on suspension, I was called into a meeting with Ms Suzanne Daniels, then recently appointed as Eskom's acting Company Secretary, as well as Mr Zithembe Khoza and Mrs Klein, both directors. I was then, out of the blue, presented with a letter headed "**Proposed Terms for Settlement**" in terms of which I was to agree to my services with Eskom being terminated by my resigning and my then being paid R4 951 410,94 (before tax) in settlement. The letter is document MMK 34 in the accompanying bundle.⁶³ I refused this outright and was then told by Mrs Klein that I would then face investigation by Dentons. My response was that I had done absolutely nothing wrong and I was quite willing to face investigation or misconduct charges or whatever. Ms Klein stated that I should, in any event, go and think about it. Mrs Daniels about a week later arranged a meeting with me at the Protea Hotel in Midrand. It was with the same people as before. I again informed them that I had no intention whatsoever to resign and take the package.
146. I was subsequently on a number of occasions interviewed by representatives of Dentons. No criticism of me was made in any report that they made to Eskom's board and my suspension was lifted and I returned to work on 20 July 2015.
147. Mrs Klein has in the proceedings before the Portfolio Committee attempted to put me in a bad light because she harbours resentment against me as a result of the fact that I had refused to assist her husband, Mr Harold Klein, to procure a project management contract for his company in respect of the conversion of Eskom's diesel driven OCGT generation plants to gas driven plants.

⁶³ MMK34, bundle p 208.

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148. Mrs Klein during the second week of January 2017, after I had been appointed interim GCE, phoned me and requested that I should meet with her at her home in Mooikloof, Pretoria. She stated that she had a private issue that she wanted to discuss with me. I complied with the request and met with Mrs Klein at her home on Saturday, 14 January 2017. Her husband participated in the meeting. They informed me that they had a “problem” and Mrs Klein said that she needed me to solve it. They explained the “problem” as being that Dr Klein’s company had tendered for project management contracts on the conversion of the OCGT units to gas project, but was not getting the jobs. Mrs Klein said that she had taken her Absa pension money and had invested it in her husband’s business and he now could not get Eskom contracts due to her being a director of Eskom, while his competition was getting these irregularly. Mrs Klein stated that she wanted me to do something about it. I was surprised by what she put across because it was contrary to every Eskom rule regarding conflicts of interest. I informed her and husband that I had no knowledge of the intricacies of the conversion projects at that time or of any irregularities in relation to the awarding of tenders in respect thereof. I told her that I would, however, look into the matter.
149. I then phoned Dr Klein on, I believe, Monday, 16 January 2017, and arranged a meeting with him. I, for purposes of the meeting, called in Eskom’s Chief Audit Officer, as well as members of the OCGT gas conversion project team. I introduced Mr Klein to them when he arrived and asked them to hear him out regarding his complaints. I then stepped out of the meeting.
150. Mrs Klein’s attitude towards me changed from that time. She must have expected that I would cause the contracts that had allegedly been “irregularly” awarded to be channelled to her husband.

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151. Mrs Klein's stating that in moving Messrs Masango and Hlakudi I "went too far" is telling. As I have referred to already, my attempts to move corrupt officials who were harming Eskom in relation to the Medupi and Kusile projects from their positions was the precipitating turn of events that caused that I was taken out of play as Eskom's interim GCE from mid May to the end of December 2017 and that I was eventually charged with misconduct on charges in respect of which there never was even a *prima facie* case.

MS SUZANNE DANIELS

152. Ms Suzanne Daniels was before my suspension on 11 March 2015 a Senior Manager in my office (in my capacity as Group Executive: Technology and Commercial) responsible for administration and legal matters in the Commercial Division.
153. Mr Tsotsi resigned as Chairman of Eskom's board shortly after I and my three colleagues were suspended in March 2015. Ms Daniels was then, while I was still on suspension, moved to the Chairman's office to serve in the capacity as Eskom's acting Company Secretary and later its acting Corporate Counsel, i.e. head of the legal department.
154. Ms Daniels was, as I have referred to already, regarded as an expert in relation to the various coal supply agreements in terms of which Eskom procured thermal coal for electricity generation at its coal fired generation plants. She was intimately involved as a draftsman of documentation, adviser on strategy and participant in negotiations on many contracts, also the Hendrina Coal Supply Agreement.

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155. Ms Daniels played an instrumental role to instigate and promote the process that led to my first being put on leave in May 2017 and then being suspended in August 2017, pending the disciplinary hearing that eventually took place.
156. Ms Daniels testified to the Portfolio Committee that I played a role in procuring payment to Trillian Management Consulting (“Trillian”) of millions of Rands in circumstances where Eskom had no contract with Trillian and the payments were irregular, even referring to me as a “thief” in that context. Her statements to that effect, which were also contained in a “report” that she submitted to the Minister of Public Enterprises⁶⁴, were, however, lies. The truth is to the very contrary – it was Ms Daniels who was pivotally involved in procuring payment directly to Trillian of R460 million in circumstances where I, in my capacity as interim CGE, had on more than one occasion declined to approve such payment.
157. Trillian was a so-called “BEE partner” of McKinsey & Company South Africa (“McKinsey”). Eskom’s relationship with McKinsey dates back to 2011 arising from Eskom’s instituting the so-called “Top Engineer” programme. That programme had as its objective to train Eskom engineers to enable them to carry out functions, as employees of Eskom, that would often be contracted out to consulting engineering firms at high cost.
158. McKinsey has before this Committee been described as “a *global management consulting firm committed to helping institutions in the private, public, and social sectors achieve lasting success*”. It had apparently established its South African office in 1995 and was subsequently able to establish a reputation in the public and private sectors in South Africa as a sound business and management consultant.

⁶⁴ Sent to the Minister without Eskom’s Board’s consent or authority.

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159. I am not aware of how McKinsey was originally introduced to Eskom. I can say, though, that the “Top Engineer” programme has been very helpful to Eskom to develop the expertise of its engineers. It continues to this day, still with intellectual property that McKinsey had provided, albeit that McKinsey itself is no longer a consultant to Eskom.
160. BTC, Eskom’s Board Tender Committee, on 6 July 2015 approved that Eskom engage McKinsey as consultant in relation to four further areas of its operations, being procurement, coal purchases, generation and claims management, that Dentons had identified as areas of concern. I was not at all involved in the processes that gave rise to the approval as I was on suspension at the time – I had no input in the whole process. The understanding that I achieved later was that the contract then concluded with McKinsey had been contracted on a so-called “risk basis”, i.e. on the basis that McKinsey would be remunerated on a percentage basis calculated with reference to proven cost savings, but subject to agreed maxima.
161. A further contract was concluded with McKinsey on 10 September 2015. The contract was still targeted at the areas in respect of which the BTC had given its approval on 6 July 2015, but was of a more urgent and immediate nature. McKinsey was in terms thereof engaged to assist to resolve the cashflow problems that had arisen for Eskom, to assist to design and develop a strategy within the regulatory environment that Eskom faced so as to enable Eskom to operate within ever more constrained means and to assist to update the “cost to completion” business cases for the Medupi and Kusile projects. The contract was for a fixed price of R101 million running over an eight month period and was approved as a “Sole Source Procurement” arising from McKinsey’s proven expertise as a consultant and its service delivery in the past. I, along with Eskom’s Chief Financial

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Officer, Mr Anoj Singh, recommended the engagement of McKinsey on this basis and it served before and was approved by the BTC on that basis. I am not aware that any criticism has been raised about this contract.

162. I do not know how Trillian got involved with McKinsey. However, representatives of Trillian, acting on McKinsey's behalf, started participating in functions executed by McKinsey as from some time at the beginning of 2016.
163. Trillian apparently submitted an invoice for R30,6 million directly to Eskom early in February 2016. I was not aware of it at the time, but became aware on 10 February 2016 during a meeting that I had with Ms Bianca Goodson, then Trillian's CEO.
164. I do not know exactly how the meeting was arranged. Ms Goodson submission to the Portfolio Committee stated that it had been arranged by what she referred to as the "executive assistant" of a Mr Stanley Shane. That is possible, but I cannot confirm it.
165. Ms Goodson utilised the meeting as an opportunity to convey, in a rather emotional manner, that her perception was that McKinsey was side-lining Trillian in relation to the consultancy functions that it was supposed to execute on the McKinsey contracts. I explained to her, kindly, that it was not a matter that I could concern myself with – even if her complaints were justified, it was a matter between McKinsey and Trillian. She did also request that Eskom should pay the invoice that had been submitted directly to Trillian and also that I should agree that future invoices be submitted to Eskom directly and be paid directly to Trillian.

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166. I dismissed these suggestions out of hand. To quote what Ms Goodson stated in her submission to the portfolio committee:

“3.18.7. When we spoke about TMC’s direct invoicing to Eskom [as I had been instructed to do], Matshela responded that he understood TMC’s request to invoice directly, but could not support it – simply put, there were no contracts in place between Eskom and TMC.”

167. Approximately a year later, during February 2017, I was again confronted with a request that direct payment be made to Trillian, this time of the sum of R460 million. This occurred in terms of a memorandum, dated 17 February 2017, supported, among others, by Ms Daniels, that recommended and requested that I approve direct payment of the said sum to “*McKinsey & Company and the BBBEE partner*”. The document is document MMK 35 in the accompanying bundle.⁶⁵ I declined to sign off on the document for the same reason as before – I could not authorise payment to an entity with whom Eskom had no contract.
168. I was not involved in the approval of the now controversial payments that Eskom made to Trillian. I did not approve any such payments and first learnt that direct payment had been made to Trillian through the press.
169. The long and the short of it is that Ms Daniels’ attributing responsibility to me for Eskom’s payments to Trillian is pure fabrication. I had at the very outset, when Trillian became involved with McKinsey at the beginning of 2016, refused that Trillian’s invoices be paid by Eskom and I again declined to sanction such payments when MMK 35 was submitted to me for approval. I am not aware of how exactly the payments to Trillian were authorised or processed.

⁶⁵ MMK 35, bundle pp 209 – 210.

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MATSHELA MOSES KOKO

21 January 2018
Johannesburg



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

AFFIDAVIT

I, the undersigned

DANIEL LESEJA MAROKANE

Do hereby state under oath in English:

1.

I am an adult male with ID 7106175369089. I am employed as a Group Executive working at Tongaat Hulett with work address 1 Amanzimnyama Hill Road, Tongaat, Durban.

My contact details are:

Office: 032 439 4301

Cell: 082 401 0226

E-mail: dan.marokane@gmail.com

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

2.

My qualifications include:

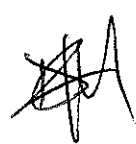
- 2.1. B.Sc Chemical Engineering
- 2.2. M.Sc. Petroleum Engineering
- 2.3. MBA

3.

I hereby confirm that following my suspension from the position of Group Executive – Group Capital at Eskom on the 12 March 2015, I reverted to the board, via the attached letter. This letter, addressed to the Chairman of the Board, Mr Zola Tsotsi, and copied to the company secretary Mr Malesela Phukubye, was never acknowledged nor responded to. Subsequent follow up letters from my lawyers to Eskom board also suffered the same fate. As time progressed, it became clear to me that the board was deliberately frustrating me. It was well into the month of May 2015, around the 20th of the month, that I called the interim Chairman of the board, Dr Ben Ngubane, in the evening to indicate to him that I had come to the conclusion that I could no longer trust the board, and as such I wanted us to discuss how to separate. By the following morning, Dr Ngubane had already assigned two board members, Messrs Romeo Khumalo and Zithembe Khoza to have separation discussions with me. We concluded the separation discussions at the end of May 2015 and I left the employ of the company effective 1st of June 2015.

4.

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



1. Q. Do you know and understand the contents of this statement?
2. Q. Do you have any objections in taking the prescribed oath?
3. Q. Do you consider the prescribed oath as binding in your conscience?

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



Signature of Deponent

01 MARCH 2020

Date

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Sandton on the 1st day of March 2020 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

TUMISANG REGINALD KGABOESELE
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Dan Marokane

Email address: dan.marokane@gmail.com

18 March 2015

To: Eskom Holdings SOC Ltd

Att: Mr Zola Tsotsi
(Chairman of the Board)
Email address: zola.tsotsi@eskom.co.za

Att: People & Governance Committee of the Board
C/o Company Secretary
Email address: malesela.phukubye@eskom.co.za

Dear Mr Tsotsi

1. I refer to your letter dated 12 March 2015 in which the reference reads "*notice of suspension as Executive; Group Capital*" which letter was (1) signed by Mr Zola Tsotsi, the Chairman of Eskom Holdings SOC Limited and (2) handed to me for my signature on 12 March 2015 at 08h45. I shall henceforth refer to this letter as "*the suspension letter*".
2. At the time you handed same to me (*at approximately 08h45 on the morning of 12 March 2015*) I did not have sufficient opportunity to read and evaluate same, although I did notice that paragraph 5 of the letter which read as follows :-

"5 I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly",

was factually incorrect. I pointed this out to you and you agreed to delete the whole of the paragraph and drew a line through same. You and I then initialled that amendment.

3. At the same time certain words appearing in paragraph 6 were also deleted; for the record those words are the following :-

"... and after having considered your representations, ...",

4. Now that I have had an opportunity of (1) studying the letter closely, (2) considering the somewhat limited information made available to me at the time the letter was presented to me and (3) considering the media reports relating to my and other of my colleagues' suspensions, it is clear that the letter was prepared prior to our meeting with no contemplation of any influence from engagement with me. For context purposes it bears mention that whilst on leave the previous day I was telephoned at 21h00 on 11 March 2015 with the request that I meet the Board later that evening which proved difficult and we scheduled a meeting at 08h00 the following morning.





5. Since then the media (*including very importantly the printed media*) has reported extensively on my suspension and the simultaneous suspension of three of my colleagues namely :-

- a. Tshediso Matona (*Eskom's Chief Executive*);
- b. Tsholofelo Molefe (*Eskom's Finance Executive*);
- c. Matshela Koko (*Eskom's Commercial and Technology Executive*),

who I shall henceforth refer to the above-named as "*the suspended executives*".

6. Whilst I refer hereunder to the suspended executives as a group and for ease of reference, I must make it clear that I do not speak on their behalf. It is simply a matter of convenience in the context of this letter to refer to the four of us together where the context requires same.
7. The explanation that Eskom has tendered to the outside world in respect of the suspension of the suspended executives is that – in summary – whilst there is no evidence or suggestion of any wrongdoing by the suspended executives, it was considered necessary by the Board to essentially remove them from the Eskom environment so that the inquiry that the Eskom Board had resolved on 11 March 2015 to establish could take place with unfettered access to Eskom. In the suspension letter it refers to the "importance of it being free of any influence from leadership in the organisation" – from which I conclude that the "leadership" is intended to refer to the suspended executives.
8. Pursuant to that determination the Board considered it necessary to remove the suspended executives from the environment so that – at least as asserted by Eskom – the inquiry could take place with unfettered access to Eskom. You, Mr Chairman, are quoted in the press as saying "*there is nothing sinister happening. This is a fact finding inquiry ... which will last for three months.*" You are also quoted as saying that "*to ensure that this process is as transparent and uninhibited as possible ... the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this inquiry.*"
9. That inquiry is to establish and enquire into the state of Eskom's business focusing on (1) generation capacity supply, (2) the delays in the new build programme and (3) the current cash flow / liquidity situation so that the Board can have a benchmark of where the business is at.
10. That is the background to my suspension but when one has regard to the suspension letter which (1) was prepared on 11 March 2015 in anticipation of it being delivered to me at or shortly after 21h00 that evening and (2) against the background of the Board's decision as referred to above and Eskom's explanation to the outside world, also referred to above, the letter, besides being entirely incompatible with the (*purported*) rationale / logic / motivation for my suspension, also has a tone, structure and content that is, sadly, as best I can make out and based on representations made by you to me and Eskom to the outside world, more indicative of the traditional or type of suspension letter handed to an employee (*irrespective as to the seniority or status of that employee*) against whom there is (1) at very least the suspicion of wrongdoing and (2) a pending or contemplated disciplinary hearing.

11. The letter furthermore contains a huge number of factual assertions in the suspension letter which are objectively speaking inaccurate. So for example :-
- a. we did not discuss the matters referred to in paragraph 1; I was simply told of the Board's decision and was not given an opportunity to engage in any form of discussion that could have a bearing on the decision;
 - b. I was not afforded an opportunity as alleged in paragraph 2;
 - c. the advices referred to in paragraph 3 were presented to me as a *fait accompli*;
 - d. the concerns referred to in paragraph 4 were also presented to me as Board's decision;
 - e. paragraphs 5 and 6 are also factually incorrect although I only picked up paragraph 5 and part of paragraph 6 during the short meeting on Thursday, 12 March 2015.
12. The majority of the content of the suspension letter is most inappropriate if the suspension was for the purpose as publically disclosed by Eskom.
13. On the contrary the suspension letter makes no effort whatsoever to be a true and fair reflection of the publically stated purpose of my suspension but rather is indicative of a circumstance in which an employee (*in this instance myself*) is suspended pending an inquiry into alleged wrongdoing. However, whatever Eskom's motive may be, I have been suspended and subjected to an unfair labour practice and I reserve my rights.
14. Both the publically stated reason for my (*and indeed all the suspended executives*) suspension and that stated in paragraph 1 of the suspension letter implies that there will be an attempt by me to unlawfully interfere with the inquiry's business. There can be no other rational or objective explanation – however illogical that reasoning may be. In this regard no explanation has been tendered to me as to what it is I might do – or not do – that would improperly or unlawfully influence the inquiry.
15. I would remind you that I was appointed to the role of Group Executive – Group Capital from 1 November 2014 after holding the acting position for a period of a year. I was asked to act in that position after the departure of the then responsible executive, Paul O'Flaherty in August 2013 which followed the announcement that the target date of December 2013 for bringing the first unit of Medupi Power Station online was not going to be met due to slow project execution.
16. Within a period of a month I reverted to the Board Committee that oversees Mega Projects and clearly articulated three areas that needed to be resolved in order to get the projects including Medupi, back on track. These areas were:-
- a. the resolution of the boiler welding defects;
 - b. the resolution of the control and instrumentation system non-compliance;
and

- c. the creation of a stable environment for a productive labour force.

17. I developed a plan to address the three challenges above as follows :-

- a. by increasing the collaboration with the contractors to identify mutually solved technical challenges in a proactive manner. Both welding, control and instrumentation challenges were resolved through joint problem solving teams beyond the normal contractual arrangements;
- b. by further cascading the implementation of new organised labour / contractors to create site stability and mechanisms for early discontentment identification and resolution. The sites have now been stable for one of the longest duration intervals;
- c. by improving transparency on projects – I made Medupi achieve its first integrated project schedule since the project was started in 2007. The schedule integrated all risks to create transparency. The Kusile schedule which was already in existence was boosted with realistic integration of risk;
- d. by using the integrated project schedules to develop a new estimate of costs to completion for the project so that the business can understand what the cost increases will be and what the main drivers of these escalations were.

18. Having taken all the above to the Board and secured their support, I proceeded to develop mitigation plans to ensure the containment of cost increases by focusing on improvement of productivity at sites, integrated planning with contractors and finding solutions to commercial disputes that had been tabled.

19. I ensured that we lift the standard of project execution across the business by making all projects learn from challenges encountered in other projects.

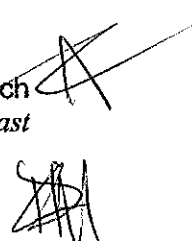
20. I set up the appropriate organisational structures to support these initiatives and created a central contract management unit to standardise our approach to contractors.

21. I implemented performance management to include lower levels to ensure that everyone is doing what is required and prioritise where necessary.

22. All of the above elements were identified as crucial by a number of independent reviews conducted by external parties which reviews were done on behalf of the Board. During my tenure as Group Capital Executive I created meaningful and tangible progress in the execution of various projects which saw, in particular, the delivery of the first unit of Medupi - achieved one week prior to my suspension.

23. It is for *inter alia* the above reasons that I am of the opinion that I will add valuable insight in assisting the inquiry to establish and identify where Eskom is with regard to various project delays and cost overruns. After all, I was specifically engaged to resolve these problems which were pre-existing and pre-dated my appointment and were obviously not of my making.

24. Paragraph 9 of the suspension letter provides *inter alia* that I am not to approach "any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining your prior permission."

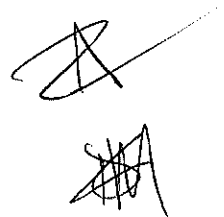


25. This is so widely worded - would you please re-visit paragraph 9 and deal more constructively therewith rather than leave the matter with its current vague and generalised terminology. .
26. If the Board has an absolutely genuine desire to (1) get to the heart of all of Eskom's problems, (2) understand how those problems came about, (3) and how they were over time handled (*and mishandled*) and (4) what Eskom needs to do in order to overcome its challenges, I am willing to co-operate with the independent investigation on the basis that I will be allowed to advance and share my genuinely held open and frank views without fear of retribution or any other adverse consequence to me, my professional integrity, my reputation in the marketplace and importantly my career in Eskom and my anticipated and indeed hoped for career path within Eskom.

Yours faithfully



Dan Marokane

Two handwritten signatures are located in the bottom right corner of the page. The top signature is a stylized, cursive mark, and the bottom signature is a more complex, scribbled mark.

Dan Marokane

Email address: dan.marokane@gmail.com

18 March 2015

To: Eskom Holdings SOC Ltd

Att: Mr Zola Tsotsi
(Chairman of the Board)
Email address: zola.tsotsi@eskom.co.za

Att: People & Governance Committee of the Board
C/o Company Secretary
Email address: malesela.phukubye@eskom.co.za

Dear Mr Tsotsi

1. I refer to your letter dated 12 March 2015 in which the reference reads "*notice of suspension as Executive; Group Capital*" which letter was (1) signed by Mr Zola Tsotsi, the Chairman of Eskom Holdings SOC Limited and (2) handed to me for my signature on 12 March 2015 at 08h45. I shall henceforth refer to this letter as "*the suspension letter*".
2. At the time you handed same to me (*at approximately 08h45 on the morning of 12 March 2015*) I did not have sufficient opportunity to read and evaluate same, although I did notice that paragraph 5 of the letter which read as follows :-

"5 I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly",

was factually incorrect. I pointed this out to you and you agreed to delete the whole of the paragraph and drew a line through same. You and I then initialled that amendment.
3. At the same time certain words appearing in paragraph 6 were also deleted; for the record those words are the following :-

"... and after having considered your representations, ...",
4. Now that I have had an opportunity of (1) studying the letter closely, (2) considering the somewhat limited information made available to me at the time the letter was presented to me and (3) considering the media reports relating to my and other of my colleagues' suspensions, it is clear that the letter was prepared prior to our meeting with no contemplation of any influence from engagement with me. For context purposes it bears mention that whilst on leave the previous day I was telephoned at 21h00 on 11 March 2015 with the request that I meet the Board later that evening which proved difficult and we scheduled a meeting at 08h00 the following morning.

5. Since then the media (*including very importantly the printed media*) has reported extensively on my suspension and the simultaneous suspension of three of my colleagues namely :-
 - a. Tshediso Matona (*Eskom's Chief Executive*);
 - b. Tsholofelo Molefe (*Eskom's Finance Executive*);
 - c. Matshela Koko (*Eskom's Commercial and Technology Executive*),who I shall henceforth refer to the above-named as "*the suspended executives*".
6. Whilst I refer hereunder to the suspended executives as a group and for ease of reference, I must make it clear that I do not speak on their behalf. It is simply a matter of convenience in the context of this letter to refer to the four of us together where the context requires same.
7. The explanation that Eskom has tendered to the outside world in respect of the suspension of the suspended executives is that – in summary – whilst there is no evidence or suggestion of any wrongdoing by the suspended executives, it was considered necessary by the Board to essentially remove them from the Eskom environment so that the inquiry that the Eskom Board had resolved on 11 March 2015 to establish could take place with unfettered access to Eskom. In the suspension letter it refers to the "importance of it being free of any influence from leadership in the organisation" – from which I conclude that the "leadership" is intended to refer to the suspended executives.
8. Pursuant to that determination the Board considered it necessary to remove the suspended executives from the environment so that – at least as asserted by Eskom – the inquiry could take place with unfettered access to Eskom. You, Mr Chairman, are quoted in the press as saying "*there is nothing sinister happening. This is a fact finding inquiry ... which will last for three months.*" You are also quoted as saying that "*to ensure that this process is as transparent and uninhibited as possible ... the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this inquiry.*"
9. That inquiry is to establish and enquire into the state of Eskom's business focusing on (1) generation capacity supply, (2) the delays in the new build programme and (3) the current cash flow / liquidity situation so that the Board can have a benchmark of where the business is at.
10. That is the background to my suspension but when one has regard to the suspension letter which (1) was prepared on 11 March 2015 in anticipation of it being delivered to me at or shortly after 21h00 that evening and (2) against the background of the Board's decision as referred to above and Eskom's explanation to the outside world, also referred to above, the letter, besides being entirely incompatible with the (*purported*) rationale / logic / motivation for my suspension, also has a tone, structure and content that is, sadly, as best I can make out and based on representations made by you to me and Eskom to the outside world, more indicative of the traditional or type of suspension letter handed to an employee (*irrespective as to the seniority or status of that employee*) against whom there is (1) at very least the suspicion of wrongdoing and (2) a pending or contemplated disciplinary hearing.

11. The letter furthermore contains a huge number of factual assertions in the suspension letter which are objectively speaking inaccurate. So for example :-
- a. we did not discuss the matters referred to in paragraph 1; I was simply told of the Board's decision and was not given an opportunity to engage in any form of discussion that could have a bearing on the decision;
 - b. I was not afforded an opportunity as alleged in paragraph 2;
 - c. the advices referred to in paragraph 3 were presented to me as a *fait accompli*;
 - d. the concerns referred to in paragraph 4 were also presented to me as Board's decision;
 - e. paragraphs 5 and 6 are also factually incorrect although I only picked up paragraph 5 and part of paragraph 6 during the short meeting on Thursday, 12 March 2015.
12. The majority of the content of the suspension letter is most inappropriate if the suspension was for the purpose as publically disclosed by Eskom.
13. On the contrary the suspension letter makes no effort whatsoever to be a true and fair reflection of the publically stated purpose of my suspension but rather is indicative of a circumstance in which an employee (*in this instance myself*) is suspended pending an inquiry into alleged wrongdoing. However, whatever Eskom's motive may be, I have been suspended and subjected to an unfair labour practice and I reserve my rights.
14. Both the publically stated reason for my (*and indeed all the suspended executives*) suspension and that stated in paragraph 1 of the suspension letter implies that there will be an attempt by me to unlawfully interfere with the inquiry's business. There can be no other rational or objective explanation – however illogical that reasoning may be. In this regard no explanation has been tendered to me as to what it is I might do – or not do – that would improperly or unlawfully influence the inquiry.
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- c. the creation of a stable environment for a productive labour force.

17. I developed a plan to address the three challenges above as follows :-

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18. Having taken all the above to the Board and secured their support, I proceeded to develop mitigation plans to ensure the containment of cost increases by focusing on improvement of productivity at sites, integrated planning with contractors and finding solutions to commercial disputes that had been tabled.
19. I ensured that we lift the standard of project execution across the business by making all projects learn from challenges encountered in other projects.
20. I set up the appropriate organisational structures to support these initiatives and created a central contract management unit to standardise our approach to contractors.
21. I implemented performance management to include lower levels to ensure that everyone is doing what is required and prioritise where necessary.
22. All of the above elements were identified as crucial by a number of independent reviews conducted by external parties which reviews were done on behalf of the Board. During my tenure as Group Capital Executive I created meaningful and tangible progress in the execution of various projects which saw, in particular, the delivery of the first unit of Medupi - achieved one week prior to my suspension.
23. It is for *inter alia* the above reasons that I am of the opinion that I will add valuable insight in assisting the inquiry to establish and identify where Eskom is with regard to various project delays and cost overruns. After all, I was specifically engaged to resolve these problems which were pre-existing and pre-dated my appointment and were obviously not of my making.
24. Paragraph 9 of the suspension letter provides *inter alia* that I am not to approach "any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining your prior permission."

25. This is so widely worded - would you please re-visit paragraph 9 and deal more constructively therewith rather than leave the matter with its current vague and generalised terminology. .
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Yours faithfully



Dan Marokane



WRITTEN SUBMISSION OF MR MATSHELA MOSES KOKO

I, the undersigned,

MATSHELA MOSES KOKO

hereby state that:

INTRODUCTION

1. I was an employee of Eskom Holdings SOC Limited ("Eskom") of 23 years standing. I was employed by Eskom since the beginning of 1996, and even before that, while I was an engineering student, I worked for Eskom during university vacations. I had with the assistance of Eskom obtained a place at the University of Cape Town to study engineering, for which Eskom provided financial assistance.
2. I qualified with a B.Sc. degree in chemical engineering at the University of Cape Town at the end of 1995. I additionally have a Master of Business Leadership (MBL) degree from the University of South Africa, conferred in 2016.
3. I held the position of Group Executive: Generation, i.e. head of Eskom's Generation Division. The Generation Division comprises Eskom's electricity generation assets. I also held the position of Group Executive: Generation and Technology, i.e. the head of Eskom's Generation and Technology Divisions which was restructured, and I was Generation Division only. I first became responsible for Generation Division in October 2015, when it was added to my responsibilities as head of Technology.

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4. To provide context to what I refer to below I provide a brief synopsis of material events relating to the positions that I held in recent times, and to whom I reported from time to time.
5. I was appointed to the position of Group Executive: Generation and Technology in October 2015. The Technology Division provides engineering designs and support for the Generation, Transmission and Distribution Divisions. My previous position was that of Group Executive: Technology and Commercial to which I was first appointed in an acting capacity when the Technology and Commercial Divisions merged in April 2014. I was permanently appointed to the post in November 2014. Before that, from 2010, I held appointment as a Divisional Executive: Technology. During the period from 20 July 2015 to the end of September 2015 I was responsible for Technology only, Commercial having been assigned to the Chief Financial Officer. Generation was added to my portfolio with effect from 1 October 2015.
6. I was appointed as Eskom's interim Group Chief Executive ("Group Chief Executive" or "GCE") during early December 2016 arising from the resignation of Mr Brian Molefe. Mr Molefe left Eskom in November 2016. Eskom's board of directors ("Eskom's Board" or "the Board") then appointed me in December as interim GCE pending a recruitment process for the eventual appointment of a new GCE.
7. I was during 2017, on 16 May 2017, placed on special leave pending the outcome of an investigation that had been undertaken at the behest of Eskom's Board by attorneys Cliffe Dekker Hofmeyr ("CDH"), acting in conjunction with the forensic investigation arm of auditors' firm Nkonki Inc. ("Nkonki"), to investigate the veracity of newspaper reports that alleged that I had, arising from interests that my wife's daughter from a previous marriage had in March 2016 unbeknown to me obtained in an Eskom contractor, Impulse International (Pty) Limited, acted in breach of the

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fiduciary duties that I owed Eskom and Eskom's policies and procedures. I was subsequently, on 1 August 2017, placed on suspension pending finalisation of disciplinary proceedings that Eskom's Board then decided had to be instituted against me. This occurred despite the findings of the investigators in terms of their report dated 13 June 2017 that:

"There is no evidence that supported and/or indicated that Mr Koko committed an act which undermined the internal control system of Eskom and no action in terms of Section 15(1) of the Public Finance Management Act was therefore required from the accounting authority relevant to the conflict of interest matter", which was supported by a memorandum to similar effect, dated 14 June 2017, from the attorneys, CDH.

8. Eskom's pursuing the disciplinary enquiry despite CDH/Nkonki's findings apparently arose from a report made to Eskom's Board by Mr Khulani Qoma, the erstwhile General Manager in the office of the Chairman of Eskom's Board, on 14 June 2017 to the effect, among other things, that *"(t)he findings of the investigation on the alleged conflict of interest relating to the Impulse International should be viewed within the prisms of the public sentiments as opposed to solely focusing on the legal rationale"* and that I should be dismissed regardless, in conjunction with a memorandum subsequently obtained from a senior advocate of the Johannesburg Bar that was to the effect that, despite the findings of CDH/Nkonki that had exonerated me, I should answer certain questions in the forum of a disciplinary enquiry¹.

9. The disciplinary proceedings commenced on 18 October 2017 before Adv. M. Mthombeni, a member of the Johannesburg Bar, and ran their course on and off until

¹ As opposed to simply being given the opportunity to provide explanations in respect of the questions that the advocate had posed, whether to Eskom's Board, CDH/Nkonki, or whomever.

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the beginning of December 2017. It became apparent during the proceedings that my issuing instructions early in 2017, after I had been appointed interim GCE, that corrupt senior officials charged with overall responsibility for the Medupi and Kusile projects be moved, pending investigation, from their posts to posts where they would no longer be able to continue with their harmful conduct, was the precipitating turn of events that eventually culminated in my being subjected to disciplinary proceedings. It led to information about my having declared the interests of my stepdaughter in Impulse International (Pty) Ltd in terms of Eskom's policies and procedures being fed to the Tiso Blackstar group of newspapers by the very corrupt officials against whom I had acted. They had realised that I was coming for them and connived with the journalists who then launched a campaign of vilification of me based on falsehoods and distortions of the truth, which is continuing even today. Ironically, charges for misconduct were even added during the disciplinary process relating to the action that I had taken to stop the corruption at Medupi and Kusile. These arose from alleged "whistleblower reports" ² that had been made by the corrupt officials themselves, who then, eventually, refused to testify before Mr Mthombeni.

10. I was on 29 December 2017 supplied with Mr Mthombeni's findings (that had already been issued on 14 December 2017). I was in terms of these found not guilty on all the charges that Eskom had chosen to prefer against me. ³ My suspension was at

² Mr Abram Masango testified at the Portfolio Committee on Public Enterprise Oversight Enquiry into the allegations of governance failures and state capture at Eskom that he was the originator of the "whistleblower reports". I had moved Mr Masango from his position of Group Executive of Group Capital because I had evidence in my possession that he was implicated in corruption activities at Kusile Power Station. Mr Masango was ultimately arrested with four others on or about 18 December 2019. They are facing charges of fraud and corruption relating to Kusile Power Station contracts and are currently out on R300 000 bail each.

³ Which was not surprising as there was, despite the relentless continuation of the vicious trial by media campaign against me in, principally, publications of the Tiso Blackstar media group on the basis of false and misleading reporting, never a prima facie case against me for misconduct, as put across to Eskom's Board already in June 2017, as referred to above.

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the same time lifted and I returned to work on 8 January 2017 (albeit in the interim restructured) position of Group Executive: Generation.

11. The erstwhile Chairman of Eskom, Mr Jabu Mabuza testified in this Commission that the disciplinary hearing that vindicated me was a “sham”. He did to provide the evidence to support this allegation. Eskom made the same allegation at the Labour Court ⁴ before Justice GN Moshwana. In his judgment Justice GN Moshwana wrote:

“For reasons better known to the media and later the respondent (Eskom), the disciplinary hearing (that vindicated Mr Koko) was labelled a sham”.

Once again, Eskom did not provide the evidence in Court that is necessary to support the allegation of a “sham” disciplinary hearing.

12. On 20 January 2018, the Presidency released a Government Statement announcing the new Board of Eskom. In the same statement Government directed the new Board, which was not yet in office to:

“immediately remove all Eskom executives who are facing allegations of serious corruption and other acts of impropriety, including Mr Matshela Koko...”

13. On or around 24 January 2018 Mr Malusi Gigaba who was then Minister of Finance was interviewed on SABC in Davos at the World Economic Forum. He said following.

“The Cabinet decision was that Mr Koko must be dismissed by the new Board. The Board has not met. We will allow it in terms of its corporate governance to have its

⁴ Koko vs Eskom Labour Court 2018-J200-18 Par [5]

(first) meeting and to look at the process and deal with the issues as they need to deal with them. It is quite urgent..."

14. Government was directing the Board of Eskom as newly constituted to go find reasons to dismiss me. Government was overreaching and I considered its directive to the new Board of Eskom as unlawful and unconstitutional.
15. I was not facing "allegations of serious corruption and other acts of impropriety". There were allegations of conflict of interest relating to my stepdaughter's shareholding in an entity called Impulse International (Pty) Ltd. For that I was charged, and I was vindicated.
16. On 24 January 2018, I was summoned to a meeting with Mr Phakamani Hadebe, then the newly appointed Acting Group Chief Executive of Eskom. I had not met Mr Hadebe before. The meeting took place on 25 January 2018 at Megawatt Park. In this meeting, and in no uncertain terms, I was told that my presence at Eskom had become undesirable and if I were to return it would be detrimental to Eskom. I was informed that the lenders had expressed concern about my presence at Eskom. It was mentioned to me that the lenders viewed me as a stumbling block to the efforts of Eskom to clean up acts of maladministration and corruption.
17. Mr Hadebe instructed me to resign by 10h00 the following day failing which I would be terminated. I refused to resign and in anticipation of being dismissed by 10h00 on 26 January 2018, I approached the Labour Court for an interdict.
18. Eskom was interdicted and restrained on an interim basis from unlawfully terminating my contract of employment based on a directive issued by the Government in terms

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of a statement that the government put out on Sunday, 21 January 2018, to the effect that:

"The board is directed to immediately remove all Eskom executives who are facing allegations of serious corruption and other acts of impropriety, including Mr Matshela Koko..."

19. The matter was postponed for a hearing on 6 February 2018 at 10h00. Upon the interim interdict, Eskom decided to embark upon a disciplinary process on the grounds of misconduct. I was instructed by Mr Hadebe not to report for duty until further notice. On 31 January 2018 while still at home, I was served with a letter of suspension. I was also served with new charges. The disciplinary hearing was scheduled for February 16, 2018.
20. I resigned at the hearing after entering my plea into records. I did so without any admission of wrongdoing in relation to the charges that Eskom has preferred against me in the disciplinary hearing before Adv Nazeer Cassim. I had good defences to the charges against me, and they had been conveyed to Eskom's legal representatives.
21. In his judgment of 26 February 2018, Justice GN Moshwana concluded that⁵:
 1. *"On the evidence before me, it is clear that the respondent is intent and actually is pressured to dismiss the applicant. Should the outcome of the current process not yield the desired results, there is a great possibility of the respondent pulling the ace up the sleeve. Legal advice has already been sought and dispensed with that the steps taken are justified in law. That being so, there is nothing that would*

⁵ Koko vs Eskom Labour Court 2018-J200-18 Par [32]

prevent the respondent to flag the steps already interdicted to justify the termination once the interdict is gone. Therefore, the fear of the applicant is reasonable and ought to be entertained by this Court”.

2. *“It seems to me that the respondent (Eskom) labours under a misapprehension that even if the reasons that justify summary dismissal are absent, it can terminate by simply giving a six months’ notice”*

22. The Board of Eskom as newly constituted had been given the directive by Government to dismiss me and it was determined to do just that. Should they have failed in the disciplinary hearing before Adv Nazeer Cassim they would have looked for another opportunity to dismiss me. That is the reason why I resigned.

23. Previously, during the period from 11 March 2015 until 15 July 2015⁶, while I was serving as Group Executive: Technology and Commercial, I together with 3 others of my then colleagues⁷, was also placed on suspension. That was supposedly to allow an “unfettered enquiry” while a so-called “Forensic Fact Finding Enquiry ... into the status of the business and challenges experienced by Eskom” by the Cape Town law firm, Dentons South Africa, was taking place.

24. Dentons had been appointed by Eskom’s Board to investigate, among other things, “(t)he poor performance of Eskom’s generation plant” and the “(i)ntegrity of the procurement processes and compliance with legislation as well as Eskom’s procurement policies”. I shall refer in greater detail to the events that gave rise to my suspension below. However, our supposedly being suspended to allow an

⁶ I returned to the office on 20 July 2015.

⁷ The then Group Chief Executive, Mr Tshediso Matona, the Group Executive: Group Capital, Mr Dan Marokane and the then CFO and Director of Finance serving on Eskom’s Board, Ms Tsholofelo Molefe (the latter’s suspension by the Board occurred a few days after that of Messrs Matona, Marokane and myself).

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“unfettered enquiry” was simply a ruse and attempt by the Eskom Board, as constituted at the time, to pressurise us to accept separation packages and leave Eskom⁸. This had been engineered by the then Chairman of the Board, Mr Zola Tsotsi. The Chairman of the Board, Mr Tsotsi, resigned shortly afterwards and in the ensuing period the other members of the Board, with three exceptions⁹, resigned or were replaced by the shareholder.

25. Notwithstanding the fact I was on suspension during the period from 11 March 2015 until 15 July 2015 and I only returned to the office on 20 July 2015, Justices Tsoka J, Baqwa J & Fourie J accepted Eskom’s version at the Gauteng North High Court that¹⁰:

“On 6 July 2015 Koko was tasked to conduct negotiations as Group Executive: Technology and Commercial to conduct negotiations of the MSA (Master Service Agreement with McKinsey)”.

I was not the respondent in this matter, but the Court was wrong on facts and it erred in accepting that on 6 July 2015 I was tasked to conduct negotiations with McKinsey when I was in fact sitting at home on suspension.

26. As interim Group Chief Executive I reported and was responsible directly to Eskom’s Board. Dr Baldwin (Ben) Ngubane was the Chairman of the Board during the period

⁸ Which was, for the most part, effective in the end. I was the only one who refused to accept the separation packages offered to us while we were on suspension. Concomitantly, I was the only one of the four who returned to work when Dentons reported on 15 July 2015 that they had found no wrongdoing on our part.

⁹ Mr Zithembe Khoza, Ms Venete Klein and Prof Pat Naidoo.

¹⁰ Eskom Holdings SOC Limited v McKinsey and Company Africa (Pty) Ltd and Others (22877/2018) [2019] ZAGPPHC 185 (18 June 2019)

that I actively rendered service as interim Group Chief Executive from December 2016 to 16 May 2017.

27. In my position as Group Executive: Generation and Technology I reported to the Group Chief Executive. From April 2015 until December 2016, the Group Chief Executive was Mr Brian Molefe. He was previously the Group Chief Executive of Transnet SOC Ltd. He was first appointed on an interim basis, on secondment from Transnet (as far as I am aware), but permanently in October/November 2015. Before that, from 2010, the GCE was Mr Brian Dames, who, however, retired during 2014. He was succeeded as GCE by Mr Colin Matjila in an acting capacity. Mr Tshidiso Matona was then permanently appointed as GCE during or about November 2014. He resigned shortly after he was suspended (with me and 2 others, as referred to above) on 11 March 2015. He then returned to Government where he is now the secretary of the National Planning Commission. Mr Zithembe Khoza acted as GCE for a short period before Mr Brian Molefe was appointed in an acting capacity.

CHAIRPERSON'S DIRECTIVE INTERMS OF REGULATION 10(6) OF THERE GULATIONS OF THE COMMISSION

28. I received emailed letter from the Secretariat of Commission of Inquiry into State Capture ("this Commission"), on 18 August 2020.
29. The emailed letter directed me in terms of Regulation 10.6 of the Commission to deliver on or before Tuesday, 1 September 2020 to the Secretary or Acting Secretary of the Commission an affidavit or affirmed declaration in which I state whether I admit or deny the allegations made about or against me in the following matters:

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1. In the affidavit of Ms Suzanne Daniels dated 17 August 2020.
2. In Paragraph 27 of the affidavit of Ms Tsholofelo Molefe dated 22 July 2020
3. I state, the grounds on which I base my denial and give my full version in regard to the allegations or statements or issues or matters or incidents covered therein insofar as they refer or relate to me.

The suspension of the Executives

30. The context was that Mr Zola Tsotsi, then the Chairman of Eskom's Board, came to see me during or about June 2014 to request that I should approve payment of a sum of some R69 million on the basis of invoices that a Japanese company, Sumitomo Corporation, had rendered to Eskom in respect of transformers that it had allegedly manufactured for Eskom that Eskom had not taken delivery of. The issue was that Eskom had never contracted with Sumitomo for the manufacture of the transformers or issued a purchase order for the supply of these. My staff in the Commercial Division was, as a result, not willing to process any payment to Sumitomo.
31. I told Mr Tsotsi quite unequivocally that I could not recommend or approve any payment to Sumitomo for equipment that Eskom did not contract and issue a purchase order for. I conveyed to him that I was not going to intervene and that Sumitomo's request for payment had to be dealt with appropriately in terms of the prescribed procedures. That included, potentially, that the matter be submitted to the relevant tender committee for consideration, which would be the only means through which any informal arrangements that might have been made with Sumitomo could be regularised and any payment could be approved. Mr Tsotsi was not happy with my response.

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32. It subsequently came to my attention that, despite the fact that no purchase order had been issued to Sumitomo to manufacture and supply the transformers, Mr Sekhasimbe, the General Manager in Commodity Sourcing played an active part to procure that a letter be sent by Mr Tsotsi, in his capacity as Chairman of Eskom's board, to Sumitomo Corporation stating that Eskom would pay for the transformers. Such a letter being issued by the Chairman was irregular for a host of reasons, primarily that no contract existed, no purchase order had been issued and that the letter went out without the matter having been placed before the relevant tender committee to consider in terms of the prescribed procedures and then to approve or reject.
33. In these circumstances I did insist that disciplinary action be taken against Mr Sekhasimbe. He was, as a result, suspended on 2 March 2015. A disciplinary hearing was convened towards the end of 2015 under the chairmanship of an independent chairman, Advocate Afsal Mosal, of the Johannesburg Bar. He found Mr Sekhasimbe guilty of misconduct. He later recommended Mr Sekhasimbe's dismissal, which recommendation I accepted and effected.
34. The matter, however, had adverse consequences for me because of my resisting Mr Tsotsi's attempts to persuade me to act in a manner that was not compatible with Eskom's policies and procedures. While Mr Sekhasimbe was on suspension, on Sunday 8 March 2015, Mr Tshediso Matona, then Group Chief Executive, spoke to me. He told me that he had been instructed by the Chairman, Mr Tsotsi, that Mr Sekhasimbe had to be "unsuspended". I told Mr Matona that there were good reasons for Mr Sekhasimbe's facing disciplinary proceedings and informed him of what it was all about. I conveyed that I was not going to act to "unsuspend" Mr Sekhasimbe. Mr Matona then informed me that we would then be suspended. My

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response was that there was no reason whatsoever for my being suspended and I was, in any event, not going to succumb to any threats in this regard emanating from the (non-executive) Chairman.

35. It was this event that led to my and, probably, Mr Matona's, suspension on 11 March 2015, engineered by Mr Tsotsi, supposedly to allow Dentons to conduct an "unfettered" investigation.
36. On the morning of 10 March 2015 Mr Matona called me to his office and said to me that he is expecting that me and him will be suspended over Mr Sekhasimbe's matter. He asked me again if there is anything that can still be done about Mr Sekhasimbe's suspension. I said nothing. He told me in no uncertain terms that we will be likely suspended by the end of the day.
37. I went back to my office and packed my computer and immediately left the office. Mr Tsotsi had a full-time office in Megawatt Park and I did not want him to find me in the office. I went to JB's Corner in Melrose Arch where I worked for the day.
38. I wanted legal advice. I was convinced that I was not deserving of the pending suspension. Ms Suzanne Daniels is an officer of the Court and she was employed at that time in my office as a legal advisor. She was also handling Mr Sekhasimbe's matter. I called her couple of times and we met at JB's Corner. We did not move to any other place in Melrose Arch. Salim Essa was not part of the meeting. Only Ms Suzanne Daniels and I met at JB's Corner.
39. She was not convinced that there were grounds for the suspensions of Mr Matona and I over the Sekhasimbe matter. Mr Tsotsi and or the Board of Directors would have to find other reasons to suspend us and she did not think that they can do that.

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We never discussed Mr Marokane or Ms Molefe. At that stage I did not know that they would also be suspended. The meeting ended and Ms Suzanne Daniels left me at JB's Corner.

40. The following day on 11 March 2015, Mr Matona again called me to his office and told me that there is an urgent Board of Directors meeting and former Minister Brown will be in attendance. He confirmed to me that we will be suspended on that day. He did not mention other executives. It was at that point that the Company Secretary, Mr Malesela Phukubje came to tell me that I must remain in my office. The Board wanted to see me.
41. I stayed in my office and while I was in my office, I called Ms Suzanne Daniels. I called her because I expected to receive the letter of my suspension that morning and I wanted to discuss it with her for legal advice.
42. I do not have capabilities of bugging telephones nor do I have contacts with people who bug telephones. I deny confronting Ms Suzanne Daniels about her private telephone records. I am not aware that Ms Suzanne Daniels reported this "bugging incident" to Eskom Forensic Department and or the police for investigation. This is a criminal matter and Ms Suzanne Daniels is the Officer of the Court. I expected her to have reported this for investigation. In her affidavit she does not say if she reported it. I can only suggest that the reason she does not mention this in her affidavit is because she knows that it is not factual.
43. I received the letter of my suspension around 20:00 and Mr Nick Linell was sitting on the chair outside the Board Room next to the exit door. I do not know why he was there.

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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 Daniels¹¹, as well as Mr Zithembe Khoza and Mrs Klein, both directors. I was then, out of the blue, presented with a letter headed "Proposed Terms for Settlement" in terms of which I was to agree to my services with Eskom being terminated by my resigning and my then being paid R4 951 410,94 (before tax) in settlement. The letter is document MMK 1 and is attached¹². I refused this outright and was then told by Mrs Klein that I would then face investigation by Dentons. My response was that I had done absolutely nothing wrong and I was quite willing to face investigation or misconduct charges or whatever. I also told them that the real reason I was suspended was because I refused to take an unlawful instruction from Mr Tsotsi. Ms Klein stated that I should, in any event, go and think about it. Ms Suzanne Daniels about a week later arranged a meeting with me at the Protea Hotel in Midrand. It was with the same people as before. I again informed them that I had no intention whatsoever to resign and take the package.
46. I was subsequently on several occasions interviewed by representatives of Dentons. No criticism of me was made in any report that they made to Eskom's board and my suspension was lifted and I returned to work on 20 July 2015.

¹¹ I did not know on what basis was Ms Suzanne Daniels in the meeting. When I was suspended, she was employed in my office. I was surprised that out of the blue she now sits in a meeting that would decide whether I should be terminated or not.

¹² MMK1

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Paragraph 27 Tsholofelo Molefe Affidavit

47. Ms Nonkululeko Dlamini was not only a colleague but a family friend. I called her on the day, and we met for dinner in the evening at Midrand. I deny that I called her to come to Melrose Arch. Ms Nonkululeko Dlamini and I were very surprised when she was appointed the acting CFO after Ms Molefe was suspended.

I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the contents thereof. This statement was given to/affirmed before me and the deponent's signature/mark/thumb-print was placed thereon in my presence.

At: Dale 2020/09/01

Smiso Tati

TOPAAS & Douglas

DOUGLASDALE SAs

RANK CST

SAPOLICE SERVICE

Matshela Moses Koko

Matshela Moses Koko

1 September 2020

Johannesburg

SOUTH AFRICAN POLICE SERVICE

DOUGLASDALE

2020-09-01

CLIENT SERVICE CENTRE

SOUTH AFRICAN POLICE SERVICE

MMKI

PERSONAL

Mr M Koko

Date:

11 May 2015

Enquiries:

Mr A I Minnaar

Tel +27 11 800 3088

Dear Matshela


PROPOSED TERMS FOR SETTLEMENT

We hereby agree on the following proposed terms in finalising the settlement agreement between Eskom and Mr M Koko:

1. Separation package.
2. Payment of Grant 8 based on an on-target vesting percentage of 50%.
3. Payment of Grant 9 based on an on-target vesting percentage of 50% pro-rated for 24 months.
4. Any annual leave accrued upon termination of employment will be paid.
5. The records of Eskom shall record the termination of employment as a resignation.
6. Eskom will at all times provide a favorable reference, regarding your employment with Eskom

The payments are reflected below:

Separation (1 month for every year - 19 years service)	R 3 553 665.84
LTI Grant 8 Due to vest 31 March 2015 based on 50% on target performance.	R 838 647.00
LTI Grant 9 Due to vest 31 March 2016 based on 50% on target performance for 24 months	R 559 098.00
Total (before tax)	R 4 951 410.84


Ms V J Klein**ACTING CHAIRPERSON****PEOPLE AND GOVERNANCE COMMITTEE OF THE ESKOM BOARD**

Mr M Koko

**GROUP EXECUTIVE
ESKOM**

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Eskom Holdings SOC Ltd Reg No 2002/015527/30

**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's¹ Mr Pather dated 24 December 2019. In it, Mr Pather listed a number of issues where the commission required clarification from myself.

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)

Two handwritten signatures are present at the bottom right of the page. The first signature is a stylized, cursive 'G' followed by a flourish. The second signature is a more formal, blocky 'Lk'.

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.

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 2015, 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).

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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 Directors³⁴ 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 undated 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

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

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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."*

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 memo⁵³ 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

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

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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)

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111. On 13 December 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 Training⁶⁸ to train nuclear operators, (both for ourselves and for other new operators).⁶⁹ Eskom had not trained operators in a very long time.

⁶⁸ National Academy of Nuclear Training Accreditation Certificate (Annexure BM)

⁶⁹ Njobeni S "Eskom'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 Act⁷² and natural justice.

⁷⁰ Approval of the Artisan Nuclear Operating Pipeline 12.04.2016 (Aneexure BM)

⁷¹ Njobeni S "Eskom'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).

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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 foregoing Affidavit which was signed and attested to at the undermentioned address on this day of **FEBRUARY 2020.**


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Commissioner of Oaths

Minister Lynne Brown appoints Brian Molefe as Acting Chief Executive ... <https://www.gov.za/speeches/minister-lynne-brown-appoints-brian-molefe...>



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Minister Lynne Brown appoints Brian Molefe as Acting Chief Executive of Eskom

17 Apr 2015

On Wednesday, I briefed the nation on the current state of the grid and the reasons for the implementation of stage 3 load shedding by Eskom. I am informed that the system is still tight. However, Eskom and its engineers are doing their utmost to contain further interruptions at our power plants. With than announcement I also informed the nation that I am looking at immediate steps to stabilise leadership at Eskom both at Executive and Board level.

Eskom is a strategic asset and one of the major utilities on the continent. It is therefore critical that Eskom operates optimally and contributes to economic growth of the country.

The decision to institute an inquiry has created uncertainty on Eskom's ability to ensure security of supply and successful delivery of its build programme. I am happy to announce that the Terms of Reference for the appointment of an investigator is concluded and Dentons has been appointed to lead the enquiry. I will await a report from the Board as this process unfolds.

In order to stabilise the executive leadership and after consultations with various stakeholders including President Jacob Zuma, Deputy President Cyril Ramaphosa, the Boards of both Transnet and Eskom, I have decided to second Mr. Brian Molefe as Acting Chief Executive of Eskom.

Mr Molefe is the current Group Chief Executive of Transnet and his secondment is with immediate effect.

His experience in having turned around the Public Investment Corporation and providing stability at Transnet is a clear indication that Mr Molefe is no stranger in leading complex institutions. Given Eskom's current financial and operational position, I am confident that we will be able to draw on his experience and understanding of the financial markets.

This secondment is also considered in light of Mr Molefe's extensive understanding of the public sector and the environment in which State-Owned Companies operate. As is evident from his CV, he has been involved with entities such as Telkom, the Airports Company of

Minister Lynne Brown appoints Brian Molefe as Acting Chief Executive ... <https://www.gov.za/speeches/minister-lynne-brown-appoints-brian-molefe...>

South Africa, the National Empowerment Fund and the Export Credit Insurance Corporation amongst others.

Ladies and gentlemen, I now call on Mr Molefe to join us.

This secondment allows Mr Sinethemba Khoza to resume his role as a member of the Board. I want to take this opportunity to thank Mr Khoza for acceding to the call to step in at a critical moment when his leadership was needed.

To consolidate the leadership at Eskom, I will soon be submitting my recommendations to Cabinet on appointing additional members to strengthen and augment the required skills on the Board.

In conclusion,

I would like to thank the Transnet Board for agreeing to the secondment of Mr. Molefe and the manner they dealt with this request. I would also like to appeal to the Eskom Executives and employees to welcome Mr Molefe and provide him with all the necessary support that he would require as he steers the company.

Condensed CV of Mr Brian Molefe

Mr Molefe's qualifications include the following: Masters of Business Leadership, University of South Africa; Post-Graduate Diploma in Economics, London University, School of Oriental and African Studies and a Bachelor of Commerce, University of South Africa. Majors: Accounting and Economics. Other training courses include: a Programme for Young Global Leaders, Kennedy School of Government, Harvard University (Cambridge, Mass. USA, 2009), Advanced Management Program, Harvard Business School (Boston 2006); and Executive Programme at Wharton Business School (Philadelphia USA, 2003).

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From: Malesela Phukubje <PhukubM@eskom.co.za>
Sent: Monday, 20 April 2015 13:00
To: baldwin ngubane; Zethembe Khoza; chwayitam; nazia.c@vodamail.co.za; viroshini naidoo; Venete Klein; Mark Pamensky; Pat Naidoo; romeo.kumalo@gmail.com
Cc: Neo Tsholanku; Suzanne Daniels
Subject: Secondment Agreement

Dear Board Members,

I refer to the above matter and transmit a Secondment Agreement which was approved by the Board of Transnet this morning.

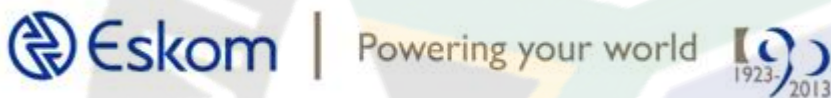
Please peruse the agreement and advise whether there are any comments or changes you would like to incorporate.

It would be appreciated if the agreement is signed today so that it coincides with the official date of commencement of Mr. Molefe's tenure at Eskom.

Kindly let us have your comments as soon as possible.

Regards,

Malesela Phukubje | Company Secretary
Office of the Company Secretary | Office of the Chairman | Third Floor T36
2 Maxwell Drive Megawatt Park | Tel : +27 11 800 8542 | Cell : +27 84 200 0087 | Fax : +27 86 652 3139 |
eFax: 0866523139
E-mail : phukubm@eskom.co.za
Secretariat website: http://sivmas045.eskom.co.za/corporate_secretariat/



From: Ndiphiwe Silinga Transnet Corporate JHB [mailto:Ndiphiwe.Silinga@transnet.net]
Sent: Monday, April 20, 2015 11:56 AM
To: Neo Tsholanku; Malesela Phukubje
Cc: Ayanda Ceba Transnet Corporate JHB
Subject: FW:

Good day

Please find the version approved by the Transnet Board.

Regards,

Ndiphiwe



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From: Ayanda Ceba Transnet Corporate JHB <Ayanda.Ceba@transnet.net>
Sent: Tuesday, 28 April 2015 15:30
To: stan@integratedcapital.co.za; zainul@lechabile.co.za; nkonyanemv@telkomsa.net; peter.williams276@gmail.com; brett@pops.co.za; potso.mathekga@yahoo.com; gideon@swazi.net; blueberries.slk@gmail.com; Linda Mabaso Transnet Corporate JHB; BM Yasmin Forbes; Nazmeera Moola (Nazmeera.Moola@investecmail.com); Siyabonga Gama Transnet Freight Rail JHB; Anoj Singh Corporate JHB
Cc: Nokuthula Khumalo Transnet Corporate JHB; Karabelo Mosia Transnet Corporate; Lynnette Marais Corporate JHB; Shulami Qalinge Corporate JHB; Ndiphiwe Silinga Transnet Corporate JHB; Morwadi Mokae Transnet Freight Rail JHB; Lydia Matebisi Transnet Corporate JHB; andy@integratedcapital.co.za; Roschelle Valentine Transnet Corporate JHB; Molly Mcrowdie Transnet Corporate JHB
Subject: FYI: Speaking Notes from the meeting between the Shareholder Minister and the Board on 21 April 2015
Attachments: Minister Lynne Brown_notes on meeting with Transnet re GCEO_21April2015.pdf

Dear Board Member

We trust that you are well.

Find transmitted herewith the Shareholder Minister's Speaking Notes for your information.

Kind regards



Ms. Ayanda Ceba

Group Company Secretary
Group Company Secretariat
Transnet SOC Ltd

011 308 2719

011 308 2430

www.transnet.net

083 281 1628

ayanda.ceb@transnet.net

12/3/2019

Eskom Board commissions independent enquiry

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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

12/3/2019

Eskom Board commissions independent enquiry

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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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Minister Brown's meeting with the Transnet Board

Date: 21 April 2015

Venue: 1st Floor, the Junction, Modderfontein Road,
Esselenpark, Kempton Park

RE: Appointment of Mr. Brian Molefe as Acting Chief Executive of Eskom

Greetings to all present,

I am advised that this is an in-committee meeting and not a formal Shareholder's meeting.

On Wednesday, 15 April 2015 I briefed the nation on the current state of the grid and the reasons for the implementation of stage 3 load shedding by Eskom.

With that announcement I also informed the nation that I am looking at immediate steps to stabilise leadership at Eskom both at Executive and Board level.

On 17 April 2015, I subsequently announced my decision to second Mr. Brian Molefe as the new Acting Chief Executive of Eskom. I alluded to consultations with various stakeholders, including President Jacob Zuma, and the Boards of both Transnet and Eskom. I believe that the statement needs to be clarified.

Due to the urgency to stabilise Eskom, I called a meeting with the Chairperson of Transnet Board, Ms. Linda Mabaso, and the Acting Chairperson of Eskom Board, prior

to making the announcement. This decision was taken within the context of challenges facing Eskom as well as the urgency with which it needed to be implemented.

I could only consult, at this opportune moment, with the full Board. At the time, I needed to contain the matter in confidence and avoid any media leaks. Because it was not pre-planned, the Chairperson of Transnet Board could not get hold of all members of the Board.

I therefore understand that the manner in which the decision was communicated may have created a level of uncertainty in the Company. However, I wish to assure you that it was an emergency intervention, in the national interest of the country, and I needed to move with speed to implement the decision.

As you are now aware, Mr. Molefe's secondment is with immediate effect and I wish to sincerely thank the Board for swiftly accommodating my decision. I am keen to hear from the Board members how they would have voted on the matter, if I were to ask the Board to support my decision, prior to taking it.

I did not intend to violate corporate governance procedures, however, the situation called for urgent action.

Being mindful of the impact of the announcement, I appreciate that the Board has responded by taking the decision to appoint Mr. Gama as Acting Group Chief Executive. Transnet is the jewel of the DPE portfolio and I am confident that the Board and Management will continue on the same sustainable path.

I believe that we must use the 3-month window of the inquiry currently being undertaken by the Eskom Board. With Mr. Molefe being seconded and Mr. Gama being appointed to act as Transnet GCE, I request both Boards to apply their collective minds to the practical arrangements of the secondment.

I have had 2 meetings so far with Mr. Molefe and already I can begin to feel confident.

Following this meeting today and in consultation with the Department, the formal contractual arrangements and other legal implications can be discussed and agreed between the 2 Companies. In light of Mr. Molefe being an Executive of Transnet, the Board is thus requested to submit a firm proposal to me thereafter.

I had indicated that it would be advisable to have Mr. Molefe secondment for a year; however, the details must still be worked out.

I thank you all for making the extra effort to be here today to allow me the opportunity to clarify matters.

/end.



CONFIDENTIAL

MINUTES OF THE SPECIAL BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 1-15/16FY HELD ON 20 APRIL 2015 AT 08:30 IN THE PORT MANAGER'S BOARDROOM, OCEAN TERMINAL BUILDING, PORT OF DURBAN

**Resolution No/
For Attention**

1 CONSTITUTION OF MEETING AND APOLOGIES

1.1 Present

Ms LC Mabaso	Chairperson
Ms Y Forbes	Non-Executive Director
Mr SI Gama	Chief Executive Officer: Transnet Freight Rail
Mr GJ Mahlalela	Non-Executive Director
Ms PEB Mathekga	Non-Executive Director
Ms N Moola	Non-Executive Director (<i>through video-conference</i>)
Mr ZA Nagdee	Non-Executive Director
Mr VM Nkonyane	Non-Executive Director
Mr MR Seleke	Non-Executive Director (<i>through video-conference</i>)
Mr SD Shane	Non-Executive Director (<i>through video-conference</i>)
Mr A Singh	Group Chief Financial Officer (<i>through video-conference</i>)
Mr PG Williams	Non-Executive Director

1.2 In attendance

Mr N Silinga	Group Executive: Legal and Compliance (<i>through video-conference</i>)
Ms S Qalinge	General Manager: Office of the Group Chief Executive (<i>through video-conference</i>)
Ms NE Khumalo	Deputy Group Company Secretary (<i>through video-conference</i>)
Mr KL Mosia	Company Secretary (<i>through video-conference</i>)
Ms ANC Ceba	Group Company Secretary

1.3 Partial attendance

Mr M Sigonyela	General Manager: Corporate and Public Affairs
----------------	---

1.4 Apologies

1.4.1 Mr BG Stagman	Non-Executive Director
---------------------	------------------------

1.5 Welcome and Signing of Attendance Register

1.5.1 The Chairperson welcomed all members and attendees present. Having observed a quorum, she declared the meeting duly constituted. She noted an apology from Mr Stagman who was abroad. She indicated the purpose of the Special Meeting, and the rationale for its urgency. The Attendance Register was circulated for signature.

1.6 Adoption of Agenda

1.6.1 The Agenda was adopted as tabled.

2 SAFETY BRIEFING AND EVACUATION PROCEDURE

2.1 The safety briefing and evacuation procedures of the Port Manager's Boardroom were conducted by the Port Manager.

3 DIRECTORS' DECLARATION OF INTERESTS REGISTER

3.1 Declaration of Interest for the meeting

3.1.1 The Declaration of Interests Register was circulated for signature.

3.2 Comments by Chairperson

3.2.1 The Chairperson thanked the Members for availing themselves for the special meeting at short notice. She apologised for not consulting the Board appropriately on matters relating to the Secondment of the GCE to Eskom SOC Ltd on Friday 17 April 2015. She indicated that she was informed of the matter late. She attempted to arrange a teleconference with the Board, but could not participate anymore as the media briefing was commencing. She apologised for the mishap, and indicated that it was not her intention to undermine the Board. She indicated that

CONFIDENTIAL

2

the Shareholder Minister also expressed her sincere apologies, and undertook to meet with the Board to apologise. A date for the meeting will be secured through the Office of the Group Company Secretariat, and communicated accordingly to the Board.

Ms Ceba

Mr Sigonyela joined the meeting at 08:35.

- 3.2.2 He highlighted the order of proceedings for the Maritime School of Excellence Graduation Ceremony to the Board.

Mr Sigonyela was excused from the meeting at 08:40.

Mr Shane joined the meeting at 08:41.

The Board accepted the Chairperson's apology in relation to the GCE's secondment to Eskom.

4 MATTERS FOR APPROVAL/RECOMMENDATION

4.1 Secondment Agreement between *Transnet SOC Ltd* and *Eskom SOC Ltd*

- 4.1.1 Management took the Board through the submission. The submission was taken as read. The purpose of the submission was to request the Board to approve the Secondment Agreement ("the Agreement") between the Company and *Eskom SOC Ltd*, and to delegate authority to the Chairperson to sign the Agreement on behalf of the Board.

- 4.1.2 Management stated that the Agreement was circulated to the Board on 19 April 2015 for comment. Management highlighted the salient features of the Secondment Agreement to include, amongst others, the following:

- The rationale behind the secondment period of 3 months.
- The treatment of Mr Molefe's salary, and other related expenses.

- 4.1.3 Management stated that the Shareholder Minister indicated that the GCE may be seconded to *Eskom* for a period of 12 months. Mr Stagman's comments were read out to the Board for consideration. Mr Williams commended the Shareholder Minister for taking decisive action on dealing with *Eskom's* challenges. However, he was of the view that there was a process to be followed by the Board in relation to the secondment of the GCE, and in this regard, the matter could have been dealt with in another manner. He indicated, amongst others, the following from the Agreement:

- Clause 1.6 has a spelling error.
- Clause 3.1 should be cautiously managed to fulfil legitimate expectations of the parties.
- Mr Molefe's benefits should be protected during his secondment period. Further, performance management issues during the secondment period should be outlined in advance to manage Mr Molefe's other benefits.

Mr Seleke joined the meeting at 08:58.

- 4.1.4 The Chairperson apologised to Mr Seleke for the events on 17 April 2015. Mr Seleke indicated that he understood the Chairperson's circumstances prior to the media briefing, and he accepted the apology. Ms Moola requested Management to protect Mr Molefe's Short-Term and Long-Term Incentives in the Agreement. She was of the view that if the secondment period is longer than 3 months, Mr Molefe's performance management issues will need to be aligned to *Eskom's* deliverables. Management indicated that any emerging matter will be tabled to the Board for consideration at a later stage, if the secondment is extended beyond the 3 months. Mr Molefe's current benefits at the Company would stand for determining benefits during secondment. The Board will be granted an opportunity to apply its mind properly to a long term agreement, if the need arises.

- 4.1.5 The Chairperson indicated that *Eskom* would be invoiced on a monthly basis for payments made by the Company to the GCE on secondment at Eskom, including both salary and benefits. Ms Forbes was concerned that the media seemed to have more detail on the matter than the Board. She indicated she was not aware of the 3 potential candidates nominated for the acting position as per media reports. She cautioned that governance systems should be protected in the Company's activities. She sought clarity on how the Corporate Governance and Nominations Committee would address the GCE's extension of employment contract. Mr Seleke was of the

CONFIDENTIAL

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view that it was unfair to put the Chairperson on scrutiny for decisions that occurred from the Ministry's activities. He indicated that the media is provocative, and there should be no reliance on media pronouncements. He was of the view that the Board's focus should be on the acting appointee's role and the required support to successfully execute the role. Mr Nkonyane requested Management to ensure that the Secondment Agreement should be explicit that any role beyond the 3 months period would be re-negotiated accordingly with the Board.

RESOLVED that the Board approved the following:

- The secondment of the GCE to Eskom SOC Ltd *post facto*.
- The Secondment Agreement between the Company and *Eskom SOC Ltd*, subject to incorporating inputs received from the Board.
- Delegated authority to the Chairperson to sign the Secondment Agreement on behalf of the Board.

1-15/16FY/1

5 MATTERS FOR NOTING

5.1 Appointment of the Acting Group Chief Executive

5.1.1 The Chairperson stated that the purpose was to request the Board to note the appointment of the Acting Group Chief Executive. The Chairperson gave the Board background on Mr Siyabonga Gama and indicated that he was currently appointed as the Chief Executive at Transnet Freight Rail. Mr Gama was chosen to be Acting Group Chief Executive due to his vast knowledge of the Company. The Chairperson indicated that Mr Gama was appointed acting GCE with effect from 20 April to 19 July 2015.

5.1.2 Ms Moola sought detail on the remuneration during the acting period. Management indicated that there was an Acting Policy for Management Employees that would determine Mr Gama's benefits.

Mr Gama was recused from the meeting at 09:20.

*The matter was deliberated in a Closed Session.
A separate record has been prepared.*

6 GENERAL

6.1 There were no matters for discussion.

7 BOARD OF DIRECTORS MANDATE

7.1 The Board noted the Board of Directors' Mandate as contained in the meeting pack.

8 CLOSING

8.1 The Chairperson thanked the Board for its participation in the special meeting, and for valuable contributions in the meeting. There being no further business to conduct, the Chairperson declared the meeting closed at 09:28.

CHAIRPERSON

DATE: 03/06/2015

GROUP COMPANY SECRETARY

DATE: 02 JUNE 2015

SECONDMENT AGREEMENT

Between

Transnet SOC Ltd

Registration No: 1990/000900/30

Herein represented by Ms Linda Mabaso

In her capacity as Chairperson of the Board

And

ESKOM HOLDINGS SOC Ltd

Registration No: 2002/015527/30

Herein represented by Dr Ben Ngubane

In his capacity as Chairperson of the Board

A handwritten signature in black ink, appearing to be 'Ben', located in the bottom right corner of the page.

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9 ENTIRE AGREEMENT 7



Zug

1 DEFINITIONS AND INTERPRETATION

1.1 In this agreement, the following terms shall have the meaning assigned to each-

1.1.1 Parties : (1) Transnet SOC Ltd

("Transnet.")

And

(2) ESKOM HOLDINGS SOC Ltd

("Eskom")

1.1.2 Seconded: shall mean Brian Molefe, an employee of Transnet

1.2 The singular includes the plural and *vice versa*.

1.3 Reference to a gender includes any other gender.

1.4 Reference to natural persons includes legal persons and *vice versa*.

1.5 Headings to clauses are for reference purposes only and shall not affect construction or interpretation of this agreement.

1.6 The interpretation rule *contra proferentem* shall not apply to this Agreement.

Bug

2 PREAMBLE

- 2.1 Eskom requires the services of a Senior Executive to assist as Acting Chief Executive
- 2.2 Transnet agrees and is willing to second Brian Molefe to Eskom as Acting Chief Executive.
- 2.3 The Parties therefore enter into this Agreement to regulate and formalise their respective rights and obligations with regard to the secondment of the Secondee to Eskom.

3 DURATION OF SECONDMENT

- 3.1 Irrespective of the last date of signature hereof, the secondment will commence on the 20 April 2015 and shall, unless the Parties agree otherwise, automatically terminate on the 19 July 2015, provided that –
 - 3.1.1 It may be terminated by either, Transnet or Eskom, subject to at least 30 days written notice, or otherwise by mutual agreement; and
- 3.2 In the event of the Secondee's employment with Transnet coming to an end for whatever reason, this secondment agreement shall also simultaneously lapse.
- 3.3 In the event that Eskom requires an extension, it shall indicate its intentions and initiate negotiations with Transnet within a reasonable time.



4 SERVICES

- 4.1 The Seconded shall be seconded to Eskom and will be based at Megawatt Park, Maxwell Drive, Sunninghill where he will perform the functions and duties of a **Chief Executive** as may be determined by the Eskom Board from time to time.

5 EMPLOYMENT RELATIONSHIP

- 5.1 The Seconded shall remain an employee of Transnet whilst seconded to Eskom and, unless otherwise stipulated in or implied by this Agreement, he shall remain subject to the Transnet Conditions of Service.
- 5.2 In the event Eskom is of the view that disciplinary action needs to be taken against the Seconded, Eskom shall provide Transnet with a detailed report on the alleged transgression, in which event Transnet will, in its sole discretion, decide whether or not to take any action in accordance with the Transnet Code of Conduct.

6 REMUNERATION

- 6.1 Transnet shall remain responsible for, and shall continue to pay to the Seconded his total remuneration in terms of his service/employment contract with Transnet as well as all additional benefits as he is entitled to receive.
- 6.2 Transnet shall, for the duration of this secondment agreement, recoup from Eskom all payments made to and/or expenses incurred by it with regards to the Seconded, in his capacity as the Acting Chief Executive of Eskom.



- 6.3 Transnet shall invoice Eskom for any amounts due at least one month after each payment or benefit was made to the Seconded.

7 INDEMNITY

- 7.1 Whenever a claim is made or legal proceedings are instituted against the Seconded and/or Transnet arising out of any act or omission in the execution of his powers, or the performance of his duties and functions in consequence of his secondment, Eskom –

- 7.1.1 Shall, in the event of a civil claim or civil proceedings, indemnify the Seconded and/or Transnet in respect of such claim or proceedings.

- 7.1.1.1 In the event that the Seconded acts outside his scope of duties and functions as determined by the Eskom Board from time to time, this indemnity shall only apply in favour of Transnet.

8 COMMUNICATION

- 8.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses –



<u>Name</u>	<u>Physical Address</u>
Eskom	Megawatt Park Maxwell Drive Sunninghill

Marked for the attention of: the Chairperson of the Board of Eskom

<u>Name</u>	<u>Physical Address</u>
Transnet	47 th Floor, Carlton Centre 150 Commissioner Street Johannesburg 2001

Marked for the attention of the Chairperson of the Board of Transnet provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address by written notice to the other Party to that effect. Such change of address will be effective 5 (five) Business days after receipt of the notice of the change.

9 ENTIRE AGREEMENT

- 9.1 This Agreement constitutes the entire agreement between the parties with regard to the subject matter dealt with herein and no prior agreements, representations or undertakings whether verbal or in writing, with regard to the subject matter shall be binding on either party.
- 9.2 No variation, modification or waiver of any provision of this Agreement, or consent to any departure therefrom, or any consensual termination of this Agreement shall in any event be of



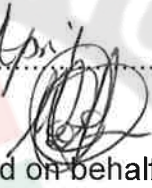
any force or effect, unless confirmed in writing and signed by duly authorised representatives of both parties.

SIGNED at Meyerswold Park on 20 April 2015

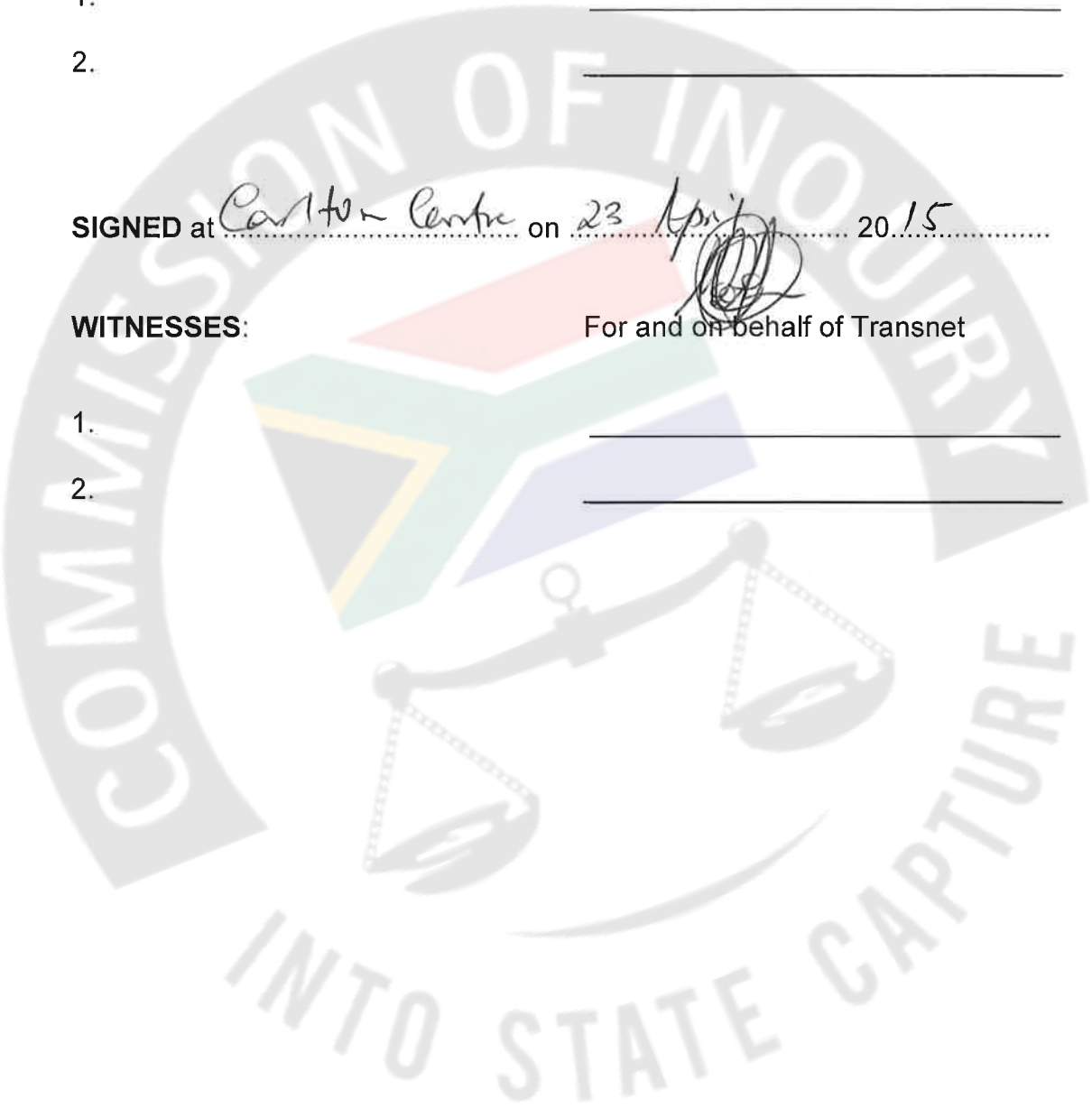
WITNESSES: 
For and on behalf of Eskom

- 1. _____
- 2. _____

SIGNED at Carlton Centre on 23 April 2015

WITNESSES: 
For and on behalf of Transnet

- 1. _____
- 2. _____



From: Venete Klein <venete@kleininc.co.za>
Sent: Friday, 19 June 2015 09:36
To: danielism@eskom.co.za
Subject: EO appt

P&G resolved that the Appt of CEO - B. Molefe be confirmed, soonest.

Act Chair of P&G to get legal opinion in terms of process (being received today).

Reasons for the appt of B. Molefe

- 1) Stability he has brought to Eskom since he joined
- 2) The confidence that he has built both internal external of Eskom
- 3) Improved stakeholder relationships built in this short time
- 4) His hands on approach which has made performance in Eskom - as it relates to maintenance & load-shedding specifically - not negotiable
- 5) Raising the bar on all fronts for his executive team to follow
- 6) His no nonsense approach towards business and the media has really stood us in great stead.

Given the reliance that the SA Economy places on Eskom we are of one mind that no other CEO will be able to maintain the current upward trajectory the Brian has given us.

It is with this is mind that the board unanimously supports his appointment - officially.

Whilst we understand that is process may require some time, it may be necessary to extend his contract on the Transnet side in order to ensure that we done have a period where he is not contracted to either ourselves or Transnet.

First prize of course is to have him confirmed as CE of Eskom as soon as possible.

Just some of my thoughts

Pls add whatever is necessary as we carve

luv

Sent from my iPhone

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 11:41
To: Venete Klein
Subject: RE: EO appt
Attachments: 20150619 DPEMIN Appointment of CE v1.pdf; 20150619 DPEMIN Appointment of CE v1.docx

Importance: High

Please see attached for your consideration. In pdf and word version for easy reference.

Regards
Suzanne

-----Original Message-----

From: Venete Klein [mailto:venete@kleininc.co.za]
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luv

Sent from my iPhone



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

Dear Minister Brown

APPOINTMENT OF CHIEF EXECUTIVE OFFICER

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.

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 63 days 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) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of [*] which was also endorsed by the Board;
- v) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee to address the issues that have bedeviled the company for too long a time;
- 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;

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

- vii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and
- viii) Certainty of leadership at the top would allow for stabilising the management team internally and therefore 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 Brian has placed the company on since his secondment in April this year. It is with this in mind that the board unanimously supports his appointment as formally recorded at its meeting of [*].

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. The legal opinion indicates [*].

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. As a matter of course, the first prize for Eskom would be a seamless transition from Transnet to Eskom with the effective date being 1 July 2015.

I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the appointment.

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

Dr Ben Ngubane
INTERIM CHAIRMAN
Date:

From: Venete Klein <venete@kleininc.co.za>
Sent: Friday, 19 June 2015 12:03
To: Suzanne Daniels
Subject: RE: EO appt

Hi S, I love it.

Roman v) Just a thought - can we add to this that having him leading this organisation - we will be able to attract top SA talent for positions which have become vacant? Don't want to give the impression that the current team is the A Team

-----Original Message-----

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 19 June 2015 11:41 AM
To: Venete Klein
Subject: RE: EO appt
Importance: High

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Regards
Suzanne

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luv

Sent from my iPhone

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



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Sent: Friday, 19 June 2015 12:33
To: Venete Klein
Subject: RE: EO appt
Attachments: 20150619 DPEMIN Appointment of CE v1&v2 compare.pdf; 20150619 DPEMIN Appointment of CE v2.pdf; 20150619 DPEMIN Appointment of CE v2.docx

Importance: High

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See if that works. (I attach v2 in pdf and word format)

Regards
Suzanne

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Sent: Friday, June 19, 2015 12:03 PM
To: Suzanne Daniels
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-----Original Message-----

From: Suzanne Daniels [mailto:DanielSM@eskom.co.za]
Sent: 19 June 2015 11:41 AM
To: Venete Klein
Subject: RE: EO appt
Importance: High

Please see attached for your consideration. In pdf and word version for easy reference.

Regards
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-----Original Message-----

From: Venete Klein [mailto:venete@kleininc.co.za]
Sent: Friday, June 19, 2015 9:36 AM
To: Suzanne Daniels
Subject: EO appt

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Reasons for the appt of B. Molefe

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Given the reliance that the SA Economy places on Eskom we are of one mind that no other CEO will be able to maintain the current upward trajectory the Brian has given us.

It is with this is mind that the board unanimously supports his appointment - officially.

Whilst we understand that is process may require some time, it may be necessary to extend his contract on the Transnet side in order to ensure that we done have a period where he is not contracted to either ourselves or Transnet.

First prize of course is to have him confirmed as CE of Eskom as soon as possible.

Just some of my thoughts

Pls add whatever is necessary as we carve

luv

Sent from my iPhone

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

Dear Minister Brown

APPOINTMENT OF CHIEF EXECUTIVE OFFICER

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.

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 63 days 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;
- ~~iv)v) During his short tenure, he has successfully taken the Board into his confidence by presenting a turnaround plan at its meeting of [*] which was also endorsed by the Board;~~
- ~~v) At the same time he has succeeded in harnessing the know-hows and experience of the current executive management committee to address the issues that have bedeviled the company for too long a time;~~
- 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;

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

- vii) His further ability to meaningfully engage the various stakeholders of Eskom, including the media, has really stood us in great stead; and
- viii) 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 fill the vacancies that currently exist and therefore 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 Brian has placed the company on since his secondment in April this year. It is with this in mind that the board unanimously supports his appointment as formally recorded at its meeting of [*].

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. The legal opinion indicates [*].

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. As a matter of course, the first prize for Eskom would be a seamless transition from Transnet to Eskom with the effective date being 1 July 2015.

I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the appointment.

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

Dr Ben Ngubane
INTERIM CHAIRMAN
Date:



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INTERIM CHAIRMAN
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Sent: Friday, 19 June 2015 13:09
To: Suzanne Daniels
Subject: Re: EO appt

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 14:38
To: Venete Klein
Subject: Re: EO appt

Hi

We didn't have the board meeting yet as you will see from malelsela's letter?

I kept it as candidates as the moi talks of them.

Will we send this without the chairman's signature? I will send the cleaned up version to you and him?

Regards
Suzanne Daniels

Sent from my Samsung Galaxy smartphone.

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Cc:
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Sent: Friday, 19 June 2015 15:02
To: Matsietsi Mokholo; kim.davids@dpe.gov.za
Cc: baldwin.ngubane@gmail.com; Venete Klein; Zethembe Khoza
Subject: APPOINTMENT OF CHIEF EXECUTIVE OFFICER
Attachments: 20150619 DPEMIN Appointment of CE execution copy.pdf

Importance: High
Sensitivity: Confidential

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

Best regards
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SUZANNE DANIELS

Office of the Chairman

Eskom Holdings SOC Limited

Phone: +27 11 800 3091 Mobile: +27 82 580 7832 Fax: +27 86 662 7327

Email: daniels.suzanne@eskom.co.za



REMEMBER YOUR POWER





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

Dear Minister Brown

APPOINTMENT OF CHIEF EXECUTIVE OFFICER

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.

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 63 days 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 28 May 2015, which was also 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;

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- 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.

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 in 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 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.

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.

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. As a matter of course, the first prize for Eskom would be a seamless transition from Transnet to Eskom with the effective date being 1 July 2015. I am available at the Minister's convenience to engage my Transnet counterpart on the issues and finalise the terms and conditions of the appointment.

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

Dr Ben Ngubane
INTERIM CHAIRMAN

Date: 19 June 2015

Not signed as electronically submitted

From: baldwin ngubane <baldwin.ngubane@gmail.com>
Sent: Friday, 19 June 2015 15:51
To: Suzanne Daniels
Subject: Re: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

Dear Suzanne,

At this stage I am not able to recommend to the Minister as decided by the P&G as the Minister cant confirm an acting person into a permanent position unless the person has acted for six months. The last thing we want to do is to create controversy around Brian's presence at Eskom. The ridht approach as far as I am concerned is to request the Minister to accept extension for another three months.

Best,
Ben

On Fri, Jun 19, 2015 at 3:02 PM, Suzanne Daniels <DanielSM@eskom.co.za> wrote:

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

Best regards

Suzanne

SUZANNE DANIELS

Office of the Chairman

Eskom Holdings SOC Limited

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I'm part of the 49Million initiative.

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

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 19 June 2015 16:22
To: Venete Klein
Subject: Fwd: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

Regards
Suzanne Daniels

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: baldwin ngubane
Date: 19/06/2015 15:50 (GMT+02:00)
To: Suzanne Daniels
Cc:
Subject: Re: APPOINTMENT OF CHIEF EXECUTIVE OFFICER

Dear Suzanne,

At this stage I am not able to recommend to the Minister as decided by the P&G as the Minister cant confirm an acting person into a permanent position unless the person has acted for six months. The last thing we want to do is to create controversy around Brian's presence at Eskom. The ridht approach as far as I am concerned is to request the Minister to accept extension for another three months.

Best,
Ben

On Fri, Jun 19, 2015 at 3:02 PM, Suzanne Daniels <DanielSM@eskom.co.za> wrote:

Good Afternoon Matsietsi and Kim

Please find correspondence attached for the Minister's attention.

Best regards

Suzanne

SUZANNE DANIELS

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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

A handwritten signature in black ink, appearing to read 'Ben Ngubane'.

Dr Ben Ngubane
INTERIM CHAIRMAN

Date: 23/06/15

"VK5"



MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Dr. B Ngubane
Interim Chairperson
Eskom Holdings SOC Limited
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2000

Tel: 011 800 5808
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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 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.

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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: 27/06/2018

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"VK10"

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	MINUTES OF THE ESKOM HOLDINGS SOC LTD PEOPLE AND GOVERNANCE COMMITTEE MEETING	Unique Identifier	221-204
		Document Type	OCSbTE
		Revision	0
		Revision Date	July 2015
		Office of the Company Secretary Department	

MINUTES OF THE PEOPLE AND GOVERNANCE COMMITTEE MEETING NO HELD IN THE HUVO NKULU BOARDROOM, MEGAWATT PARK ON 09 SEPTEMBER 2015 AT 11:46

STRICTLY CONFIDENTIAL

PRESENT

MEMBERS

Ms V Klein
Ms N Carrim
Ms C Mabude
Mr Z Khoza
Dr B Ngubane

Chairman
Member
Member
Member
Member

IN ATTENDANCE

Mr B Lolefe
Mr A Singh
Mr M Phukubje

Acting CE
Acting CFO
Company Secretary

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 AGENDA ITEMS

The CE was briefed on the manner in which the meeting was organized and that it was a "disaster" in the sense that there was no good communication between Secretariat and HR. As a result of this, the pack, submission and the general coordination of the meeting was not what was expected.

The CFO stated that these could be complications which arise due to the transition phase and that matters would improve within the next two meetings or so, as the team aligned and started speaking the same language. It was agreed that this should not

recur in the future and that the CE would attend to it.

It was requested that the action list be aligned with the resolutions sought.

With regard to the Remuneration of Executives and that of Non-Executive Directors, the CE reported that the DPE had issued guidelines regarding the matter and that it was a shareholder matter. The Committee could however make its inputs and share the benchmarking with the Shareholder. He confirmed that feedback will be provided in the next P&G meeting in October 2015.

Management was requested to proceed with an STI and LTI view, which will be presented to the Committee. It was noted that there had been no LTI incentives in the 2014/2015 financial year and management was requested to go back and look into the current rules with a view to determining whether they would like to change these.

It was reported that the performance contracts for senior executives were available but unsigned as they would be affected by the Turnaround Plan which would be presented to the Board in the upcoming Board Breakaway. It was agreed that a letter of comfort from the CE confirming that performance agreements have been signed be presented to the Committee in its next meeting.

The Treasury Department's incentive scheme was discussed. There was consensus that Treasury should not have its own, stand-alone incentive scheme. It was agreed that management would look into the matter, review the scheme and report to the Committee.

The issue of executive vacancies was discussed and it was proposed and agreed that the positions of CE and FD be filled first and that this proposal be presented to the Board, after which it will be circulated to the Shareholder for information.

A proposal was tabled that the Acting CE and Acting CFO be appointed as directors of the company for the duration of their appointment. The proposal was supported and it was resolved that this be presented to the Board in its next meeting.

The Chairman requested that the structure be presented by October 2015.

There being no further matters for discussion, the Chairman declared the meeting closed at 12h31.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS.

CHAIRMAN:

DATE:

[Handwritten signature]
11



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 SPECIAL ESKOM BOARD MEETING 10-2015/16 HELD ON 10
SEPTEMBER 2015 AT VENUE 7, ESKOM LEADERSHIP DEVELOPMENT CENTRE,
MIDRAND FROM 16H00**

STRICTLY CONFIDENTIAL

PRESENT

Dr BS Ngubane	Acting Chairman
Ms N Carrim	Member
Ms M Cassim	Member
Mr Z W Khoza	Member
Ms V J Klein	Member
Mr R Kumalo	Member
Mr G Leonardi	Member
Ms C Mabude	Member
Dr P Naidoo	Member
Ms V Naidoo	Member
Mr MV Pamensky	Member

OFFICIALS

Mr B Molefe	Acting Chief Executive ("Acting CE")
Mr M Phukubje	Company Secretary
Mr A Singh	Acting Chief financial Officer ("Acting CFO")

APOLOGIES

None

BY INVITATION

None

IN ATTENDANCE

Ms S Daniels	
Mr W Venner	Committee Secretary

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1. OPENING AND WELCOME

The Acting Chairman welcomed members to the meeting.

2. APOLOGIES

Apologies as above were noted.

3. QUORUM

A quorum being present, the Acting 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. ADOPTION OF THE AGENDA

The Agenda for the meeting was approved. It was requested that Item 9.2, Diesel report be dealt with first and then Item 9.3 McKinsey mandates.

7. ITEMS FOR DISCUSSION AND/OR APPROVAL

7.1. Ad-Hoc Diesel Audit as discussed at Audit & Risk Committee

Reference document 9.2 (a) (b) (c) (d)

The SGM: A&F joined the meeting for the purposes of the discussion.

The Ad-Hoc Diesel Audit as discussed at Audit & Risk Committee was tabled for information, details of which were included in the meeting pack.

According to management the following were key factors that played a significant role in the decision to use ad-hoc suppliers:

- The OCGTs were installed as peaking generators only, intended to operate for 2-3 hours a day maximum. Fuel supply contracts and logistics were then concluded around this operating regime in 2008. The contracts were of 10 year duration with an end date of 2018.
- Due to constraints in the grid that emerged in 2012 already, the OCGTs were required to operate for up to 17 hours a day progressively from 2012 to date.
- Because of the increased OCGT load factor, additional suppliers had to be introduced to supplement the contracted suppliers who had reached their contracted capacity

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limits. Contracted capacity consisted of contracted volume capacity plus logistics capacity. Logistics capacity became the primary driver of increased use of ad hoc suppliers.

- With high continuous usage (14-17 hours at 425 KL/hour) delivery capacities of contracted suppliers often reached their limits and supplementary suppliers were required to keep the tank levels healthy to avoid fuel-out trips. For example in the first 4 months of the current financial year, logistics capacity primarily increased the use of ad hoc suppliers.
- It was important to note that there was no preset volume allocated to the ad hoc suppliers as this was driven by the capacity required by Eskom.

It was noted that the concern raised by members had been around the process itself and not the actual awarding of the tenders for short term diesel purchases.

The emergency procurement of fuel oil for Coal Fired Power Stations and diesel for OCGTs during the period September 2012 to February 2013 was ratified by EXCOPS and BTC during February and March 2013 respectively. The review therefore excluded the period before March 2013 as the Board then ratified whatever took place prior to that period.

The Board Tender Committee then approved that a new tender be issued to the open market for the purpose of constituting a panel of service providers who would supply a minimum of 25% of the required quantities for fuel oil and diesel to Eskom on an "as and when required basis" for a 5 year period. In the interim, management continued to use ad hoc suppliers.

The following criteria for new ad hoc suppliers was set:

- Have a valid wholesale license;
- Evidence of a credible source of diesel; and
- A letter of financial support

A&F was of the view that the criteria was not adequate.

With respect to General Controls it was reported that the sourcing of suppliers was based on word of mouth from both Eskom employees who knew the diesel suppliers and probably the other source was word of mouth from the market itself as the bulk of them were unsolicited. A&F was of the view that the process required a robust internal evaluation process before approval to be captured on the Vendor Master, which evaluation process was not evidenced.

The suppliers were evaluated on whether they comply with the 3 criteria ratified by the Board, however evidence of this evaluation and approval did not exist. There was evidence that the two suppliers met 2 of the 3 criteria. There was no evidence that evaluation and approval process took place.

With regard to the Process of allocation of suppliers once on the panel, according to management, once the supply was on the database they had an opportunity to be requested



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to supply Eskom with Fuel (only these suppliers who were on the data base). The process was initially at random

In respect of Performance assessment and re-selection for use management reported that the suppliers were re-selected or not re-selected based on their performance. However there was no evidence that this actually happened.

A&F performed independent probity checks relative to these suppliers and found no evidence of conflict of interest from both Eskom employees who were involved in the value chain, Exco and the Board.

With respect to the specific controls issues related to 2 suppliers, it was found that the appointment of these 2 followed the same process and there was no extraordinary change to accommodate them. The last criterion were not complied with (obtaining the letter of support).

It was reported that A&F had recommended that Management should consider the potential savings as well as logistical efficiencies to be realised by contracting directly with Chevron. A&F was alive to the socio economic benefits that may be forfeited by doing away with the creation of a market for Ad-Hoc diesel suppliers. This was a cost benefit analysis exercise worth considering particularly under the current environment.

If the decision was to continue with a panel of Ad-Hoc suppliers, then the adjudicating process relating to the evaluation of the final offers from the short-listed diesel suppliers needed to be finalised as a matter of urgency and contracts should have been concluded with the successful suppliers. There had been pro-active assurance on the tender process for the new panel, which found the process overall to be fair, transparent and free of conflicts of interest.

The Chairman stated that that management should have reported to the Board Tender Committee to implement the ad-hoc purchases. A member requested that the strategy in terms of procuring diesel in the light of recommendations from ARC should be tabled for information.

In response to a query as to why ad-hoc suppliers were used instead of contracted suppliers it was reported that as soon as Eskom hit the load factor it required more than the 5 million litres of diesel per the contract with the normal suppliers. This was beyond the capacity of the oil companies to supply due to logistics. In order to de-risk the supply chain it was necessary to source from the ad-hoc suppliers to make up the difference between the 5 million litres and up to the required 7 to 7,5 million litres being used. The logistical problems emanated from the decanting facilities which could not supply the difference as well as Eskom's own facilities for receiving the diesel.

The Chairman recommended that the issue be left to the Acting CE to review the processes and make a report in due course.

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Resolved that:

1. the Ad-Hoc Diesel Audit as discussed at Audit & Risk Committee is noted;
2. the Acting Chief Executive should review the processes around ad-hoc diesel purchases and make a report in due course.

7.2. McKinsey Contract Approval

Reference document 9.3 (a) (b)

The GE: T&C joined the meeting for the purposes of the discussion.

The Strategy to appoint McKinsey as a strategic partner support to Eskom on the emerging work around financial and strategic topics that do not fit under the currently negotiated performance based MSA, and the Mandate to negotiate and conclude external Strategic Partner support to Eskom on the emerging work around financial and strategic topics that do not fit under the currently negotiated performance based MSA were tabled for approval, details of which were included in the meeting pack.

Ms Klein declared a possible Conflict of Interest in that her company did some work for McKinsey. Members agreed that there was no Conflict of Interest and declined her request to recuse herself for the discussion.

The Acting CFO reported that the original contract was not risk based and was not self funding and this submission sought to amend that. It was noted that the Acting CE would sign off on the aspects of the R101m. A skills development plan was in place for skills transfer.

Resolved that:

- 7.2.1 the appointment of McKinsey and Company ("McKinsey") as the sole partner for the financial and strategic topics of: cash flow and profitability targets for FY16; updating the business cases for Medupi and Kusile; further developing and disseminating Eskom's new design to cost strategy; and adapting Eskom's governance model to ensure delivery of the new strategy is approved;
- 7.2.2 McKinsey & Company should be contracted on a fixed-cost basis with a total contract value of R 101,733,124.80 for an effective duration of 8 months;
- 7.2.3 the Group Executive: Technology and Commercial is hereby 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;
- 7.2.4 The Mandate to negotiate and conclude with a Strategic Partner on the financial and strategic topics of: cash flow and profitability targets for FY16; updating the business cases for Medupi and Kusile; further developing and disseminating Eskom's new design to cost strategy; and adapting Eskom's governance model to ensure delivery of the new strategy is hereby approved subject to the following:
 - 7.2.4.1 McKinsey & Company be contracted on a fixed-cost basis with a total

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7.2.4.2 contract value of R101,733,124.80 for an effective duration of 8 months; and the Group Executive for Commercial and Technology is given the necessary authority to execute this contract in line with the Eskom delegation of authority.

8. REPORTS AND FEEDBACK

8.1. Chairman's Report

Current Significant Issues

The Chairman stated that uppermost in the Board's mind must be the path that Eskom set itself to ensure its full recovery, stability and sustainability.

Minister Brown had indicated at the AGM that the Board's priority should be to disrupt the downward trajectory that the company found itself on. She had clearly articulated her areas of concerns in the various spheres of the business.

Eskom's liquidity position and medium to long term financial health remained a concern notwithstanding the equity injection and funds provided through the Government Support Package. As the Minister had indicated, Eskom should not expect further bailouts from the fiscus but look inward to resolving its issues.


The agenda items for discussion at the Board breakaway pointed to the many demands that Eskom was dealing with and we would need to maintain that fine balance between continued electricity supply and the sustainability of the company.

Our relationship with NERSA needed to be rebuilt. While the officials had established processes and procedures for engagement, the Board was not yet fully assured that the engagement of executive management team was at the correct level. Given our strategies going forward on the tariff, it would be imperative that any issues of interpretation and the like were cleared up prior to us engaging on the MYPD4 application process.

The build programme remained a key focus area and the Board congratulated the management team on a successful handover of Medupi Unit 6 to the generation business. This important milestone had contributed to Eskom being able to break the cycle of continuous load shedding and had gone a significant distance in restoring the confidence of the South African public in Eskom.

We now needed to focus on delivering on schedule and eliminating the cost overruns that we had experienced in getting to this milestone. It was gratifying to see that the lessons learned at Medupi were indeed being applied at the management of Kusile and the other build projects.

The future role of Eskom would need to be clarified and confirmed. A number of key strategic influences were at play in this regard and these were the issues that confronted this Board:

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- Gas Strategy (based on current exchange rate fluctuations, what would influence the long term strategy)
- We need to take a position on nuclear.
- Our future coal strategy.
- Our role in the renewables sector also needs to be identified.

Update on Board Activities

This Board had met 12 times this year which was a sure indication of the rigorous attention the business of Eskom had demanded. The issues put before this Board were by no means small in magnitude and affected the very core of the business.

Key issues dealt with were:

- The Turnaround Plan for Eskom in this financial year and the strategies going forward;
- Executive performance management;
- Eskom's liquidity position and the impact of the NERSA decision;
- The build programme – revised business cases for Medupi and Kusile;

Key Performance Indicators

The Acting CE had reported that the executive compacting would be in place shortly. The Board would need to look at how appropriate this was for the oversight role that the Board needed to play.

The Board would need to consider the Shareholder Compact carefully as this would hold us accountable to the Shareholder for delivery thereon.

The Chairman requested the support of the Board for a letter he would submit to the Minister advising her that the Board had instructed Eskom to withdraw from the War Room. This was unanimously supported. Members were of the opinion that it was not practical to have a separate structure determining the Eskom business.

It was agreed that the letter would be followed up with explanatory meetings with the Minister to explain the demands and risks that the Board faced in terms of significance and fiduciary duty by remaining in the War Room.

Resolved that:

- 8.1.1 the Chairman's Report is noted;
- 8.1.2 the Chairman is supported to submit a letter to the Minister advising her that the Board had instructed Eskom to withdraw from the War Room; and
- 8.1.3 the letter should be followed up with explanatory meetings with the Minister to explain the demands and risks that the Board faced in terms of significance and fiduciary duty by remaining in the War Room.

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8.2. Chief Executive's Report

Reference document 7.2 (a)

The Acting CE's Report as at 7 September 2015 was tabled for information, details of which were included in the meeting pack which was taken as read.

It was noted that the pack had been distributed late and members could direct any queries around the Acting CE's Report to the Acting CE.

Resolved that:

8.2.1 the Acting CE's Report as at 7 September 2015 is noted.

9. BOARD COMMITTEE REPORTS

All the Board committee reports were taken as read. In response to members' concerns that the pack had been delivered late and as a result they had not had enough time to go through them it was recommended that members send any requests for further information to the relevant Chairman of the Committees.

It was noted that from a governance perspective, some Committees had become very operational. In this regard members were advised to reflect on the work that their Committee should not be involved with and review the level of detail they received in the submissions from management to ensure that the meetings were productive and constructive. Furthermore this would allow for streamlining of meetings to free management to do their normal work. It was noted later in the meeting that the Minister had felt that there needed to be clarity around the duty of Committees in terms of operational issues.

The Chairman reported that he had requested Ms Klein to conduct interviews with each of the Board members around governance and requested that these meetings be convened as soon as possible. In response to a member's recommendation that consideration should be given to also conducting individual interviews with executives, the Chairman requested that the Acting CE conduct this exercise.

Resolved that:

- 9.1. members should send any requests for further information around Board Committees actions to the relevant Chairman of the Committees;
- 9.2. members were advised to reflect on the work that their Committee should not be involved with and review the level of detail they received in the submissions from management to ensure that the meetings were productive and constructive;
- 9.3. the interviews between Ms Klein and each of the Board members around governance should be convened as soon as possible;
- 9.4. the Acting CE should also conduct individual interviews with executives.

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		Revision	0
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		Office of the Company Secretary Department	

9.1 Audit & Risk Committee (“ARC”) Report

Reference document 8.1 (a)

The ARC Committee Reports Template for the meeting held on 10 February 2015, 14 April 2015, 8 May 2015, 27 May 2015, 5 August 2015 and 4 September 2015 was taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.1.1 the reports of the Audit & Risk Committee meetings held on 10 February 2015, 14 April 2015, 8 May 2015, 27 May 2015, 5 August 2015 and 4 September 2015 are noted.

9.2 Social, Ethics & Sustainability Committee (“SESC”)

Reference document 8.2 (a)

The SESC report for the meeting held on 14 August 2015 was taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.2.1. the Social, Ethics & Sustainability Committee report for the meeting held on 14 August 2015 is noted.

9.3 People & Governance (“P&G”) Committee

Reference document 8.3 (a)

The P&G Committee Reports for the meetings held on 20 May 2015 and 9 September 2015 were taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.3.1 the People & Governance Committee reports for the meetings held on 20 May 2015 and 9 September 2015 are noted.

9.4 Investment & Finance Committee (“IFC”)

Reference document 8.4 (a) (b) (c)

The IFC reports for the meetings held on 2 July 2015, 31 July 2015 and 6 August 2015 were taken as read and noted, details of which were included in the meeting pack.

It was reported that the IFC Terms of Reference had been approved by the Board previously but on investigation after the meeting it was found that they had not been tabled for approval. This would be done at the next Board meeting.

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Resolved that:

9.4.1 the Investment & Finance Committee reports for the meetings held on 2 July 2015, 31 July 2015 and 6 August 2015 are noted.

9.5 Board Review and Build Programme Review Committee ("BRBPR")

Reference document 8.5 (a) (b) (c) (d)

The BRBPR reports for the meeting held on 29 July 2015, the Dashboard and the briefing note – update on Eskom IDM programme were taken as read and noted, details of which were included in the meeting pack.

In response to a query it was confirmed that the BRBPR Terms of Reference had been approved by the Board on 28 May 2015. It was requested that a copy thereof be included in the next Board pack for information.

Resolved that:

9.5.1 the Board Review and Build Programme Review Committee report for the meeting held on 29 July 2015, the Dashboard and the briefing note – update on Eskom IDM programme are noted; and

9.5.2 a copy of the Board Review and Build Programme Review Committee Terms of Reference should be included in the next Board pack for information.

9.6 Board Tender Committee

Reference document 15.3 (a) (b)

The Board Tender Committee Reports for the meetings held on 3 June 2015, 21 July 2015 and 18 August 2015 were taken as read and noted, details of which were included in the meeting pack.

Resolved that:

9.6.1 the Tender Committee reports for the meetings held on 3 June 2015, 21 July 2015 and 18 August 2015 are noted.

11 ITEMS FOR DISCUSSION AND/OR APPROVAL

11.1 Memorandum of Incorporation ("Mol")

Reference document 9.1 (a) (b) (c) (d)

The Draft revised Mol was tabled for information, details of which were included in the meeting pack.

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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 of the vacancies.

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

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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 19h50.

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

CHAIRMAN:  DATE: 29/04/16

From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent: Sunday, 13 September 2015 14:28
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
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: 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 include 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
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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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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Sunday, 13 September 2015 20:00
To: Orcilla Ruthnam
Cc: Venete Klein; baldwin.ngubane@gmail.com
Subject: CE and CFO appointments
Attachments: Letter of advice_app of CEO_19 June 2015_(6190551_1).pdf

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





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- 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.
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- What is the remuneration package to be offered to the candidates?

Regards

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance

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

----- Original message -----

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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>
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Subject: Dr Ngubane's CV
Importance: High
Sensitivity: Confidential

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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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BGBowman Gilfillan

Member of Bowman Gilfillan Africa Group

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Our Reference:Mr Jerry Kaapu
Direct Line:(011) 669 9519
E-mail Address:j.kaapu@bowman.co.za

Your Reference:Ms Venete Klein
Date:18 June 2015

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

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.

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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.

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- 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

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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

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Sunday, 13 September 2015 20:00
To: Orcilla Ruthnam
Cc: Venete Klein; baldwin.ngubane@gmail.com
Subject: CE and CFO appointments
Attachments: Letter of advice_app of CEO_19 June 2015_(6190551_1).pdf

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
Legal and 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 include 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
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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



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

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

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BG Bowman Gilfillan

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Our Reference: Mr Jerry Kaapu
Direct Line: (011) 669 9519
E-mail Address: j.kaapu@bowman.co.za

Your Reference: Ms Venete Klein
Date: 18 June 2015

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 Ileg (Chairman) | PM Maduna (Deputy Chairman) | AJ Keep (Managing Partner) | AG Anderson | DP Anderson | TJ Anderson | M Angumuthoo | JBanoohhai | AM Barnes-Webb | TL Beira | ARL Bertrand | F Dhayat | 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 Gebashe | DJ Gera | UHM Gerstle | D Gever | 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 | F Khoza | ID Kirkman | U Kondile | JG Kruger | JP Kruger | R Labuschagne | FB Laher | HY Laher | T Laubscher | DA Lotter | KS Makapane | M Makala | A McAllister | JM McKinnell | JY Meijer | PH Modi | SNI Mokose | TL Mongae | RPM Morson | AV Munro-Smith | UEBU Nausimani | HB Nicolao | TH Nichols | MAJ Oppenheim | AJ Pike | P Pillay | JD Prain | MA Purchase | Y Rams | LV Raphulu | CL Reidy | JB Ripley-Evans | MS Rusu | GI Rushton | JW Sahli | MY Sass | CG Schafer | JH Schlösborg | 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 Weblu | DCJ Wessels | RS Wessels | PE Whelan | HJ Wilsenach | SG Wilson | DD Yull | D Zussa Consultants JWD Brand | S Esterhuysen | ND Rivik Special Counsel CL Valkin Practice Partner and Head of Africa JL Tang Group COO R Smith CFO G 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.

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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.

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- 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

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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

From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent: Monday, 14 September 2015 12:59
To: Suzanne Daniels (DanielSM@eskom.co.za)
Cc: Venete Klein
Subject: RE: Remuneration of prescribed officers
Attachments: Letter to Eskom re appointment of CEO.pdf; Guidelines for Appointment of CEO of SOC.pdf

Dear Suzanne

I was reading through the opinion and was concerned about paragraph 3.6 which indicated that the Department was contacted for a copy of the guideline referenced in the MOI. It is unfortunate that I was not approached.

For record, the guideline (attached) has been the Department's basis for advising the Minister and is therefore written into all SOC MOIs as well as the updated Protocol. In terms of the appointment of the CFO, the MOI is clearer on the process, however, the guideline also covers the appointment.

Hence, Minister's letter of July (attached) was informed by these guidelines.

Please provide me with a copy of the document entitled "SOE Governance Oversight Document".

Many thanks

Ms. Orcilla Ruthnam | Chief Director: Governance
Legal and Governance

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From: Venete Klein [mailto:venete@kleininc.co.za]
Sent: 14 September 2015 09:44 AM
To: Orcilla Ruthnam
Cc: Suzanne Daniels (DanielSM@eskom.co.za)
Subject: Re: Remuneration of prescribed officers

Thanks Orcilla, we await the feedback then.

Warm regards

Sent from my iPhone

On 14 Sep 2015, at 8:29, "Orcilla Ruthnam" <Orcilla.Ruthnam@dpe.gov.za> wrote:

FYI

From: Orcilla Ruthnam
Sent: 14 September 2015 08:22 AM
To: 'Ayanda Ceba Transnet Corporate JHB'
Cc: Lawrence Nevondo; Nokuthula Khumalo Transnet Corporate JHB
(NokuthulaE.Khumalo@transnet.net); Karabelo Mosia Transnet Corporate
(Karabelo.Mosia@transnet.net)
Subject: Remuneration of prescribed officers
Importance: High

Dear Ayanda

Please urgently provide me with a schedule of remuneration of prescribed officers (names disclosed in the Integrated Report) after the resolution of the AGM. In other words, the names and amounts including the 5.4% awarded at the AGM.

Many thanks

Ms. Orcilla Ruthnam | Chief Director: Governance
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**MINISTER
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA**

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Dr. B Ngubane
Interim Chairperson
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P.O. Box 1091
Megawatt Park
Johannesburg
2000

Tel: 011 800 5808
Fax: 011 800 4938
Email: Baldwin.ngubane@gmail.com /
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.

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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



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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

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

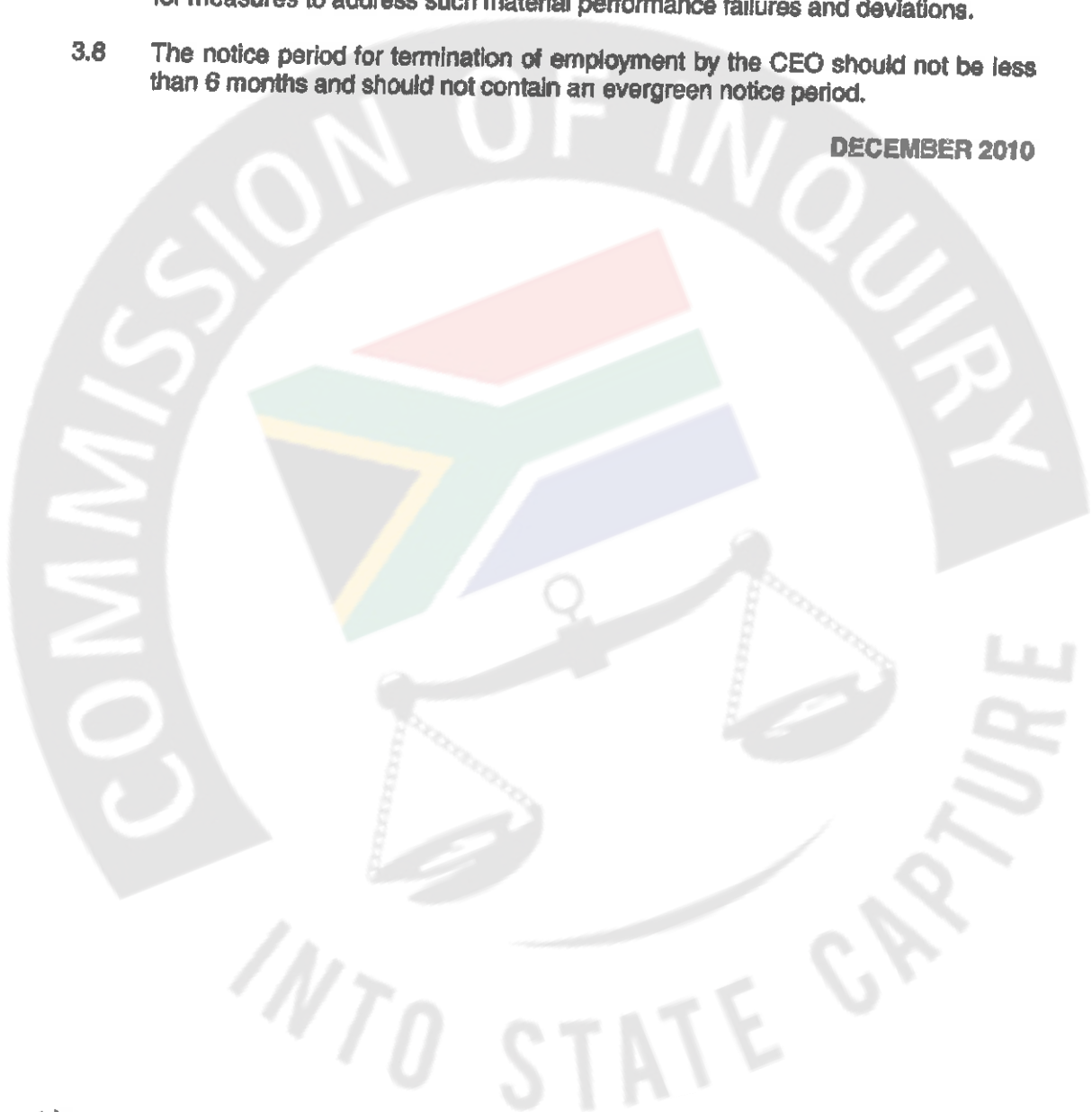
- 2.1 The Board shall endeavor to commence and complete its recruitment and appointment process of a new CEO at least 3 months before the intended departure of the incumbent CEO. In this way the Board should avoid, as far as possible, appointing an 'acting' CEO.
- 2.2 The Board must disclose to the shareholder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

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



From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Monday, 14 September 2015 15:34
To: Jerry Kaapu
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Attachments: Guidelines for Appointment of CEO of SOC.PDF

Importance: High
Sensitivity: Confidential

Hi Jerry

Please see the attached document which the DPE provided to us. Would this impact on the letter of advice in any way?

Best regards
Suzanne

From: Jerry Kaapu [mailto:j.kaapu@bowman.co.za]
Sent: Monday, September 14, 2015 3:21 PM
To: Suzanne Daniels
Cc: Venete Klein (venete@kleininc.co.za)
Subject: FW: Documents referenced [BG-JhbActive.FID877382]
Sensitivity: Confidential

Dear Suzanne

This is second batch of documents requested.

Kind regards

Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

t +27 11 669 9000 | d +27 11 669 9519
f +27 11 669 9001 | m +27 82 563 3300
e j.kaapu@bowman.co.za
www.bowman.co.za

From: Jerry Kaapu
Sent: 14 September 2015 3:16 PM
To: 'Suzanne Daniels'
Cc: Venete Klein; Luway Mongie
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Sensitivity: Confidential

Dear Suzanne

Please find hereto attached the referenced documents as requested.

Kind regards

Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

t +27 11 669 9000 | d +27 11 669 9519
f +27 11 669 9001 | m +27 82 563 3300
e j.kaapu@bowman.co.za
www.bowman.co.za

From: Suzanne Daniels [<mailto:DanielSM@eskom.co.za>]
Sent: 14 September 2015 1:43 PM
To: Jerry Kaapu
Cc: Venete Klein; Luway Mongie
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Importance: High
Sensitivity: Confidential

Thank you Jerry that will assist in answering the queries from DPE.

Best regards
Suzanne

From: Jerry Kaapu [<mailto:j.kaapu@bowman.co.za>]
Sent: Monday, September 14, 2015 1:41 PM
To: Suzanne Daniels
Cc: Venete Klein; Luway Mongie
Subject: RE: Documents referenced [BG-JhbActive.FID877382]
Sensitivity: Confidential

Dear Suzanne

We shall do so. Please confirm if you also require copies of the legislation referenced.

Kind regards

Jerry Kaapu
Partner

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

t +27 11 669 9000 | d +27 11 669 9519
f +27 11 669 9001 | m +27 82 563 3300
e j.kaapu@bowman.co.za
www.bowman.co.za

From: Suzanne Daniels [<mailto:DanielSM@eskom.co.za>]
Sent: 14 September 2015 1:22 PM

To: Jerry Kaapu
Cc: Venete Klein
Subject: Documents referenced
Importance: High
Sensitivity: Confidential

Good afternoon Jerry

Can you please send me the documents which you referenced in the attached letter of advice.

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



REMEMBER YOUR POWER



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

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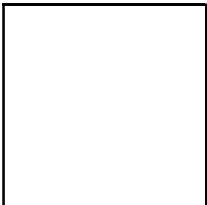
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I'm part of the 49Million initiative...

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

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public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

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

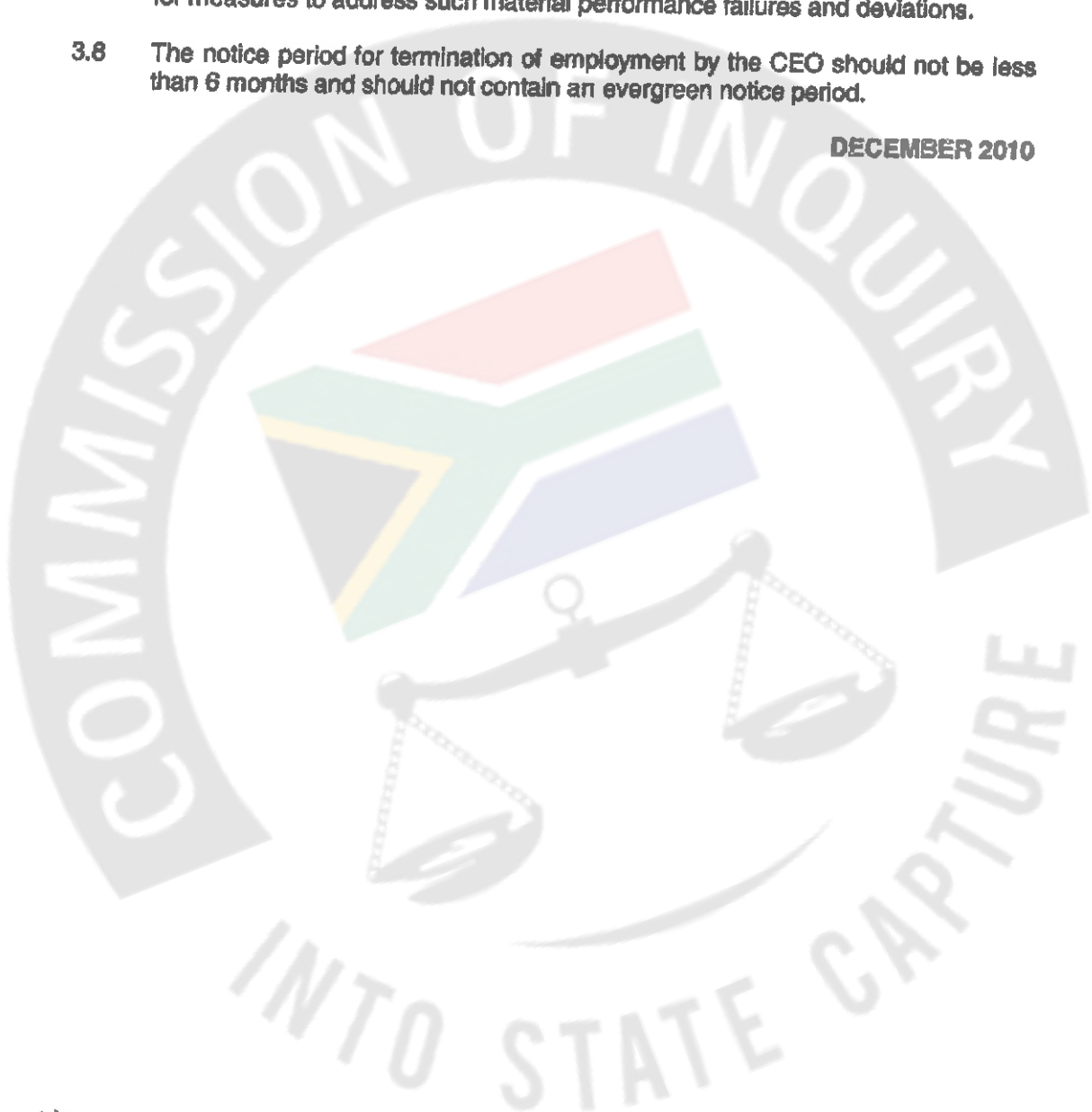
- 2.1 The Board shall endeavor to commence and complete its recruitment and appointment process of a new CEO at least 3 months before the intended departure of the incumbent CEO. In this way the Board should avoid, as far as possible, appointing an 'acting' CEO.
- 2.2 The Board must disclose to the shareholder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

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



From: Venete Klein <venete@kleininc.co.za>
Sent: Wednesday, 16 September 2015 07:09
To: danielsm@eskom.co.za
Subject: Fwd: APPOINTMENT OF CE [BG-JhbActive.FID877382]

Sent from my iPhone

Begin forwarded message:

From: Jerry Kaapu <j.kaapu@bowman.co.za>
Date: 16 September 2015 at 6:52:17 SAST
To: "Venete Klein (venete@kleininc.co.za)" <venete@kleininc.co.za>
Cc: Suzanne Daniels <DanielSM@eskom.co.za>, Keshni Pillay <k.pillay@bowman.co.za>
Subject: APPOINTMENT OF CE [BG-JhbActive.FID877382]

Dear Venete
Please find hereto attached our supplementary letter of advice.
Kind regards
Jerry Kaapu
Partner



BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
PO Box 785812, Sandton, 2146, South Africa
Tel +27 11 669 9000 | Fax +27 11 669 9001
Docex 6 Johannesburg
Email info@bowman.co.za
www.bowman.co.za

Our Reference: Mr Jerry Kaapu
Direct Line: (011) 669 9519
E-mail Address: j.kaapu@bowman.co.za

Your Reference: Ms Venete Klein
Date: 15 September 2015

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 Banooobhai | 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 Gera | 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 Serchuik | 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

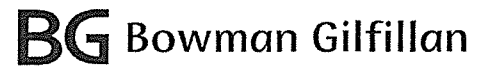
Practice Partner and Head of Africa JL Lang

Group COO RJ Smith

CFO GJ Karolus

Antananarivo | Cape Town | Dar es Salaam | Durban | Gaborone | Johannesburg | Kampala | Nairobi

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- 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

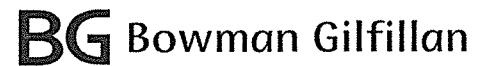
- 2.1 The Guidelines reiterate that South African Company Law authorizes the shareholders of a company to appoint a Board of Directors ("Board") to represent the shareholders and act in the best interests of the company.

- 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 Minister 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

BG Bowman Gilfillan

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

From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Wednesday, 16 September 2015 09:47
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Attachments: Letter of Advice_Appointment of Chief Executive Officer.pdf

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

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



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: 14 September 2015 04:36 PM
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)

Subject: RE: Remuneration of prescribed officers
Importance: High

Orcilla, please use this version as I have inserted the headings into the various columns for easy reading.

Best regards
Suzanne

From: Suzanne Daniels
Sent: Monday, September 14, 2015 4:11 PM
To: 'Orcilla Ruthnam'
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Dear Orcilla

Please find the information attached as requested. The extracts are from the annual financial statements that are audited by the external auditors. (I have copied the extract from the financial statements and then converted it into a table.)

Please let me know if you need anything else.

Best regards
Suzanne

From: Orcilla Ruthnam (<mailto:Orcilla.Ruthnam@dpe.gov.za>)
Sent: Monday, September 14, 2015 2:08 PM
To: Suzanne Daniels
Subject: RE: Remuneration of prescribed officers

Not yet, they are updating the table as we speak

Please also send me a similar table but with 13/14 figures as well as 2014/15.

Thanks
Orcilla

From: Suzanne Daniels (<mailto:DanielSM@eskom.co.za>)
Sent: 14 September 2015 02:06 PM
To: Orcilla Ruthnam
Subject: RE: Remuneration of prescribed officers
Importance: High

Hi

Did you get the information that you require from Transnet?

Best regards
Suzanne

From: Orcilla Ruthnam (<mailto:Orcilla.Ruthnam@dpe.gov.za>)
Sent: Monday, September 14, 2015 8:27 AM
To: Venete Klein
Cc: Suzanne Daniels

Subject: FW: Remuneration of prescribed officers
Importance: High

FYI

From: Orcilla Ruthnam
Sent: 14 September 2015 08:22 AM
To: 'Ayanda Ceba Transnet Corporate JHB'
Cc: Lawrence Nevondo; Nokuthula Khumalo Transnet Corportate JHB (NokuthulaE.Khumalo@transnet.net); Karabelo Mosia Transnet Corporate (Karabelo.Mosia@transnet.net)
Subject: Remuneration of prescribed officers
Importance: High

Dear Ayanda

Please urgently provide me with a schedule of remuneration of prescribed officers (names disclosed in the Integrated Report) after the resolution of the AGM. In other words, the names and amounts including the 5.4% awarded at the AGM.

Many thanks

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

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Wednesday, 16 September 2015 18:01
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Attachments: CE Full Specification v01.doc; 16092015 DPEMIN Motivation for Departure from Guidelines.docx

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
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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

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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From: Suzanne Daniels [<mailto:DanielSM@eskom.co.za>]
Sent: 14 September 2015 04:36 PM
To: Orcilla Ruthnam
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Orcilla, please use this version as I have inserted the headings into the various columns for easy reading.

Best regards
Suzanne

From: Suzanne Daniels
Sent: Monday, September 14, 2015 4:11 PM
To: 'Orcilla Ruthnam'
Cc: Venete Klein (venete@kleininc.co.za)
Subject: RE: Remuneration of prescribed officers
Importance: High

Dear Orcilla

Please find the information attached as requested. The extracts are from the annual financial statements that are audited by the external auditors. (I have copied the extract from the financial statements and then converted it into a table.)

Please let me know if you need anything else.

Best regards
Suzanne

From: Orcilla Ruthnam [<mailto:Orcilla.Ruthnam@dpe.gov.za>]
Sent: Monday, September 14, 2015 2:08 PM
To: Suzanne Daniels
Subject: RE: Remuneration of prescribed officers

Not yet, they are updating the table as we speak

Please also send me a similar table but with 13/14 figures as well as 2014/15.

Thanks
Orcilla

From: Suzanne Daniels [<mailto:DanielSM@eskom.co.za>]
Sent: 14 September 2015 02:06 PM
To: Orcilla Ruthnam
Subject: RE: Remuneration of prescribed officers
Importance: High

Hi

Did you get the information that you require from Transnet?

Best regards
Suzanne

From: Orcilla Ruthnam [<mailto:Orcilla.Ruthnam@dpe.gov.za>]
Sent: Monday, September 14, 2015 8:27 AM
To: Venete Klein
Cc: Suzanne Daniels
Subject: FW: Remuneration of prescribed officers
Importance: High

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Cc: Lawrence Nevondo; Nokuthula Khumalo Transnet Corporate JHB (NokuthulaE.Khumalo@transnet.net); Karabelo Mosia Transnet Corporate (Karabelo.Mosia@transnet.net)
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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.

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 in 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: 9 September 2015

Signed on original



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

Dear Minister Brown

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- 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;
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- 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;
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- ix) Public confidence has increased exponentially in the period since the commencement of his secondment to Eskom.

A handwritten signature in black ink, located at the bottom right of the page.

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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

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 1119/1160 Fax: 012 431 1038
Private Bag X9078, Cape Town, 8000 Tel: 021 461 6376/7469 Fax: 021 465 2381/451 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: general@eskom.co.za
publicaffairs@eskom.co.za

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

R 1

[Handwritten signature]

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


2


From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Thursday, 08 October 2015 13:13
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 from 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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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



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

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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



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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From: Orcilla Ruthnam <Orcilla.Ruthnam@dpe.gov.za>
Sent: Thursday, 08 October 2015 14:29
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

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To: Orcilla Ruthnam
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Importance: High

Hi Orcilla

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Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High


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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



REMEMBER YOUR POWER 

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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



REMEMBER YOUR POWER



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

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Thursday, 08 October 2015 14:35
To: Orcilla Ruthnam
Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
Importance: High

Ok thank you.

Best regards
Suzanne

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

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Department:
Public Enterprises
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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 from 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

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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



REMEMBER YOUR POWER



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
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Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Dear Suzanne

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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

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Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom
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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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Please acknowledge receipt.

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Ministry of Public Enterprises

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Friday, 09 October 2015 15:30
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
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Importance: High

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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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Your prompt response will be highly appreciated.

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Cc: Orcilla Ruthnam; Lawrence Nevondo; Keromamang Mhlongo

Subject: RE: Appointment of Chief Executive Officer and Chief Financial Officer of Eskom

Importance: High

Good afternoon

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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



REMEMBER YOUR POWER



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

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"Am I"
"ESK I"



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.

Entity	Entity	Remuneration	Fixed	Variable	Fixed	Variable	Fixed	Variable	Fixed
Entity	Entity	Entity	Entity	Entity	Entity	Entity	Entity	Entity	Entity
ESKOM	ESKOM	ESKOM	ESKOM	ESKOM	ESKOM	ESKOM	ESKOM	ESKOM	ESKOM
765600	563445	345226	2239152	7132105	8080792	9251995	30550000		

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.

Head Office
Magasani Park, Maxwell Drive, Sunninghill, Sandton
PO Box 1031, Johannesburg 2000 SA
Tel +27 11 300 2050 Fax +27 11 300 5303 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/32

Rm.k
Bey


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
E 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 Balevini Ngubane

CHAIRMAN


Date: 16/10/17

APPROVED

Ms Lynne Brown (MP)

MINISTER OF PUBLIC ENTERPRISES

Date:


M.C. Brown

From: Keromamang Mhlongo <Keromamang.mhlongo@dpe.gov.za>
Sent: Wednesday, 04 November 2015 15:18
To: baldwin.ngubane@gmail.com; danielism@eskom.co.za
Cc: Lawrence Nevondo; Orcilla Ruthnam; Masenya Selatswa
Subject: Re:Remuneration of Mr B Molefe:Chief Executive Officer

Dear Daniel.

On Behalf of Minister Lynne Brown Minister of Public Enterprises kindly find attached letter on the above mention subject for the attention of the Chairperson.

Please acknowledge receipt.

Kind regards.

Ms Keromamang Mhlongo.
Registry.
Ministry of Public Enterprises.

Tel:012 431 1118





MINISTRY
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 6376/7/469 6760 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/
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.

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



From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Wednesday, 04 November 2015 16:42
To: Venete Klein
Subject: Fwd: emuneration of Mr B Molefe:Chief Executive Officer

Regards
SUZANNE DANIELS
+27825807832

Sent from my Samsung device

----- Original message -----

From: Keromamang Mhlongo
Date: 04/11/2015 15:20 (GMT+02:00)
To: Baldwin.ngubane@gmail.com, Suzanne Daniels
Cc: Lawrence Nevondo , Orcilla Ruthnam , Masenya Selatswa
Subject: Re:Remuneration of Mr B Molefe:Chief Executive Officer

Dear Daniel.

On Behalf of Minister Lynne Brown Minister of Public Enterprises kindly find attached letter on the above mention subject for the attention of the Chairperson.

Please acknowledge receipt.

Kind regards.

Ms Keromamang Mhlongo.

Registry.

Ministry of Public Enterprises.

Tel:012 431 1118



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PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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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/
DanielSM@eskom.co.za

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Yours sincerely


MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES

DATE: 1/11/2015



From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Monday, 09 November 2015 06:56
To: Anton Minnaar
Subject: FW: Remuneration of Mr B Molefe:Chief Executive Officer
Attachments: 020 Appointment Letter Brian Molefe revised.doc; 021 Appointment Letter A Singh revised.doc

Good morning Anton

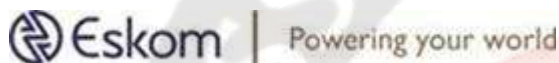
I have revised the attached letters as indicated in tracked changes. Will you please have a look and let me know if in order so that I can send to MS Klein for sign off.

You will be dealing with the foxed term contracts I assume?

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



From: Keromamang Mhlongo [mailto:Keromamang.mhlongo@dpe.gov.za]
Sent: Wednesday, November 4, 2015 3:18 PM
To: Baldwin.ngubane@gmail.com; Suzanne Daniels
Cc: Lawrence Nevondo; Orcilla Ruthnam; Masenya Selatswa
Subject: Re:Remuneration of Mr B Molefe:Chief Executive Officer

Dear Daniel.

On Behalf of Minister Lynne Brown Minister of Public Enterprises kindly find attached letter on the above mention subject for the attention of the Chairperson.

Please acknowledge receipt.

Kind regards.

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Registry.
Ministry of Public Enterprises.

Tel:012 431 1118



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Dr. B Ngubane
Chairperson
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2000

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Yours sincerely


MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES

DATE: 1/11/2015



STRICTLY PRIVATE AND CONFIDENTIAL

Mr B Molefe

13 October 2015

Dear Brian

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: GROUP CHIEF EXECUTIVE

1. Conditions

You will be required to enter into a standard-fixed term F Band Executive Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. Remuneration Package

Your remuneration package will be structured as follows:

- Total guaranteed value of R 7 032-656 000.00 per annum.
- 70% of the total guaranteed value will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund, housing loan, etc.
- The package may be structured to provide for a car allowance and 13th cheque.

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As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, yet you are entitled to the grant, such grant would be deemed to have accrued to you and will be calculated as part of the final payment to you which final payment shall be fully inclusive of any amount owed or that may become owing in terms of Eskom's Long Term Incentive Scheme to you.

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

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Kind regards

Dr B-S Baldwin -Ngubane
CHAIRMAN

ACKNOWLEDGMENT OF RECEIPT:

Signature

Date



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 - 2.3 Assign and cede to Eskom all his/her rights as author of any work which is subject to copyright in terms of the Copyright Act, 1978 produced in the course and scope of his/her employment with Eskom. The employee indemnifies Eskom against any claims resulting from the infringement by him/her of the copyright of any other author.
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STRICTLY PRIVATE AND CONFIDENTIAL

Mr A Singh

13 October 2015

Dear Anoj

OFFER OF EMPLOYMENT

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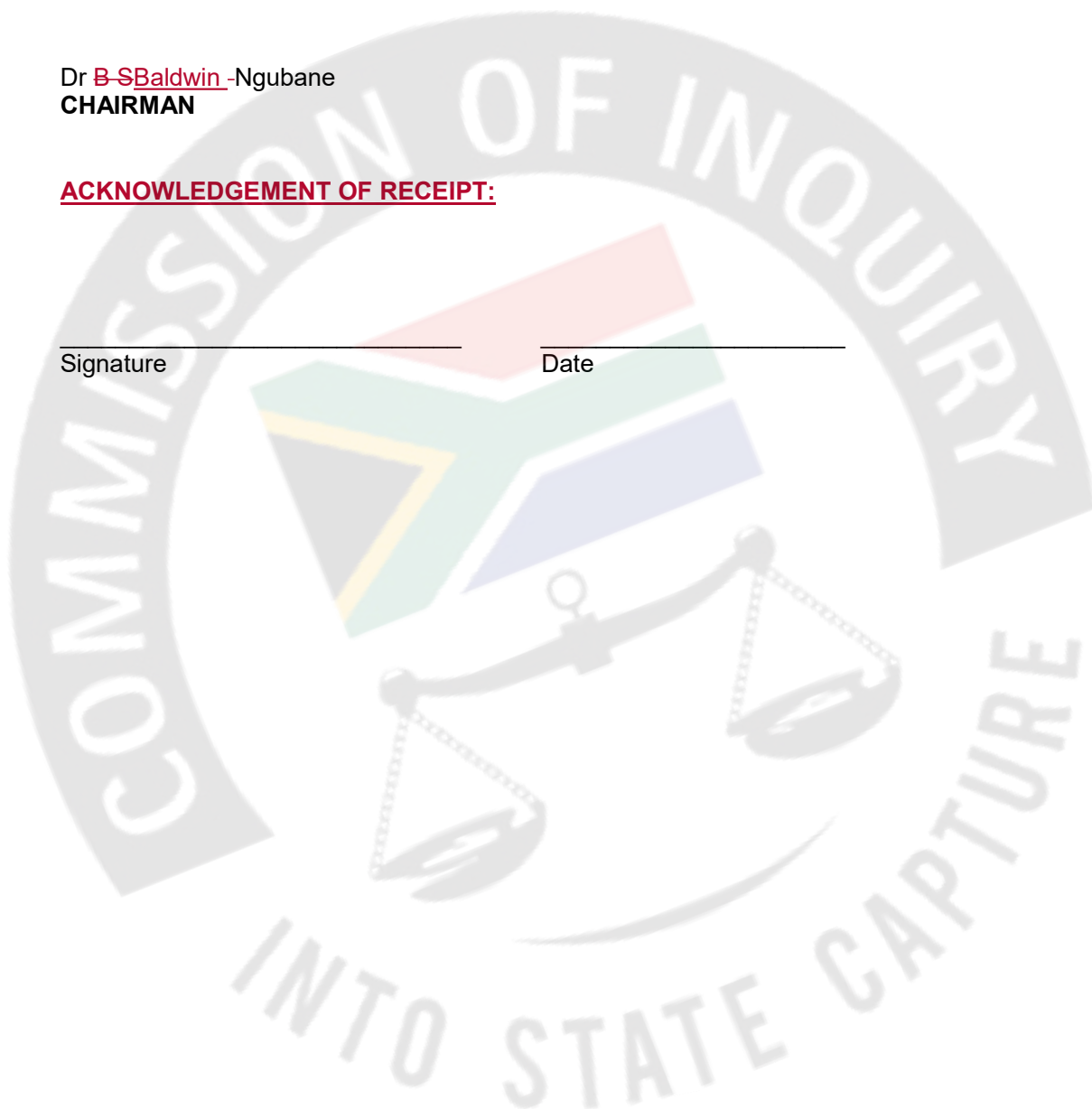
Kind regards

Dr B-SBaldwin-Ngubane
CHAIRMAN

ACKNOWLEDGEMENT OF RECEIPT:

Signature

Date



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STRICTLY PRIVATE AND CONFIDENTIAL

Mr B Molefe

13 October 2015

Dear Brian

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CHAIRMAN

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From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Monday, 09 November 2015 07:26
To: Anton Minnaar
Subject: RE: Remuneration of Mr B Molefe:Chief Executive Officer
Attachments: 7h22 020 Appointment Letter Brian Molefe revised.doc; 7h22 021 Appointment Letter A Singh revised.doc

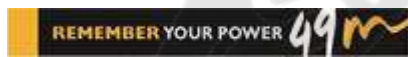
Importance: High

Ms Klein has made the following amendments and I have updated the letters accordingly.

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



From: Anton Minnaar
Sent: Monday, November 9, 2015 6:59 AM
To: Suzanne Daniels
Subject: RE: Remuneration of Mr B Molefe:Chief Executive Officer

Morning Suzanne

Will do. I will also finalise the fix contracts.

Kind regards
Anton

From: Suzanne Daniels
Sent: 09 November 2015 06:56 AM
To: Anton Minnaar
Subject: FW: Remuneration of Mr B Molefe:Chief Executive Officer

Good morning Anton

I have revised the attached letters as indicated in tracked changes. Will you please have a look and let me know if in order so that I can send to MS Klein for sign off.

You will be dealing with the foxed term contracts I assume?

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

From: Keromamang Mhlongo [<mailto:Keromamang.mhlongo@dpe.gov.za>]**Sent:** Wednesday, November 4, 2015 3:18 PM**To:** Baldwin.ngubane@gmail.com; Suzanne Daniels**Cc:** Lawrence Nevondo; Orcilla Ruthnam; Masenya Selatswa**Subject:** Re:Remuneration of Mr B Molefe:Chief Executive Officer

Dear Daniel.

On Behalf of Minister Lynne Brown Minister of Public Enterprises kindly find attached letter on the above mention subject for the attention of the Chairperson.

Please acknowledge receipt.

Kind regards.

Ms Keromamang Mhlongo.

Registry.

Ministry of Public Enterprises.

Tel:012 431 1118

From: Anton Minnaar <MinnaaAi@eskom.co.za>
Sent: Monday, 09 November 2015 09:58
To: Suzanne Daniels
Subject: STRICTLY CONFIDENTIAL
Attachments: 029 Offer of Employment A Singh.docx; 028 Offer of Employment B Molefe.docx
Importance: High

Dear Suzanne

Attached as requested. I have left the hard copies in a confidential envelope at your office.

Kind regards
Anton



**STRICTLY PRIVATE AND CONFIDENTIAL**

Mr A Singh

Dear Anoj

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: CHIEF FINANCIAL OFFICER

1. Conditions

You will be required to enter into a fixed term Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. Remuneration Package

Your remuneration package will be structured as follows:

- Total guaranteed amount of R 4 607 000.00 per annum.
- 70% of the total guaranteed amount will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund.
- The package may be structured to provide for a car allowance and 13th cheque.

In addition, the package will be influenced by factors described below.

3. Deductible Benefits

Deductions are applicable to the following benefits:

- Pension Fund – A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

OFFER OF EMPLOYMENT (Continue)

- Medical Aid – Unless you can provide proof that you are on the medical aid of your spouse / partner, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Bestmed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

4. Taxable benefits

The following benefits are taxable:

- Supplementary Medical Cover.
- Stated Benefits (Disability Cover).
- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
- You will be liable for the tax portion of all tax counselling and financial planning fees, limited to R12 000.00 per annum.
- Bank fleet card for operating and maintenance expenses on your car.

5. Non-taxable Benefits

The following benefits are non-taxable:

- Use of the Executive gymnasium at Megawatt Park Health Centre.
- Payment of Professional fees (maximum of 2 work related institutions).
- Group Life Cover – equal to three times annual pensionable earnings.
- Home installed telephone for business usage.

6. Short Term Incentive Scheme (STI) - Annual Performance Bonus

Annual performance ratings are determined according to predetermined targets and resultant payouts are taxable.

7. Long Term Incentive Scheme (LTI)

As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, all such grant values will be deemed to have accrued to you and will be calculated as part of the final payment. Such final payment will be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.

OFFER OF EMPLOYMENT (Continue)

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

An appointment will be arranged to discuss the structure of your total package to suit your personal tax requirements and other needs. **Anton Minnaar and his Executive Support Team** will assist you with all the support functions. Please contact Anton directly on tel. (011) 800-3088.

Kind regards

Dr Baldwin Ngubane

CHAIRMAN

Date:

ACKNOWLEDGMENT OF RECEIPT:

Signature

A Singh

Date

ABRIDGED VERSION OF ESKOM'S CONDITIONS OF SERVICE

The following is an abridged version of Eskom's Conditions of Service:

1. The normal working day, which includes a lunch break of forty-five (45) minutes, is from 08:00 until 16:45 from Monday to Friday.
2. The employee shall:
 - 2.1 Not become involved in any part-time work without the consent of Eskom.
 - 2.2 Assign all rights which he/she may have in and to any invention, process, new and useful art and/or any new and useful improvement thereof, which may be invented or designed by the employee in the course and scope of his/her employment with Eskom and the employee hereby assigns all such rights in favour of Eskom. Further the employee undertakes to sign all the necessary documents to enable Eskom to obtain patent rights in such invention or design.
 - 2.3 Assign and cede to Eskom all his/her rights as author of any work which is subject to copyright in terms of the Copyright Act, 1978 produced in the course and scope of his/her employment with Eskom. The employee indemnifies Eskom against any claims resulting from the infringement by him/her of the copyright of any other author.
 - 2.4 Conform to, obey and abide by any rule, regulation or law of Eskom which may be in force from time to time and to the hours of work insofar as these are applicable to the employee in the capacity in which he/she is employed.
 - 2.5 Not cede, assign or hypothecate his/her right and claim to any monies payable to him/her in respect of his/her employment with Eskom, except with the consent of Eskom.
3. Infringement of any of the Conditions of Service, or rules of Eskom, will render the employee liable for dismissal, suspension or any other disciplinary action which Eskom in its discretion may deem fit in accordance with the disciplinary code.
4. The employee declares that he/she has no conscientious objection to working Saturdays, Sundays and public holidays and to work overtime and shift work if required to do so. If the employee objects, notice must be given in advance (prior to signing acceptance hereof).
5. During the first four weeks of employment one week's notice of termination can be given by either party.
6. After expiration of the first four weeks of employment, two weeks notice of termination of employment is required. After 12 months of service, not less than four weeks' notice is required.
7. The employee shall not submit his/her resignation and Eskom shall not terminate his/her employment whilst absent on annual, accumulated, sick or special leave.
8. Annual, accumulated and special leave will also not be granted after an employee has submitted his/her resignation.
9. Eskom shall be entitled to terminate the employee's employment immediately and without any notice for misconduct or breach of any Eskom rule or Condition of Service or as a result of any false information furnished in the application for employment.
10. Eskom at all times reserves the right to transfer the employee to any place where such employee's services are required.
11. Leave is granted in several categories, however, the main categories are described below:
 - 11.1 Annual leave - accrues on an annual basis on each service anniversary date or deemed starting date at the rate of 21 calendar days per completed year of service.
 - 11.2 Occasional leave - accrues on an annual basis on each service anniversary date or deemed starting date at the rate of 9 calendar days per completed year of service.
 - 11.3 Service leave – 42 calendar days is credited after 6 years continuous service and thereafter accrues at the rate of 7 calendar days per annum for each completed year of service.
 - 11.4 Sick leave - amounts to 45 calendar days per completed year of service, accumulative to a maximum of 180 calendar days.

**STRICTLY PRIVATE AND CONFIDENTIAL**

Mr B Molefe

Dear Brian

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: GROUP CHIEF EXECUTIVE

1. Conditions

You will be required to enter into a fixed term Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. Remuneration Package

Your remuneration package will be structured as follows:

- Total guaranteed package of R 7 656 000.00 per annum.
- 70% of the total guaranteed amount will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund.
- The package may be structured to provide for a car allowance and 13th cheque.

In addition, the package will be influenced by factors described below.

3. Deductible Benefits

Deductions are applicable to the following benefits:

- Pension Fund – A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

OFFER OF EMPLOYMENT (Continue)

- Medical Aid – Subject to your agreement with the Chairman that you continue with your chosen medical aid, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Bestmed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

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- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
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As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, all such granted values would be deemed to have accrued to you and will be calculated as part of the final payment to you. Such final payment shall be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.

OFFER OF EMPLOYMENT (Continue)

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

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Kind regards

Dr Baldwin Ngubane

CHAIRMAN

Date:

ACKNOWLEDGMENT OF RECEIPT:

Signature
B Molefe

Date

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 - 2.2 Assign all rights which he/she may have in and to any invention, process, new and useful art and/or any new and useful improvement thereof, which may be invented or designed by the employee in the course and scope of his/her employment with Eskom and the employee hereby assigns all such rights in favour of Eskom. Further the employee undertakes to sign all the necessary documents to enable Eskom to obtain patent rights in such invention or design.
 - 2.3 Assign and cede to Eskom all his/her rights as author of any work which is subject to copyright in terms of the Copyright Act, 1978 produced in the course and scope of his/her employment with Eskom. The employee indemnifies Eskom against any claims resulting from the infringement by him/her of the copyright of any other author.
 - 2.4 Conform to, obey and abide by any rule, regulation or law of Eskom which may be in force from time to time and to the hours of work insofar as these are applicable to the employee in the capacity in which he/she is employed.
 - 2.5 Not cede, assign or hypothecate his/her right and claim to any monies payable to him/her in respect of his/her employment with Eskom, except with the consent of Eskom.
3. Infringement of any of the Conditions of Service, or rules of Eskom, will render the employee liable for dismissal, suspension or any other disciplinary action which Eskom in its discretion may deem fit in accordance with the disciplinary code.
4. The employee declares that he/she has no conscientious objection to working Saturdays, Sundays and public holidays and to work overtime and shift work if required to do so. If the employee objects, notice must be given in advance (prior to signing acceptance hereof).
5. During the first four weeks of employment one week's notice of termination can be given by either party.
6. After expiration of the first four weeks of employment, two weeks notice of termination of employment is required. After 12 months of service, not less than four weeks' notice is required.
7. The employee shall not submit his/her resignation and Eskom shall not terminate his/her employment whilst absent on annual, accumulated, sick or special leave.
8. Annual, accumulated and special leave will also not be granted after an employee has submitted his/her resignation.
9. Eskom shall be entitled to terminate the employee's employment immediately and without any notice for misconduct or breach of any Eskom rule or Condition of Service or as a result of any false information furnished in the application for employment.
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 - 11.3 Service leave – 42 calendar days is credited after 6 years continuous service and thereafter accrues at the rate of 7 calendar days per annum for each completed year of service.
 - 11.4 Sick leave - amounts to 45 calendar days per completed year of service, accumulative to a maximum of 180 calendar days.



Ms Suzanne Daniels
C/o Hefferman Attorneys
1007 Saxby Ave
Eldoraigne
Centurion
0157

Dear Ms Daniels

TERMINATION OF EMPLOYMENT

Please see attached the findings of Adv. Cassim SC the independent Chairperson appointed by Eskom to chair the Disciplinary Hearing convened to hear charges of serious misconduct against you.

Adv. Cassim SC has found you guilty of all of the charges against you and has recommended summary dismissal. Eskom has considered the findings and recommendation and has decided to accept these.

You are accordingly dismissed with immediate effect from your employment at Eskom Holdings SOC Limited as of today's date. You will be paid up to and including today.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Phakamani Hadebe'.

PHAKAMANI HADEBE
GROUP CHIEF EXECUTIVE OFFICER

DATE: 20/07/2018
Psh

IN THE DISCIPLINARY ENQUIRY HELD AT SANDTON

Between:

ESKOM HOLDINGS SOC LIMITED

Eskom/Employer

and

SUZANNE DANIELS

Employee/Ms Daniels

FINDINGS

Introduction

1. I have been tasked by the current CEO of Eskom (and I infer the Board itself) to chair a disciplinary hearing against Ms Suzanne Daniels, who at all material times was the Group Company Secretary ("GSC") and/or Acting Head: Legal and Compliance at Eskom. Ms Daniels' career at Eskom commenced on 1 May 2006 in the position as Chief Legal Adviser in Generation Primary Energy.
2. Prior thereto, after having graduated from law school at the University of Cape Town, she practised with small-sized firms in Cape Town. She made a career change by coming to Johannesburg and, going outside the focus of pure law, took up a position as head of operations at Global Assets and Company. Thereafter she headed the Thabo Mbeki Trust for disabled people and then took up the appointment at Eskom.

3. Until the end of August 2015, her progress at Eskom was steady and consistent with a career path in a State Owned Company ("**SOC**") of the magnitude of Eskom. By the end of August 2015, she was the senior manager, Office of the Chief Commercial Officer, earning an annual salary of R1,7 million.
4. Her meteoric rise commenced on 1 March 2015 when she was transferred to the Office of the Chairman of the Eskom Board, namely that of Dr Baldwin Ngubane ("**Ngubane**"). She reported to ET Mabelene ("**Mabelene**"), whose superior was MM Koko ("**Koko**"), who in turn reported to Ngubane.
5. Between the period 1 August 2015 to 1 August 2017 (when she was suspended), Ms Daniels rose to the position of Head: Legal and Compliance, reporting directly to the most senior person in charge at Eskom and earning a remuneration package of R2,6 million annually.¹
6. Although there are four charges, charges 2 and 3 have a number of subcharges. The charge sheet is complicated and the allegations of wrongdoing are intertwined with somewhat complicated factual and legal issues. It is my task to simplify the charges so that the conduct of the employee can be properly considered against the background of

¹ Her actual salary is R2,600,528.70 and prior to becoming Head: Legal and Compliance, which is also known as Group Executive for Legal and Compliance, she was the Group Company Secretary in the period 1 October 2015 to 1 August 2017, and during the period 1 September to 1 August 2017, she was Acting Head Legal and Compliance. During this period she reported ultimately to Mr Anoj Singh, the CEO of Eskom who in turn reported to the CEO, Mr Brian Molefe.

important and regrettably devastating material events which have had a profound impact on the everyday lives of the ordinary citizens of our country.

7. The employer's bundle, comprising documents which involve Billion rand deals, comprises some 4,000 pages. The employee's bundle is in excess of a further 1,500 pages. The employee's plea explanation tendered after the employer had presented its case is some 60 pages. I was also favoured with written submissions in lieu of argument.

Disciplinary hearings

8. This is a requirement for a fair hearing as part of the process leading to a lawful and valid dismissal as contemplated in the Labour Relations Act, No. 66 of 1995 ("the LRA").² Procedural fairness is the yardstick against which the employer's pre-dismissal actions are measured. The Code of Good Practice: Dismissal sets out the requirements for a fair pre-dismissal procedure in the following terms (Item 4(1)):

"Normally the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state her case in response to the allegations. The employee should be entitled to a reasonable time to prepare a response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer

² Section 188 of the LRA provides that, to be fair, a dismissal that is not automatically unfair must be for a fair reason and in accordance with a fair procedure.

should communicate the decision taken, and preferably furnish the employee with written notification of that decision.”

9. Although the Labour Court has held that the requirement of procedural fairness under the current LRA “*demands less stringent and formalise compliance than was the case under the unfair labour jurisdiction of the Industrial Court*”,³ disciplinary hearings, in my experience, have become long drawn out processes, belligerent in nature, obfuscation of the pursuit of the true facts and invariably takes the parties further apart, uncondusive to the continuation of a working relationship.
10. The International Labour Organisation (“ILO”)⁴ contemplates an employee being afforded an opportunity to be heard prior to dismissal for misconduct. The system is designed to be expeditious and yet fair.⁵

³ *Avril Elizabeth Home for the Mentally Handicapped v CCMA & Others* (2006) 27 ILJ 1644 (LC)

⁴ The ILO is devoted to promoting social justice and internationally recognised human and labour rights, pursuing its founding mission that social justice is essential to universal and lasting peace.

⁵ Section 6 of the ILO's recommended standards published by the ILO provides as follows:

“6. (1) Where an employer has good cause to believe that an employee has committed a misconduct mentioned in section 4, the employer may suspend such employee with or without pay and benefits and shall forthwith serve the employee with a letter of suspension with reasons and grounds of suspension.

(2) Upon serving the employee with the suspension letter in terms of subsection (1), the employer shall, within 14 working days investigate the matter and conduct a hearing into the alleged misconduct of the employee and, may, according to the circumstances of the case –

(a) serve a notice, in writing, on the employee concerned terminating his or her contract or employment, if the grounds for his or her suspension are proved to his or her satisfaction; or

11. Otto Kahn-Freund,⁶ the founder of modern labour law, never contemplated, with respect, that disciplinary hearings would be as complex, complicated and pedantic as they are practised in our country. There has to be a proper balance between the dictates of being fair to an employee and ensuring that the overall economic interest of the employer is not prejudiced by the process itself.

(b) serve a notice, in writing, on the employee concerned removing the suspension and reinstating such employee if the grounds for suspension are not proved.

(3) A determination or order served in terms of subsection 2(b) shall provide for back-pay and benefits from the time of the summary suspension.

(4) At a hearing in terms of subsection (2), an employee shall have the right to –

(a) at least three working days' notice of the proceedings against him or her and the charge he or she is facing;

(b) appear in person before the employer or the employer's representative or disciplinary authority as the case may be and be represented by either a fellow employee, worker's committee member, trade union official/officer or a legal practitioner;

(c) call witnesses and have them cross-examined;

(d) be informed of the reasons for a decision;

(e) address in mitigation before the ultimate penalty is imposed."

⁶ Otto Kahn-Freund was a scholar of labour law and comparative law. He was a professor at the London School of Economics and the University of Oxford. He became a judge of the Berlin labour court, 1929. Kahn-Freund wrote a path-breaking article, contending that the *Reichsarbeitsgericht* (Empire Labour Court) was pursuing a "fascist" doctrine in 1931. Sir Otto Kahn-Freund was the doyen of British labour law. His writings combined technical virtuosity with brilliant theoretical insights into the nature of the State, the role of autonomous organisations in relation to it, and the interaction of the legal norms and social reality. As a lawyer with a strong sociological and historical background, Kahn-Freund was, in fact, particularly well qualified for multi-disciplinary and theoretical analysis. In general, social scientists find it difficult to give an adequate assessment of legal policy in industrial relations since the raw materials of the law are usually couched in an abstruse, technical language, pre-supposing a knowledge of legal concepts and reasoning. On the other hand, the narrow academic and professional training of lawyers tends to reinforce a pre-occupation with purely technical analysis, laced with occasional explicit or usually implicit policy assumptions. Kahn-Freund's education and experience were of a different order.

12. I premise this observation on the basis that our new-found values in the Constitution of South Africa are to seek an economic state that serves the interests of the majority and not that of the individual. Regrettably, our courts, particularly in the first decade of our democracy have emphasised, in my view, the interests of the individual ahead of that of the majority.
13. All legal systems that have a moral foundation seek to achieve the greater good for the majority. It is in this context that I use the term "efficiency" to refer to the relationship between the aggregate benefits of a situation and the aggregate cost of the situation. The term "equity" in turn refers to the distribution of income among individuals.⁷ In rudimentary terms, in the context of economic transformation, maximising the size of the pie is equivalent to maximising the factory's profits. Thus, if the cost of disciplinary hearings adversely impacts on the "*size of the pie*", then such hearings have the adverse effect of prejudicing job opportunities and, in a fair society, access to opportunities.
14. In context, when Bulbulia AM, found in *Mahlangu v CIM Deltak*, *Gallant v CIM Deltak* 1986 (7) ILJ 364 at 356 para [24] that an employee who is accused of certain misconduct or poor performance must be given a

⁷ See, for instance, Efficiency and Equity in Chapter 2 of An Introduction to Law and Economics a Mitchell Polinsky

chance to account for his or her behaviour. Thus, where management prematurely decides that the employee is guilty and does not give that employee an opportunity to say anything in his or her defence this would be entirely unfair.⁸ The learned judge was, at that stage in the history of our country, giving effect to the theory of justice founded on the concept "*as meaning a proper balance between competing claims from a conception of justice as a set of related principles for identifying the relevant considerations which determines this balance*".⁹ Judge Bulbulia was dealing with a situation in 1986 where workers had limited rights (in real terms, if any) and gave meaning to considering the import of

⁸ "24. The onus of proving the employee's misconduct or poor performance lies upon management, that is to say, it is not the responsibility of the employee to prove his innocence. He has a right to challenge any statements which are detrimental to his credibility and integrity. The other important ingredients of a fair disciplinary hearing would include:

- 24.1 the right to be told the nature of the offence or misconduct with relevant particulars of the charge;
- 24.2 the right of the hearing to take place timeously;
- 24.3 the right to be given adequate notice prior to the enquiry;
- 24.4 the right to some form of representations (the representative could be anyone from the work-place; either a shop steward, works council representative, a colleague or even a supervisor, so as to assist the employee and ensure that the discipline procedure is fair and equitable);
- 24.5 the right to call witnesses;
- 24.6 the right to an interpreter;
- 24.7 the right to a finding (if found guilty, he should have the right to be told the full reasons why);
- 24.8 the right to have the previous service considered;
- 24.9 the right to be advised of the penalty imposed (verbal warnings, written warnings, termination of employment); and
- 24.10 the right of appeal, i.e. usually to a higher level of management. (see the article on 'Discipline: Justice and Equity in the Workplace' Institute of Industrial Relations Information Sheet no. 80 July 1985).

25. It is accepted that any act on the part of an employee in the performance of his employment activities, and of which dishonesty is a component, entitles the employer to dismiss the employee summarily. (See: *Van Jaarsveld & Others SA Handelsregs* 1 ed 1978). However, dishonesty must not be merely suspected, it must be proved, although this proof may be based on a balance of probabilities.

⁹ John Rawls - *A Theory of Justice* – page 10, paragraph 2.

recommendation 119 on Termination of Employment (1963) of the ILO, which provided that the *"employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the Employer cannot reasonably be expected to provide this opportunity."*

15. We have come a long way since the era of Justice Bulbulia who became the Deputy Judge President of the Labour Court and Dr Ehlers, the President of the Labour Court, who have not received proper acknowledgements for their profound contribution to changing labour relations in the workplace, making life better and more tolerable for employees, and its transformation in inter-racial relationships not only of, but beyond, the shop floor to all other sectors of everyday life.

16. The reality, however, in present day South Africa, is that unemployment has reached astounding levels. In an article published in the New York Times on 26 June 2018, entitled, *"How McKinsey lost its way in South Africa"*, South Africa is described as a *"country with the worst income inequality in the world and a youth unemployment rate over 50%"*.¹⁰

¹⁰ Quarterly Labour Force Survey – QLFS Q1:2018

The results of the Quarterly Labour Force Survey (QLFS) for the first quarter of 2018 released by Statistics South Africa today indicate that:

"The South African working-age population increased by 153,000 or 0,4 per cent in the first quarter of 2018 compared to the fourth quarter of 2017. The rise in both employment (up by 206,000) and unemployment (up by 100,000) over the quarter led to a rise in

17. The South African Survey 2018,¹¹ observes that, *"of the 10,3 million South Africans aged (15-24 years) 32,4% (approximately 3,3 million) were not in employment, education or training (NEET) in the first quarter of 2018 – implying that close to one in three young South Africans between the ages of 15 and 24 years were disengaged from the labour market. Compared to the first quarter of 2017, the NEET rate remained unchanged in the first quarter of 2018."*
18. It was never contemplated that hearings would continue for days if not weeks, and that its impact would severely prejudice the viability of the employer both in terms of finance and functionality. The format of the process itself requires urgent re-evaluation in order to strike a proper balance between affording an employee a fair hearing and not needlessly harming the employer's financial interests. This balance is necessary to enhance economic opportunities for others.
19. In the public sector the energy and resources employees employ in pursuing their rights in disciplinary hearings is a strong indication that jobs in the public sector have become a prized possession. It is not unfair to say in this context that for public sector employees, it is either feast or famine. This is why people fight tooth and nail for their jobs. If truth be told, such individuals probably do not possess the ability or

labour force participation rate (from 58,8% to 59,3%). The unemployment rate (26,7%) remained unchanged over the first quarter of 2018 compared to the fourth quarter of 2017."

¹¹ Published by the South African Institute of Race Relations

confidence to acquire or generate other job opportunities. This, of course, is a damning observation in terms of those who do not have the confidence that they can find a job elsewhere. It also reflects the poor state of our education and skills that the majority of people have to rely on government for jobs.

20. I make these observations in order to promote a different thinking as to how one must approach disciplinary hearings generally and those particularly in the public sector. Unless there is a change in the mind-set of adjudicators, the tendency is likely to promote long hearings, as opposed to fair hearings, and the pursuit of the true facts as the dominant test is likely to be undermined by procedural issues that place form above substance.

21. I further make these observations to provoke people who have jobs, particularly in the public sector including state-owned enterprises, to value their positions, to work hard and make the economic environment successful in order to enhance opportunities for others. Ours is a society based on communal good and ought ultimately to strive for a situation that the hardships of some are off-set by the greater good in the aggregate. *"It may be expedient but it is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved. The ultimate idea is that since*

*everyone's well-being depends upon a scheme of co-operation without which no one could have a satisfactory life, the division of advantage should be such as to draw forth the willing co-operation of everyone taking part in it, including those well situated."*¹²

22. In more basic terms, in all our endeavours we must ensure that our major institutions (both public and private) are arranged so as to achieve the greatest net balance of satisfaction for all individuals – the principles of utilitarianism are those of Ubuntu.

23. There must thus be a proper balance in any disciplinary hearing, namely a fair process, but not that which undermines the greater good.

The background to this hearing

24. The allegations of wrongdoing are against the background of "Guptagate". Eskom, as has been widely documented elsewhere, became yet another SOC "captured" by the notorious Gupta family and its associates. I have decided to deal with the charges on the basis of state capture, because the employee has been charged in the context of her conduct leading to the wholesale abuses of State resources at Eskom, and as part of corruption and malfeasance perpetrated by officials of Eskom in cahoots with those who are associated with the Gupta family. The employee's version, in a nutshell, is that she is an

¹² John Rawls: *Theory of Justice*: p 15.

innocent party, and that she was but a pawn who carried out instructions at the risk of being intimidated and losing her job. I pause to observe at the outset that her defence was schizophrenic in nature – on occasion she contended that she did no wrong because she had no knowledge of any wrongdoing, but when pressed on specific issues, she relied on a defence of obeying orders.

25. On a personal note, I am duty-bound to deal with the capture of Eskom to understand the employee's role in a proper perspective in order to decide whether she committed misconduct or not in the employment context. I cannot lose sight of the fact that Eskom is important to every segment of South African society; its well-being is fundamental to the future of South Africa in all walks of life. The poor and working class people need access to affordable electricity. The industrialists and the business sectors are dependent on cost-effective energy. In the editorial of the Business Day of 29 June 2018, the question is raised *"Could Eskom cause a banking crisis? That is the unspoken question that lies behind the new cooperation between the Government and the financial sector on a rescue plan for state owned companies."* The import of this is that it will cost billions of Rand to normalise Eskom and this, in turn, also depends on good and competent people to do so. Invariably the issue in this matter is whether Ms Daniels fits the profile to be part of the team to undertake this arduous task.

26. At present, Eskom is clamouring for higher tariffs at the cost of all South Africans. The employee has placed herself in the public limelight. She gave evidence at the Parliamentary hearings in which she sought to project herself as a whistle-blower and a do-gooder. This has to be carefully analysed, bearing in mind the purview of protection afforded to whistle-blowers in terms of the Protection of Disclosure Act, 26 of 2000.
27. The transactions which underlie the charges concern the top echelon of Eskom, members of the Board itself and other professionals, law firms, lawyers, and accountants. Irrespective of the conduct of the employee, in particular whether she misconducted herself or not, anyone of the other persons could have at any stage done the right thing and prevented substantial losses to our country. This in itself requires my findings to canvass the conduct of others. There is also, in my view, the further aspect of the commission of enquiry into State Capture. Speaking personally, I am perturbed by the estimate of R280 million to be spent in the Commission, when the wrongdoing (and the wrongdoers) are not hard to detect, because the relevant transactions are all documented and manifest and those implicated are government officials and politicians whose identities are known.
28. Instead of prosecutions and real action to recover losses, it is a costly Commission in a struggling economy and, quite rightly, perceived in

many quarters as a further dilatory manoeuvre to further delay the detection and punishing of the wrongdoers. This cannot be good for the road to recovery. From the documentation that I have seen, it is not difficult to understand the wrongs and to allocate appropriate blame. What is difficult is recovering losses and holding those accountable to account because we, as a country, lack capacity and functionality to perform what appears to me to be a rather uncomplicated task.

The role-players

29. At all material times the Minister of Public Enterprises under whose responsibility Eskom fell, was Ms Lynne Brown ("**Minister Brown**"), the Group Chief Executive was Brian Molefe ("**Molefe**"), the Interim Group Chief after Molefe had left, was Koko, and the Chief Financial Officer was Anoj Singh ("**Singh**"). They all formed part of the Board. The Chairman of the Board was Ngubane, Ms Venete Klein ("**Klein**"), Dr Pat Naidoo ("**Naidoo**"), Mr Giovanni Leonardi ("**Leonardi**"), Zetheme Khoza ("**Khoza**") Ms Chwayita Mabude ("**Mabude**"). Later on, other board members were added – it would appear at the behest of the Guptas and their associates. This is well documented and I need not go further on the aspect.

30. At the start of November 2016, the former Public Protector, Thuli Madonsela's State of Capture Report was made public after the President's legal team withdrew its bid to interdict its release. A turning

point, Madonsela's report provided the first comprehensive legal analysis of the alleged systematic corruption being perpetrated through SOCs. Since then, South Africans have witnessed the rallying of civil society, investigative journalists, academia, public media and concerned citizens who have come together to further this civic work. I make this point because much of the evidence that featured before me was in the public domain. So were the role-players.

31. In the period March 2011 to April 2015, Molefe was the CEO of Transnet and during the period 2009 to August 2015, Singh was the financial director of Transnet. Minister Brown occupied her position during May 2014 to February 2018 and her DG, Richard Seleke ("**Seleke**"), was appointed in November 2015 to the present in Public Enterprises. He is presently on suspension or some sort of leave, languishing at a handsome salary at the taxpayers' expense for no value received by the taxpayer. Molefe and Singh took up the reins at Eskom in the face of damning evidence that the two of them were instrumental whilst at Transnet of causing the increase of the estimated total cost from R38,6 billion to R54,5 billion for the acquisition of 1,060 locomotives without compliance with procurement processes. To date, no steps have been taken to recover the excess of R17 billion lost to the people of South Africa – instead, Molefe and Singh were allowed to pursue their new interests at Eskom. In the Transnet deal, R5 billion was paid to an unknown entity which intervened, namely Tequesta Group Limited

incorporated in Hong Kong, and headed by one Salim Aziz Essa ("Essa") (a native of Polokwane, now residing in Dubai). In May 2015, Essa purchased Trillian, a competitor to Regiments, and which features prominently in the hearing before me.

The allegations of wrongdoing

Charge 4

32. For expediency and in hindsight simplicity, counsel¹³ representing Eskom commenced with charge 4, the complaint being that Ms Daniels mandated attorneys Mchunu and approved payment to these attorneys for legal services rendered to the then chairman of Eskom, Ngubane.
33. The charge is that these legal services concerned the parliamentary enquiry of Ngubane *apropos* his role and conduct at the South African Broadcasting Corporation ("**SABC**"). Eskom is aggrieved that R806,425.71 was paid at the instance of Ms Daniels to attorneys Mchunu for the benefit of services rendered to Ngubane in relation to his conduct while he was chairman at SABC.
34. To simplify matters, why should Eskom, and indirectly the South African taxpayer, pay legal fees of Eskom's chairman concerning his misconduct or like conduct whilst at the helm of the SABC? From my own

¹³ Advocates Tembeka Ngukaitobi and Zaid Navsa, instructed by Bowman Gilfillan, represented Eskom and Mr Sean Hefferman of the firm Hefferman Attorneys represented Ms Daniels.

perspective, why should the taxpayer foot the bill of a malfeasant chairman of a board, albeit a private board, a public board or a board of a SOC?

35. In order to understand the complaints, it is necessary that I consider Ms Daniels conduct in the context of the material background events which gave rise to the charges being proffered against her. I now concentrate thereon.

The material underlying facts

36. In January 2016, Eskom entered into a contract with McKinsey for the provision of consulting services, known as the "Master Services Agreement" ("**the MSA**"). This agreement was negotiated and concluded without Eskom engaging in any open and competitive tender process.
37. Under the MSA, McKinsey was to receive "*risk based*" remuneration, entitling it to a share of any savings secured for Eskom. This was a substantial departure from the National Treasury's instructions for the remuneration of external consultants, but Eskom failed to seek or obtain National Treasury's approval. At some point, Trillian, a small consulting company with close links to the controversial Gupta family, was presented as McKinsey's "supplier, development and localisation partner". In March 2016, McKinsey refused to conclude any contract with Trillian after Trillian apparently failed due diligence checks.

38. In June 2016, after McKinsey refused to have further dealings with Trillian, the Eskom BTC ("**the BTC**") decided to terminate the MSA and to make substantial payments in "settlement" thereof.
39. Between August 2016 and February 2017, Eskom made payments of just under R1,6 billion to McKinsey and Trillian for a contract that was in existence for less than six months. There was also no contract in existence between Eskom and Trillian at the time.
40. The above payments were additional to separate payments made in terms of a short-term contract concluded between Eskom and McKinsey, which came into effect on 1 October 2015 and terminated on 9 January 2016 ("**the 2015 McKinsey Contract**"). On the basis of that contract, McKinsey and Trillian received further payments amounting to over R112 million. From my understanding this was in respect of a very limited period in which the contract operated.
41. In the public domain, there was much controversy, commentary and disquiet when newspaper articles revealed that McKinsey earned over R1,1 billion in less than a year from Eskom. Mindful of the fact that Eskom was always clamouring for increased tariffs which really hurt the pockets of the ordinary South African, the disquiet turned into frustration when it was reported that Trillian, a small consultant firm, earned just under R600 million without any contract. To the ordinary officious bystander this was wholesale looting of State coffers, made possible by the government of the day. It is in

this context that a Parliamentary enquiry into State Capture at Eskom was announced. It is also documented that the then Eskom Board, and senior executives, including Ms Daniels, repeatedly denied any wrongdoing and in fact took no steps to deal with the mischief.

42. In the early part of 2018, the new President of South Africa, Mr Ramaphosa, replaced Minister Brown with Minister Gordhan and the entire Eskom Board was replaced.

The decision-making process involving the McKinsey contract and payments made to Trillian

43. The decisions to negotiate and conclude the Master Services Agreement involved:
- 43.1. the Eskom BTC's decisions on 6 July 2015 and 21 October 2015 to authorise the negotiation and conclusion of the Master Services Agreement; and
 - 43.2. the subsequent decisions taken by Mabelane, the former Chief Procurement Officer, to conclude the agreement with McKinsey between 7 and 11 January 2016.
 - 43.3. the BTC's decision on 21 June 2016 to authorise the cancellation of the MSA, followed by its decision on 8 August 2016 to authorise a settlement and initial cash payments of R800 million to McKinsey and its unnamed "BBBEE partner", Trillian.

43.4. the BTC's decision on 13 December 2016 to authorise the further payment of R134 million to the unnamed "BBBEE partner", Trillian.

The Tegeta transaction

44. Charge 3 deals with the employer's complaint concerning Ms Daniels' role in what I have referred to as "the Tegeta transaction". It is, in my view, also relevant in adjudicating wrongdoing, if any, on the part of Ms Daniels in relation to charge 4.

45. I will endeavour to set out the salient features of this transaction as I understand the factual matrix emanating from some 6,000 pages before me (the respective bundles and additional documents) and that which appears from the public domain.

46. The Public Protector reported extensively on the purchase of the controlling shares of Optimum Coal Holdings ("**Optimum**") by Tegeta Exploration and Resources ("**Tegeta**"). In her report the point is made (and as I understand the position not denied by Ms Daniels) that Eskom had in various ways improperly facilitated this deal for the benefit of the shareholders of Tegeta.

47. The shareholders of Tegeta at the material time was made up as follows:

47.1. 29,05% owned by Oakbay Investments (Pty) Limited, which is known to be majority owned by members of the Gupta family;

- 47.2. 28,53% owned by Mabengela Investments (Pty) Limited, of which Mr Duduzane Zuma (the son of the President) holds 43% and Mr Rajesh Gupta holds 25%;
- 47.3. 2% owned by Mr Ashu Chawla, who is reported to be the CEO of the Gupta-owned company, Sahara; and
- 47.4. 21.59% is owned by Elgasolve (Pty) Limited ("**Elgasolve**"), the sole director of which is Essa, who at the material time was also the substantial shareholder in Trillian.
48. Tegeta did not have the money to pay for the purchase price of the shares in Optimum. According to the Public Protector's report, Trillian paid Tegeta part of the purchase price for Optimum. The remaining funds, or a material portion thereof, were sourced from Eskom as described in the charge sheet, in respect of which there is no contention as being untrue.
49. Eskom was eager to assist Tegeta. It agreed to prepay R1,68 billion to Tegeta for coal which it would in due course source from Optimum and which would facilitate the purchase by Tegeta of Optimum. This was in due course substituted by a guarantee issued by Eskom in favour of Optimum which facilitated the transaction. If I understand the position correctly, Eskom caused a favourable settlement with Optimum in terms whereof Eskom had contractual claims against Optimum on the basis that Optimum would accede to it being acquired by Tegeta.

50. In summary, Eskom made it possible for Tegeta to acquire Optimum and Tegeta's source of income was the sale of coal to Eskom.

Charge 4

51. I revert to an analysis of charge 4. Ngubane joined the Board of Directors of Eskom as a non-executive director on 11 December 2014 and was appointed as interim Chairman of the Board of Eskom Holdings SOC Limited on 30 March 2015 (subsequently appointed Chairman by Minister Brown) and resigned on 13 June 2017.
52. When pressed, Ms Daniels conceded that the McKinsey, Trillian and Tegeta transactions had all the hallmarks of corrupt dealings. Initially she denied that she was aware that there was anything wrong, but when pressed that against the objective facts; the Public Protector's report, the Gupta connection to the President, the media reports and the concerns of the ordinary South Africans, she conceded that she was aware that the transactions were improper.
53. Ngubane was at the helm of the Board of Eskom during all three transactions referred to above. In fact, whilst they took place Ms Daniels was in constant contact with Ngubane, so much so that she testified that she confronted him and looked him in the eye and asked him whether he was aware of the wrongdoings at Eskom. He denied this according to her. Ms Daniels reasoned that it was important for Ngubane to be funded by Eskom to protect Ngubane's reputation as he was the "face" of Eskom. She

saw nothing wrong in spending Eskom's funds to protect her chairman for allegations of wrongdoing in his previous position at the SABC. She testified and argued that this was the right thing to do – according to her it promoted the image and reputation of Eskom.

54. In cross-examination Ms Daniels realised that her explanation was not probable as the corruption at Eskom involving Ngubane was documented and reported in the public domain. In fact, Ms Daniels raised the publication of the AmaBhungane article titled 'The Gupta owned State Enterprises' in March 2016 as a material event in her own understanding of the wrongful influence exercised by third parties over various Eskom members. The article itself linked Ngubane as one of five directors of Eskom who had direct connections with Essa. Essa was co-director with Ngubane in a company called Jade Oil and Gas. Despite this, Ms Daniels sought to rationalise the payment of the legal fees to attorneys Mchunu on the premise that it was important for Eskom to protect its chairman. She was undeterred that the legal fees related to Ngubane's malfeasance at the SABC before he joined Eskom.

55. There can be no doubt that Ms Daniels knew that Ngubane was compromised. The Public Protector's report of November 2016 in respect of which Ms Daniels conceded she had knowledge also confirmed Ngubane's links to the Guptas.

56. Ms Daniels explanation for authorising use of Eskom's resources to fund the private concerns of Ngubane lacks any credibility and demonstrates to my mind her unresolved dedication to the group of senior people at Eskom who were looting this SOC for their own benefit and, shamelessly, the benefit of the Guptas and their associates. I do not lose sight of the fact that she conceded that already by 9 March 2015 she had met Essa at Melrose Arch, introduced by Koko and, at this meeting, Essa demonstrated his influence over senior people at Eskom.
57. I do not believe that charge 4 requires any further analysis or debate. Ms Daniels behaved as if the Eskom resources belonged to her, unlawfully spent taxpayers' money for the personal benefit of Ngubane. At this stage she occupied a position earning her at least double the salary of a Supreme Court judge and in my exchange with her, she either lacked the competency to occupy the position as the Head of Group Legal at an SOC of the magnitude of Eskom or she was simply putting on an act to play-down her role in the corruption saga.
58. Ms Daniels abused public funds in providing a mandate and authorising legal fees to the value of R806,425.71 for Ngubane's legal costs to attend the Parliamentary enquiry into the SABC. She sought to wrongfully protect Ngubane at the expense of public funds. In this way, she further harmed the image and reputation of Eskom. Not only did she cause fruitless and wasteful expenditure, but she breached various items of Eskom's code, committed financial misconduct under the PFMA and misconducted herself.

59. In the order of the presentation of the case before me, I now deal with charge 1.

Charge 1

60. The nub of this charge is that Ms Daniels caused the distribution of confidential Eskom proprietary interest (be it in the form of documentation or the contents thereof) to a third party. It is not disputed that Ms Daniels distributed information to an email address "Business Man infoportal1@zoho.co7m." It is also not in issue that the material so distributed by Ms Daniels contains confidential Eskom information which ought not to have been made available to an outside third party.

61. Ms Daniels defence is that the email address belonged to Seleke. Eskom's contention on the other hand is that the email address is likely to be that of Essa. In order to evaluate the respective contentions, I need to analyse the role of the two individuals concerned *apropos* the information made available to them and the overall probability.

62. Seleke was at the relevant time, as I have already alluded to, the DG in the Department of Public Enterprise. He is currently, as testified by Ms Daniels on suspension. This is regrettably a common feature of the present-day administration in which highly paid officials are placed on suspension or long leave on full pay pending further investigation into allegations of misconduct. It would be remiss of me not to reiterate that this is regrettable because government officials earn a full remuneration package at the cost

of the tax payer for rendering no value whatsoever whilst on suspension. More so, in circumstances where jobs are scarce and delivery continuously ineffective.

63. Essa on the other hand is depicted in the Public Protector's report and in numerous publications as the prime initiator of corrupt practices. It is documented that he received substantial payments of monies through one or more of his companies from organs of state and in respect of which the state received no value. From all accounts he is presently resident in Dubai having accumulated substantial wealth arising from his interactions with leading politicians and in particular, members of the Eskom Board. As stated, Essa through Elgasolve holds a 22% stake in Tegeta, the Gupta owned mining firm that bought the struggling Optimum coal mine from multinational Glencore. Essa is a director of both Elgasolve and Trillian Holdings and a major shareholder in Trillian. Essa through Elgasolve is the majority shareholder in VR Laser Services, a company whose other shareholders are Tony Gupta and Duduzane Zuma.
64. Ms Daniels conceded that she met Essa in March 2015 at a meeting in Melrose Arch convened by Koko, then her immediate boss. From the contents of that discussion, it was apparent that Essa had intimate and intrinsic knowledge about the affairs of Eskom. Essa had alerted her to the fact that four senior officials of Eskom would be suspended the following day and that there would be an investigation into Eskom. His observations were correct.

65. The next time she met Essa was in October 2015 at Eskom's offices, where he took the opportunity to congratulate her on her appointment as Company Secretary.
66. The nature and contents of the documentation made available by Ms Daniels to the email address under scrutiny, is the kind of information generally made available to people running the affairs of Eskom. In fact, from the documentation so made available to the email address, it is clear to me that the recipient was calling the shots to the Eskom Board as to crucial decisions on matters which ultimately saw substantial assets unlawfully diverted by Eskom to Gupta and Essa-linked entities.
67. On the probabilities, I reject the suggestion that the emails were intended for the attention of Seleke. First, Seleke in his official position would generally speaking be entitled to such information representing the shareholder. There would be no need for secrecy. Secondly, Ms Daniel's explanation was that Ngubane had informed her that it was Seleke's email address when they started working together in April 2015. This cannot be correct. Seleke only became Public Enterprises DG in December 2016, whereas, the first email copied onto the "Businessman" email address was on 11 June 2016 dealing with a position statement issued by the Chairman of Eskom, Ngubane, dealing with public criticism aired on the program Carte Blanche concerning Eskom's coal contracts being irregularly advanced for the benefit of the Gupta family. Thirdly, the contents of the emails demonstrate a clear leaning to favour Essa and the Guptas in

business transactions involving Eskom. Fourthly, the conduct of Essa by this time and in particular his ability to pack the Eskom Board with his lackeys demonstrates that he was indeed running Eskom - an outsider conducting the affairs of Eskom for the purposes of enriching himself and his associates.

68. On the probabilities, I concur with the evidence of the expert Sean Morrow that the email account most probably belonged to Essa.
69. Ms Daniels is found guilty on this charge. In enabling an outsider to gain confidential information of Eskom in breach of her duty of good faith and in breach of the provisions of item 2.35 of Eskom's disciplinary code and Eskom's Code of Ethics, Ms Daniels committed misconduct.
70. In dealing with the remaining charges, namely charges 2 and 3, I propose to deal therewith holistically and not to analyse each and every charge as articulated in the charge sheet. I understand and appreciate that the species of wrongdoing is spelt out in sub-paragraphs (in respect of charges 2 and 3) in order to precisely inform the employee of the particulars of her wrongdoing in the context of the employment relationship. However, in my view it would be unnecessary to make findings on each particular species of alleged wrongdoing. It would accord with policy considerations that I consider the conduct of the employee in the context of the transaction as a whole and, in particular, to determine whether she misconducted herself or

not in relation to her part in the transaction as a whole. This would, in the circumstances be the sensible and reasonable approach.

Charge 2 – The McKinsey and Trillian transactions

71. In my view there is no justification for –

71.1. Eskom to have entered into the MSA with McKinsey on a sole source basis;

71.2. the support by Eskom officials of the final settlement of the MSA with McKinsey; and

71.3. the payments made to McKinsey and Trillian in an amount of R1 593 155 413,01.

72. This was a scam and a fraud on the South African public that is well documented. Indeed, McKinsey, has recognised this and has now publicly announced that it has agreed to repay R1 billion to Eskom. This is the right thing to do. As for Trillian, I am not surprised that they would deny any liability. Trillian is controlled by dishonest people and their *modus operandi* is deceit and greed.

73. I would have thought that somebody in Ms Daniels' position would have immediately acknowledged that the transaction was imbued with wrongdoing and illegality. She is an officer of the Court, having taken the oath to uphold the law and the values of our Constitution – not to defy the

precepts of the provisions of section 217 of the Constitution, the provisions of the PFMA and the policies of her employer to whom she owes a duty of good faith and loyalty.

74. The issue is whether, in the course of carrying out her duties, Ms Daniels misconducted herself or not. I am mindful of the fact that from time to time in her evidence she testified that she did not at the material time realise that she was committing any wrong, on other occasions she rested on the defence of obeying orders and ultimately resorted to a further defence that she took legal advice. I will revert to these defences later on herein.

75. In my view Ms Daniels acted incorrectly in the following respects, having regard to the evidence placed before me –

75.1. She erred in law in motivating in her memorandum to the executive and/or Eskom board that a sole source process was justifiable in the appointment of McKinsey. She should, as a competent lawyer and senior employee, have advised that it was necessary to follow an open competitive bidding process. Her conclusion that there was compliance of Eskom's Supply Chain Management Policy and procedure was wrong in law and on the facts. There was no need for any deviation from a process that was open, competitive, transparent, accountable and fair. Her memorandum of May 2015 has all the hallmarks of an individual prepared to do the wrong thing to please those in control of

Eskom. If I am wrong in this assessment, then at the very least she must be found to be incompetent and wholly lacking in ability to render legal services expected from a person in the position she holds.

75.2. The same criticism applies to the submission document in which it is motivated that a settlement of some R1,8 billion be paid to McKinsey and Trillian. On this issue, however, her liability for wrongdoing is exacerbated – the checklist attached to the submission document indicates that the corporate legal department's input had been obtained. I am not impressed with Ms Daniels' contention that this was in the sole domain of the then head of the corporate legal department, Neo Tsholanku. My findings cannot in any way detract from the liability of Mr Tsholanku.

75.3. This hearing concerns the conduct of Ms Daniels and not of other individuals. That other individuals may be guilty of similar or worse conduct is not the issue in this hearing. This issue in this hearing is the conduct of Ms Daniels. She was then Group Company Secretary and she should have brought to the attention of the Board the absence of a contract, and the nondisclosure of the BBBEE partner who would benefit in terms of the settlement. The fact that the submission document emanated from Ms Daniels placed an onus on her to ensure that she brought to the attention

of the BTC the reasons why the settlement was improper and unlawful. Ms Daniels owed a duty of good faith to Eskom, and not to enhance the interests of McKinsey, Trillian and corrupt leaders within Eskom. She accepted in cross-examination that she had read the submission document and it was clear to her (or ought to have been) that the material deficiencies determined that the settlement agreement ought not to have been approved.

75.4. By December 2016, Ms Daniels occupied a dual position, namely Acting Head: Legal and Compliance, and Group Company Secretary. Her conduct in supporting payment of some R134 million to the BBBEE partner was unlawful. She attended a meeting on 13 December 2016 at which the decision was taken to approve this payment. It was to an unnamed BBBEE partner which Ms Daniels knew to be Trillian. She took no steps to distance herself from this wrongful payment; it is aggravated by the fact that she took advice from attorneys Cliffe Dekker Hofmeyr ("CDH"). There is no indication from Mr Moodley of CDH that this payment should not be made. CDH owed a legal duty to Eskom and not to Ms Daniels. Had it taken the correct legal and moral position, it would have unequivocally opined that the payment not be made. This is regrettable because their conduct was used by Ms Daniels to subtly promote a payment of money which was in my view, akin to a theft from Eskom's coffers to the Guptas and

Essa. In the written submissions, filed in support of Ms Daniels' case, the following appears:

"It must be stressed that the employee sought legal understanding and advisory service on behalf of Eskom in the McKinsey matter, when it became apparent that something might be amiss. This was done on 5 December 2016, even prior to the preliminary report from Oliver Wyman dated 9 December 2016, where she requested Rishaban Moodley, CDH to conduct a legal review of the transaction ..."

75.5. Ms Daniels misconducted herself in failing to bring to the attention of the Eskom Board the view of Oliver Wyman, an external verifier, that no payment should be made until Eskom had performed an independent legal review of the MSA and the contracting process of the whole transaction which resulted in substantial payments being made to McKinsey and Trillian.

75.6. Ms Daniels misconducted herself in recommending the settlement in the memorandum of 17 February 2017, the purpose of the memorandum being to deal with the request to pay the final amount for the termination of the McKinsey MSA in line with the approval from the BTC and the provision for the amount payable in October 2016. Her conduct was wrongful in material respects. She could not in good conscience have supported any settlement payment. In this context again, I point out that the settlement agreement was drawn up by CDH. CDH should not have drawn up a settlement agreement when the supporting documents pointed out that the entire transaction was tainted by irregularity.

75.7. The fact that the CDH memorandum raised questions concerning the SLA agreement and whether suspensive conditions had been fulfilled, were not sufficient; it must have been clear to CDH that Ms Daniels was determined to pursue the settlement agreement because she required CDH to prepare such an agreement and it was, in my view, incumbent on CDH to have reported to the Eskom Board that the settlement was unsustainable in law. By preparing a settlement agreement, CDH armed Ms Daniels with the arsenal to cover up her wrongful conduct to support those in control of Eskom to perpetuate what is, in essence, a fraud on the fiscus.

76. Viewed holistically, Ms Daniels conducted herself improperly without regard to her duty of good faith to further Eskom's interest and not the interests of those she supported to perpetrate a fraud on Eskom.

Charge 3 – the Tegeta transaction

77. Ms Daniels did not quarrel with the proposition that this entire transaction had all the hallmarks of corruption. Her defence was that she was but a cog in the wheel of a large parastatal and that there was very little that she could do to avoid the transaction itself.

78. I must observe, having perused the documentation (which sheds more light than *viva voce* evidence because it is the very documentation that is used as a justification for the transaction) that, in essence, Tegeta should be an

Eskom asset. Not only did Eskom fund the acquisition of Tegeta for the benefit of the Guptas and their associates, but Eskom (and by that I mean those people in charge of Eskom at the material time) was instrumental in ensuring that Tegeta acquired Optimum, which in turn was Eskom's coal supplier.

79. Ms Daniels misconducted herself in the following material respects –

79.1. She played an important role in the transaction. In December 2015, she emailed to Koko for the latter's review and sign-off of the submission documents entitled "Optimum Coal Mine (Pty) Ltd". In the submission document, the resolution was proposed to authorise the CFO and the Group Executive Generation *"to negotiate and conclude an agreement with the new owners of Optimum in regard to the prepayment to secure the fixed coal price for a period of twelve months or up to a limit of R1,68 billion"*. There were no new owners; the submission document itself prepared by Ms Daniels was misleading and at the very least a fraud on the South African public. It was this resolution that set in motion the chain of events empowering corrupt people within Eskom to facilitate the Guptas and their associates to obtain Optimum at the expense of Eskom, with the secure knowledge that Optimum had a ready purchaser for its coal produce, namely Eskom.

79.2. Subsequent to the resolution, and in December 2015, Ms Daniels finalised a different version of the coal pre-purchase agreement in the form of a "letter guarantee" which was drafted by CDH. The impact thereof was that the shares in Optimum were transferred to Tegeta and Eskom would *"issue a bank guarantee in favour of Tegeta in the amount of R1,68 billion to secure the payment"*. This guarantee amount makes no commercial sense. What it does is the following: it guaranteed payment to Tegeta for coal to be purchased by Eskom, which coal emanated from Optimum. To any reasonable observer, the fraud is patent. Ms Daniels participated in a transaction in terms whereof Eskom would continue to receive coal from Optimum but additionally fund Tegeta to acquire Optimum. This is why, in my view, properly construed, and if the fraud is unwound, Tegeta is in fact an asset of Eskom. Why then is a transaction facilitated to promote an external party to acquire an asset at the expense of Eskom? This is so patently a fraud and Ms Daniels was instrumental in not only preparing the paper work but in taking no steps to actively distance herself from such wrongdoing.

79.3. In order to illustrate the instrumentality of Ms Daniels' involvement, I need look no further than Ms Daniels email of 17 February 2016 to Singh, the then CFO of Eskom, in respect of the Tegeta performance guarantee. She attached the extract of the resolution indicating Singh's authority to sign off on the transaction. The

extract itself is signed off by Ms Daniels. But the Board itself did not contemplate a guarantee and Ms Daniels acted improperly by contending that the Board had authorised the guarantee. She, however, did this with the knowledge that the transaction itself would be facilitated.

79.4. Tegeta required Eskom to advance cash or a guarantee because it could not raise monies to purchase Optimum. The evidence before me was to the effect that Essa had informed the business rescue practitioners of Optimum that there was a shortfall of some R600 million on the purchase price. This then gave rise to the addendum of 11 April 2016 for the short-term coal supply agreement between Tegeta and Eskom for the supply of coal from Optimum. In this way, Tegeta could then receive a pre-payment, or a guarantee for coal not belonging to it, to be sold to Eskom in order to raise the monies for Tegeta to acquire Optimum. Ms Daniels prepared the BTC submission to assist Tegeta with the pre-payment. She worked on this document the night before the BTC meeting of 11 April 2016. The submission in its final form motivated the need for Eskom acquiring higher grade coal suitable for its Arnot and Kriel power stations and which was procurable from Tegeta. The coal of course came from Optimum's stocks. Ms Daniels thus perpetuated untruths to support the conclusion of the transaction whereby Eskom assisted Tegeta to acquire Optimum.

79.5. Ms Daniels was party to the pre-payment to Tegeta being made on 13 April 2016. The latter agreement, I have already pointed out was prepared by CDH and modified by Ms Daniels. The terms of the agreement involved Eskom making an advance payment to Tegeta in lieu of future coal supplies in terms of the existing coal supply agreement with Optimum in an amount just short of R600 million (R586,787,000). The pre-payment was made on 13 April 2016. I must point out that at this stage there was no form of any security to protect Eskom's interests. There were documents prepared and concluded after the payment had been made, to give comfort to Eskom's interests.

79.6. I do not think it is necessary for me, for purposes of these findings, to analyse the subsequent agreements that sought to give protection to Eskom's interests. In my view, to a large measure, these agreements provide no real security to Eskom and were prepared in an endeavour to cover up what was clearly a transaction to favour the interests of a third party to the potential prejudice of Eskom. The fact of the matter is that Ms Daniels was instrumental in putting together a transaction which had all the hallmarks of corrupt dealings and thereafter engaging in what can only be described as "cover-up" agreements. There is no commercial rationale in the Tegeta transaction other than what I consider to be a fraud on Eskom.

79.7. Ms Daniels' subsequent conduct in the role she played in dealing with the media, demonstrates to me that she sought to justify, if not to cover up, wrongdoing on the part of those in control of Eskom and who made the Tegeta transaction possible. Thus, for instance, in June 2016, she assisted in preparing a statement in response to Mail & Guardian's queries to the effect that the allegations that Eskom had contracted Trillian and Regiment's group were baseless and factually incorrect. This information, Ms Daniels knew to be false. She willingly participated in misrepresenting to the public at large the role of the Guptas and their associates, in particular Essa, in controlling the Board of Eskom and entering into transactions to the detriment and prejudice of Eskom.

80. In my view, Ms Daniels is guilty of misconduct in respect of charges 2 and 3 more fully articulated above.

81. I now propose to deal with the defences based on the Protected Disclosures Act 26 of 2000 ("**the PDA**"), obeying instructions and the suggestion that Ms Daniels has been singled out and therefore victimised. Finally, I will have a word or two regarding the way forward for Eskom (to the extent that this is necessary) in dealing with employees in control of a SOC.

The Protected Disclosures Act 26 of 2000

82. In the written submissions made on behalf of Ms Daniels, it is contended that Ms Daniels made disclosures, during the period July 2017 to 4 September 2017, to Eskom's attorneys, senior people at Eskom, the media as well as to the acting group chief executive which amount to disclosures as contemplated in the PDA. Thus, she claims protection from any disciplinary steps on the premise that she was advancing the eradication of criminal and other irregular conduct at Eskom.
83. Taken to its logical conclusion, Ms Daniels argues that the proceedings before me constitutes a reprisal as a result of such disclosure and should not be allowed.
84. Having regard to the provisions of section 4 of the PDA as well as section 188A (11) of the LRA, I do not have jurisdiction to determine whether Ms Daniels is subjected to an occupational detriment (by the holding of the disciplinary hearing) by Eskom by virtue of the disclosures made by Ms Daniels. Whilst I do not have the power to make a determination as to whether the PDA protects Ms Daniels or not, I am not satisfied that the disclosures made by Ms Daniels were in good faith. Having regard to the content of the disclosure as well as its timing, I am persuaded that the disclosures are selective in nature, inconsistent with an employee who genuinely endeavours to protect the interests of her employer and, in the circumstances, opportunistic. That there is good reason for the holding of

the disciplinary hearing is manifest from the conduct of Ms Daniels over a sustained period of time and her intricate involvement in promoting irregular practices which directly prejudiced her employer and advanced the interests of corrupt employees and third party racketeers.

Carrying out instructions

85. In my inter-exchange with Ms Daniels, I enquired as to why she did not, at any stage, take measures to prevent Molefe, Koko, Ngubane, Singh and a host of other senior people (some in her own rank in terms of the hierarchy of employment) from pursuing irregular conduct and engaging in transactions that prejudiced Eskom. I did this in an endeavour to understand why an educated professional occupying a senior position in an important institution in South Africa would not do the right thing.
86. Ms Daniels' response was that she was carrying out instructions and that she feared that if she remonstrated, she would lose her job. I find the explanation pathetic and a sad reflection of the state of our nation. Some 30 years ago when I joined the Bar, I had difficulty comprehending why leading and brilliant advocates defended cases based on apartheid laws. I am not only referring to legislation which banned organisations, free speech and freedom of movement. More basic legislation such as the Black Areas Consolidation Act which made it an offence for a Black person (in context an African person) from residing or being in an urban area, unless such person qualified under strict regulatory conditions was defended on the

basis that it was the law. Unjust laws were thus defended and applied by lawyers on the pretext that this was their duty – but this prolonged the apartheid system and gave justification to an inhumane and illegal regime.

87. These days with our new found democracy, lawyers perpetuate illegality and immorality by carrying out the client's instruction. This is an extension of the bygone era when unjust laws were applied on the pretext that it was the obligation of the lawyer to uphold and defend the law. If truth be told, the real prime motivator is greed. Those of us in the legal profession who know or reasonably ought to know that a client's instructions and interests are the embodiment of wrongdoing, cannot hide behind the shield of carrying out instructions. The dividing line is thin in protecting the ethos of the profession - that even the devil is entitled to representation - and that of becoming submerged in the wrongdoing itself. But, to knowingly perpetuate the wrongdoing under the guise of "professional duty" is unconscionable.
88. Had Ms Daniels done the right thing, she could have averted significant financial losses suffered by Eskom and uphold the values upon which a proper society ought to function. Those in control of Eskom (high ranking officials and leading members of the government of the day) were motivated by self-interest in the damage they caused to Eskom and the people of South Africa. This also applies to Ms Daniels. She had a choice. She could have done the right thing. Her suggestion that she would have lost her job undermines the value of the PDA, the protection afforded to employees in the LRA and the right to fair employment practices enshrined

in section 23 of the Constitution of the Republic of South Africa (**“the Constitution”**).

89. If truth be told, the monumental financial transactions in Eskom could have been averted had any of the major role players taken a stand and done the right thing. Both the McKinsey/Trillion and Tegeta transactions required the input of lawyers and other professionals. Had the legal people (outsiders to Eskom) but in reality Eskom’s lawyers done the right thing, the corrupt transaction would not have taken place. They owed their obligation to Eskom and to their conscience and not to the corrupt officials at Eskom who perpetrated the corrupt transactions.

90. The guiding idea of the principle of justice for the basic structure of our society is our Constitution. Therein are embodied the principles that free and rational persons entered into to further their own interest. Therein lies the kind of social cooperation that can be entered into and the forms of governing structures. Those who let the people of South Africa down must hang their heads in shame, because they put at risk the very foundation of the principles of our Constitution and democracy. Those who advance the interests of the scourge of our society, namely corruption, do so to promote their self-interest which is founded on avarice and materialism.

91. The values enshrined in our Constitution are at risk. It is in this context that I take the view that the common law should not be needlessly undermined. The success of our Constitution is the enforcement of the values enshrined

therein, namely good governance, honest administrators, accountability, efficiency and competent delivery of services and, above all, honesty, decency and respect for each person's dignity without undermining the common good. But where the values are permeated by dishonest administrators, dishonest practices and the uncertainty of performance, useful reliance is to be found in the common law which has developed a set of principles that is predictable and certain.

92. A legal system premised on a value-based model can only succeed if the values itself are respected and enforced. In contrast, a rights-based system creates certainty, predictability and each individual is held accountable for his or her conduct. To promote a value-based system, this must not be at the expense of the individual claiming his or her rights and not appreciating and understanding the reciprocal obligation to perform. The latter is an inherent quality and requirement in a rights-based system.

93. Ms Daniels' excuse is lame and not in good faith.

Victimisation

94. The employer presented facts which demonstrated that disciplinary steps have been taken against all known wrongdoers. A number of such individuals resigned prior to or in the face of disciplinary action.

95. There is no substance in Ms Daniels' complaint. The object of the disciplinary hearing was to enable the employer to present its case against

Ms Daniels. Ms Daniels, in turn, could scrutinise the employer's case and present her own case. The hearing sought to afford the affected employee the *audi* principle. It is my finding that the employer discharged the onus and prove serious misconduct committed by the employee.

The way forward

96. Ms Daniels has committed serious misconduct. I see no purpose in a separate hearing to determine an appropriate recommended sanction. There is no legal requirement for a separate hearing on sanction. Each case must be determined on its own facts. To the extent that some judgments attempt to create the impression that it is a fixed principle that there be two separated hearings, this is wrong both in policy and practice. Employers cannot be required to participate in a sham, which is not only costly at the expense of other employees' rights, but ineffective in the context of an efficient economic model.

97. Ms Daniels breached her duty of good faith and a duty of trust and confidence.

98. From a labour law perspective, I have had regard to the Code of Good Practice in Schedule 8 to the LRA, in particular item 3, paragraph 4. This is

serious misconduct and, on the facts of this case, dishonesty which destroys the employment relationship. The employment relationship is regarded as one of the highest good faith.¹⁴

99. The success of any enterprise depends upon the absolute integrity and honesty of its employees, and any form of dishonesty or deception may have serious and far-reaching consequences, particularly at executive level.¹⁵

100. The concept of honesty in the employment context does not merely mean refraining from criminal conduct. It embraces any conduct which involves deceit (*Sappi Novo Board* at 787). Ms Daniels, in my view, knowingly aided corrupt practices at Eskom with the reasonable foresight that these would imperil the very existence of Eskom. The financial damage suffered by Eskom and consequence reputational harm has cost this country dearly. It has imperilled jobs and brought about disharmony in the work force. For the ordinary struggling employee, it makes no sense why people in high positions such as Ms Daniels earning almost R2,7 million a year could carry on the way she did whilst lower echelon employees must struggle to eke out a living. Members of society that are reliant and dependent on energy supply from Eskom who now have to pay higher tariffs for electricity because of the behaviour of people like Ms Daniels, are further frustrated.

¹⁴ *Counsel for Scientific and Industrial Research v Fijen* (1996) 17 ILJ 18 (A) at 26B-F; *Standard Bank of SA Ltd v CCMA* (1998) 19 ILJ 903 (LC) at 913E-H; *Sappi Novo Board (Pty) Ltd v Bolleurs* (1998) 19 ILJ 784 (LAC) at 7 and the authorities cited therein.

¹⁵ *JD Group Ltd v De Beer* (1996) 17 ILJ 1103 (LAC) at 1112-1113; *Carter v Value Truck Rental (Pty) Ltd* (2005) 26 ILJ 711 (SE) at 34

Failure to assist an employer in bringing the guilty to book violates the employee's duty and, in itself, justifies dismissal (*Chauke & Others v Lee Service Centre t/a Leeson Motors* (1998) ILJ 1441 LAC at paragraph 31).

101. I recommend summary dismissal.

Obiter

102. Having been appointed by the new board to conduct this hearing, I am taking the liberty as a concerned citizen and bearing in mind the trust and confidence vested in me by the board to make the following additional recommendations.

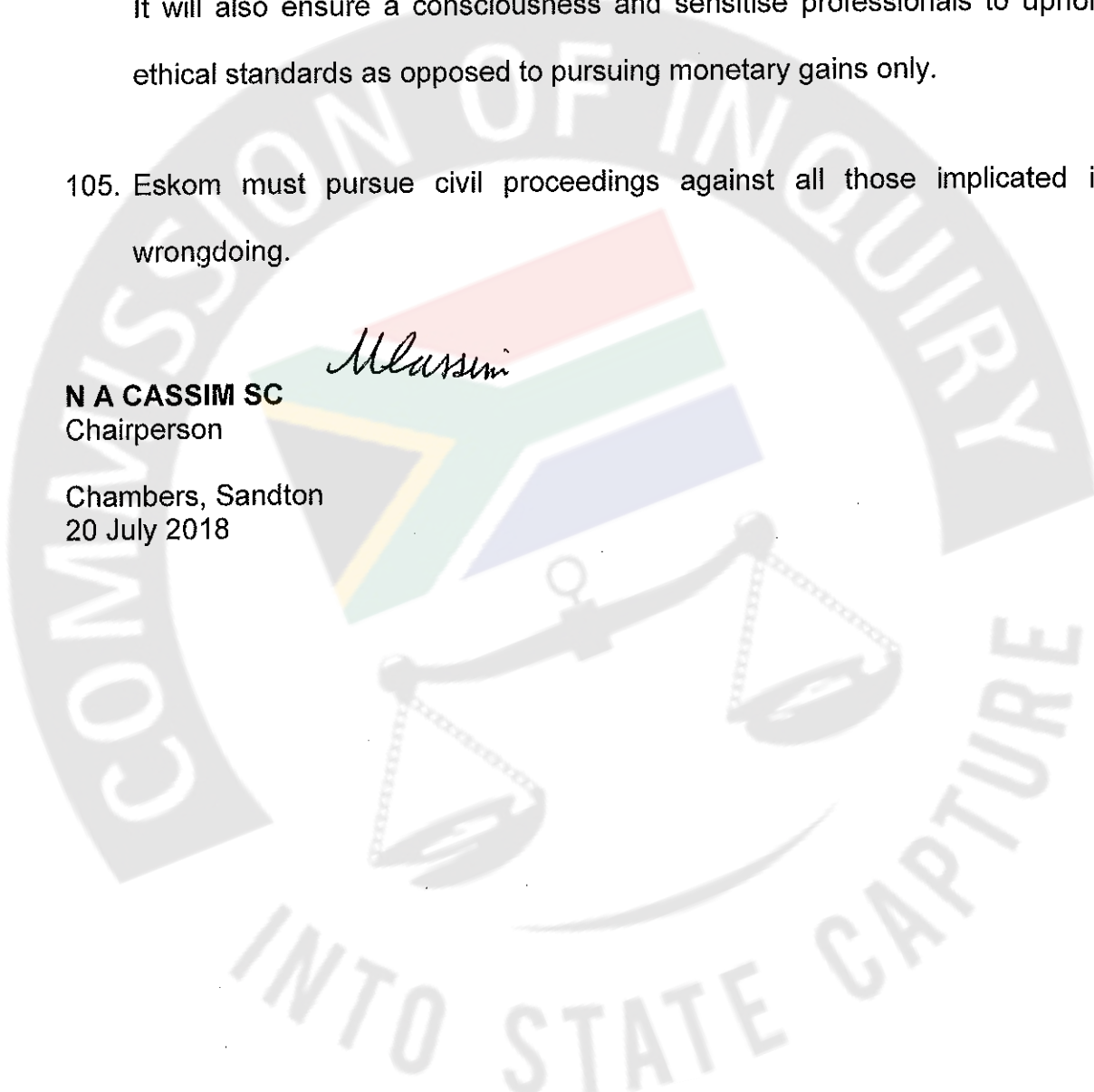
103. Legal proceedings must be considered against Ms Daniels to recover losses suffered by Eskom and in which she participated. This would be a delictual action. This is necessary to deter others from misconducting themselves as Ms Daniels has done. As a responsible board, decisive action must be taken to recover losses and deter others from similar conduct. There is regrettably no great prospect of criminal prosecutions being pursued to finality. To evaluate why the authorities are so ineffective in dealing with complaints is probably a chapter on its own and unnecessary for purposes of these findings. In any event, Eskom has no control over the prosecution process.

104. Eskom must evaluate the role of service providers, namely lawyers, accountants and other professionals in the transactions dealt with in these charges to understand culpability on the part of such professionals (if any). This is important because it sends a message that professionals owe a duty to the client, namely Eskom, and not to senior officials in control of Eskom. It will also ensure a consciousness and sensitise professionals to uphold ethical standards as opposed to pursuing monetary gains only.

105. Eskom must pursue civil proceedings against all those implicated in wrongdoing.

M Cassim
N A CASSIM SC
Chairperson

Chambers, Sandton
20 July 2018



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DENTONS

REPORT

in respect of the investigation into the status of the business and challenges experienced by Eskom,
instituted by the board of Eskom Holdings (SOC) Ltd in terms of a resolution passed on 11 March
2015

2 July 2015

(reflecting the state of the investigation as at 18 June 2015)

CONFIDENTIAL

Dentons South Africa
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INTRODUCTION

1 Background

- 1.1 This document constitutes the report ("Report") of Dentons South Africa in respect of the investigation ("Investigation") commissioned by Eskom Holdings SOC Limited ("Eskom") pursuant to a request for proposals ("RFP") issued on 8 April 2015 under number CORP3254R, in terms of a resolution adopted by the board ("Board") of directors of Eskom on 11 March 2015.
- 1.2 The Investigation commenced on 20 April 2015. A draft report was required to have been provided on 20 July 2015, with the final report to follow on 31 July 2015. Progress reports have been provided to Eskom at approximately two-weekly intervals in the form of activity reports and presentations.
- 1.3 On 11 June 2015, we were requested to prepare a detailed presentation to the Board, in addition to a draft report dealing with the state of the Investigation to date. We understand that this was due to the need to meet the deadlines for various other commitments that had been made by the Board in respect of the time frames of the Investigation. A detailed presentation to the Board was delivered on 25-26 June 2015, which was followed by our draft preliminary report. For these purposes, investigatory activities ceased shortly after 11 June 2015 and resources were redirected from the normal course of the Investigation to the development of preliminary findings, preparation of the above mentioned presentation, and preparation of a draft preliminary report.
- 1.4 Subsequent to our presentation to the Board, we were advised that (i) the Board was satisfied with the Investigation and the degree of detail covered in a very short period of time, (ii) the Investigation had provided the Board with the information it needed to take decisions as to how best to manage the affairs of Eskom, and (iii) no further investigatory activities were required.
- 1.5 A draft preliminary report was submitted to the Board on 3 July 2015. This was followed by an executive summary on 6 July 2015. A presentation was made to the Minister of Public Enterprises on 9 July 2015. We were then requested to prepare this Report as our last submission.
- 1.6 This Report represents a snapshot of the Investigation at the midpoint of the investigation period (about 18 June 2015) and is provided to Eskom on the specific request of Eskom. The findings, views, conclusions and recommendations set out in this Report are accordingly (i) subject to verification and testing, (ii) provided to Eskom as a record of the Investigation as at the midpoint of the investigation period, and (iii) do not constitute definitive findings, views, conclusions and recommendations.

2 Form of Contract

- 2.1 The form of contract between Dentons South Africa and Eskom relating to the Investigation is the Professional Services Contract ("PSC") forming part of the New Engineering Contract 3 ("NEC") suite of contracts, which is published by Thomas Telford Publishing on behalf of the Institution of Civil Engineers, United Kingdom.

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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:

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- 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

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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

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In this phase, the Dentons team will conduct reviews of the available documentary information and interviews to obtain an understanding of the information that has been provided to the Board on the key issues identified under the Scope of Work. This phase will entail review of a large volume of information, a key intent would be to distil and extract from these documents those aspects that are most pertinent to addressing the Scope of Work and will be used for the more detailed assessment to be conducted in Phase 2.

Phase 2: Detailed Assessment

In this phase, the Dentons team will conduct assessment of the credibility and completeness of the information that has been provided to the Board on the key issues identified under the Scope of Work. This may require review of additional information such as more detailed reports as well as further interviews to fully address the issues identified under the Scope of Work.

The review of available information and the detailed assessment will be at a level which can be reasonably expected to be conducted within the time frame of Task Order 1. Although, specialist studies will not be conducted under Task Order 1, the verification of certain matters may require additional studies of a specialist nature that may fall outside the methodology set out in Eskom's Terms of Reference. Any such studies will be discussed and agreed between Eskom and Dentons as part of new task orders."

- 5.2 In effect, the methodology of the Investigation was limited to (i) interviewing employees of Eskom and also other persons, and (ii) review of documents.
- 5.3 The prescribed methodology excluded specialist and technical investigations and certain types of investigations that would ordinarily be included in the scope of forensics work.
- 5.4 The limitations of the above mentioned methodology was recognised by the Board, and this led ultimately to an extension of the methodology to include site inspections. This extension was authorised by way of a resolution of the Board adopted at the time of our presentation to the Board on 27 May 2015. Any additional investigations would require authorisation by way of a new task order.

6 Team Structure

- 6.1 It is clear from the scope of work set out in paragraph 2 of Task Order 1 that the investigative team would be required to include specialists in engineering and finance. More specifically, paragraphs 2.1 to 2.3 involve a strong engineering component, whilst paragraph 2.4 is financial and accounting in nature.
- 6.2 The investigative team accordingly comprised of specialist engineering, finance and legal sub teams, co-chaired by the managing director of Dentons South Africa, Noor Kapdi, and Adv Dumisa Ntsebeza SC.
- 6.3 The investigative team was further divided into a core team, three primary working teams, and four further sub teams.
- 6.4 The three primary working teams were allocated the following tasks:
 - 6.4.1 engineering team – investigation of the matters set out in paragraphs 2.1, 2.2 and 2.3 of Task Order 1;

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- 6.4.2 finance team – investigation of the matters set out in paragraph 2.4 of Task Order 1;
- 6.4.3 legal team – investigation of the matters set out in paragraphs 2.5 to 2.7 of Task Order 1.
- 6.5 In addition, the following four sub teams were appointed:
 - 6.5.1 coal team – investigation of coal supply and related contracts;
 - 6.5.2 diesel team – investigation of diesel supply contracts;
 - 6.5.3 business intelligence – gathering of business intelligence; and
 - 6.5.4 document review team – review of (i) selected reports received by EXCO from the various Eskom divisions and business units, (ii) selected reports made by EXCO to the Board, and (iii) minutes of EXCO and Board meetings.

7 Period of the Investigation

- 7.1 The RFP provides that the Investigation is required to be concluded in a period of three months commencing no later than two days "after the signing of these terms of reference". The Letter of Acceptance was signed by both parties on 17 April 2015.
- 7.2 As indicated above the form of contract used by Eskom for the appointment of Dentons South Africa to conduct the Investigation is task order based. Work is required to be performed only in terms of a task order. Nonetheless, the Investigation formally commenced on 20 April 2015.
- 7.3 At the meeting of the Board on 31 March 2015, it was noted that the period of the Investigation could take up to 12 months.
- 7.4 The contractual three-month period for the Investigation was possible only (i) on the assumption of full cooperation by Eskom for the purposes of the Investigation, and (ii) on the basis of the specified purpose and prescribed methodology of the Investigation (see in this regard paragraphs 4 and 5).
- 7.5 In the circumstances, we were requested to prepare this Report reflecting the state of the Investigation as at the mid point of the investigation period on the basis that the Investigation had at that stage revealed sufficient information for the purposes of the Board.

8 Conduct of the Investigation

- 8.1 Eskom specifically requested that work on the Investigation commence on 20 April 2015 and that work proceed thereafter without delay.
- 8.2 The Investigation accordingly commenced formally on 20 April 2015 with a meeting between the Dentons core teams (being engineering, finance and legal) and ARC at Eskom's premises in Megawatt Park, Johannesburg. Certain preliminary steps were undertaken both on, and in the days before, 20 April 2015 to assemble the various teams and to develop a definitive understanding of the TOR.
- 8.3 Further meetings with ARC were held in Cape Town on 21 April 2015 (to discuss the scope of work in greater detail) and on 22 April 2015 (to discuss points of clarification in respect of the scope of work in the TOR).

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- 8.4 An informal introductory meeting with the Board took place in Cape Town on 22 April 2015.
- 8.5 The above mentioned meetings were followed by initial scoping interviews on 24 April 2015 for the purposes of scoping the Eskom environment and understanding its divisional structure and reporting lines. These interviews were with key Eskom personnel from the following organisational areas:
- 8.5.1 Group Capital Division;
 - 8.5.2 Primary Energy Division;
 - 8.5.3 Human Resources;
 - 8.5.4 Treasury;
 - 8.5.5 Information Technology; and
 - 8.5.6 Procurement.
- 8.6 An initial document request was made on 22 April 2015. This was followed by several other document requests as the investigation progressed.
- 8.7 Interviews have been conducted with persons regarded by the investigative team as being sources of information relevant to the investigation.

9 Limitations

- 9.1 Access to Documents
- 9.1.1 Certain documents were available only at Eskom's premises. For a period of several weeks, these documents were available only until 17h00 during business days.
 - 9.1.2 Arrangements were put in place some weeks later to grant the document review team better access to these documents.
- 9.2 Access to Emails
- 9.2.1 Although the prescribed methodology requires review of emails, we were not provided with access to any emails.
 - 9.2.2 The prescribed internal form for access to emails is titled "Eskom Forensic & Anti-Corruption Information Management (Employee E-Mail Records) Request". A duly completed and signed copy of this form in respect of specified data subjects was delivered by hand to Eskom on 28 May 2015. A copy is attached as Schedule 4.
- 9.3 Interviews with Suspended Employees
- 9.3.1 Interviews were requested with certain employees who were under suspension.
 - 9.3.2 We were advised that these interviews could not be arranged due to the suspension of the employees in question. We were required to make direct contact with these employees for these purposes.

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9.4 Interviews with Senior Management and Employees who have left the employ of Eskom

9.4.1 Interviews were conducted with several members of Eskom's senior management, including certain members of the EXCO and the Board. We had planned to interview all persons who had been members of EXCO or the Board over the last two years, but were unable to do so in the limited time leading up to the presentation of this Report.

9.4.2 Furthermore, we identified certain ex-employees as potentially being in possession of information relevant to the Investigation.

9.4.3 These ex-employees advised us that they had entered into confidentiality agreements with Eskom and would only discuss the affairs of Eskom with us if Eskom were to provide written consent to them doing so. We directed correspondence to Eskom on 23 June 2015 requesting that Eskom provide such written consent.

9.5 Conflict of Interests

9.5.1 Dentons South Africa represents Areva in respect of review and related appeal proceedings currently pending before the courts, in connection with the Koeberg steam generator upgrade.

9.5.2 We were accordingly precluded from investigating matters related to the above.

9.6 Methodology Limitations

9.6.1 The prescribed methodology for Task Order 1 limits the information sources for the Investigation to review of documents and interviews.

9.6.2 This limited the methods available to us to obtain, test and verify information.

10 Reporting

10.1 The following reports have previously been provided to Eskom:

10.1.1 activity report delivered on 8 May 2015;

10.1.2 activity report delivered on 27 May 2015; and

10.1.3 activity report delivered on 8 June 2015.

10.2 In addition three presentations have been made, as follows:

10.2.1 presentation to ARC on 14 May 2015;

10.2.2 presentation to the Board on 27 May 2015; and

10.2.3 presentation to the Board on 25-26 June 2015.

10.3 In view of the Board's request for a detailed presentation on 25 June 2015 followed by a preliminary report and then this Report, no activity reports were prepared for the period subsequent to 8 June 2015.

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11 Structure of this Report

- 11.1 This Report comprises of seven chapters, dealing with the items contained in the scope of work set out in paragraph 2 of Task Order 1.
- 11.2 Additional material is provided in the schedules.
- 11.3 The assumptions and qualifications on which this Report is based are set out in Schedule 4.
- 11.4 A glossary is provided in Schedule 5.



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- 12.5. The "bugging" incident amounted to nothing more than "the paranoia of the executive at the time. A sweep was done of the executive's office and nothing was found. Forensics compiled a report regarding the incident.



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Schedule 1**Terms of Reference**

This schedule contains the terms of reference that formed part of Eskom's RFP.

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY

COMMISSIONED BY ESKOM HOLDINGS (SOC) LTD (hereinafter referred to as "Eskom")

TERMS OF REFERENCE

A Forensic Fact Finding Enquiry ("the enquiry") into the status of the business and challenges experienced by Eskom is hereby instituted in terms of an Eskom Holdings (SOC) Ltd Board ("the Board") resolution taken in a properly constituted meeting of 11 March 2015 held at Megawatt Park where it is envisaged that upon completion, this enquiry will provide the Board with an independent view of reasons for the following

- The poor performance of Eskom's generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Eskom's financial challenges
- Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
- Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.
- Security failures and accountability at Eskom as a Key National Point.

1. PROBLEM STATEMENT

The Board seeks to obtain an independent and unfettered view regarding the credibility and the correctness of information that Eskom's Executive Management ("EXCO") provides in their reports relating to:

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Eskom's financial challenges

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- Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies
- Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.

The Board has indicated that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO, whose areas would be directly impacted by the enquiry") so as to lend credence to the reports that the independent party would produce.

2. PREAMBLE AND CHALLENGES FACING ESKOM

The Board recognises and is alive to the fact that it is uncommon for the Board to undertake such an enquiry and at the same time, allow senior Management to go on special leave because these enquiries are normally within the purview of senior management. Be that as it may, the following issues weighed heavily in favour of the decision taken by the Board.

2.1 For the past 2 (two) years, the Office of the Chairman and the Board (both the new and the old Boards) have been inundated with complaints and concerns raised by various sources internal and external to Eskom with regard to the unreliable power supply, escalating build project costs, escalating maintenance costs, high costs of primary energy and the inordinately high costs of the borrowing programme that Eskom has participated in recently.

2.2 In addition to the above, in the last few months, countrywide load shedding has become the order of the day and thus leading to an increased outcry about the economic impact of the uncertainty brought about by load shedding. This matter has escalated to a national power challenge which has also attracted the anger and concern of ordinary citizens, (private and corporates), Cabinet, Parliament and its oversight bodies, rating agencies and investors alike. This is so particularly because Eskom continues to make commitments that it is unable to meet.

2.3 To this end, the Board resolved to institute an enquiry into all of these concerns. Having so resolved, the Board delegated the authority to institute this enquiry to the ARC, with assistance from other Board committees where necessary. ("ARC"). Included in the authority to institute this enquiry, is also the authority to:

- Appoint a Service provider/s;
- Manage the costs of executing the enquiry; and

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- Ensure that the Service provider/s delivers on its mandate within the prescribed time lines and within budget.

3. PROCESS TO BE FOLLOWED FOR THE APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER/ERS

- 3.1. The Board has delegated the ARC full responsibility to appoint a Service provider/s that will assist Eskom with the enquiry and to manage the Service provider/s during the execution of the enquiry.
- 3.2. The Service provider/s will report to the ARC who will in turn report to the Board.
- 3.3. The procurement of the Service provider/s will follow normal Eskom procurement policies and procedures, namely a close tender process or the use of a sole source process should it be necessary, given the time constraints.
- 3.4. Once a Service provider/s has been appointed, and the terms and conditions of performing the enquiry are agreed upon, the information set out below will be completed

Name of the entity/ties:

Estimated costs:

Estimated time to complete the enquiry:

4. SCOPE OF THE INVESTIGATION

The Service provider/s will investigate and report on the following:

4.1. The poor performance of the generation plant in particular:-

- 4.1.1 confirm the true state of the generation plant and the manner in which the fleet is managed with reference to and in relation to best practice.
- 4.1.2 whether the underlying reasons for the state of the fleet are known and could have been avoided. In particular, the increase in the UCLF ("Unplanned Capability Loss Factor").

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- 4.1.3 whether the strategies, tactics and plans to address the decline in the capacity of the fleet to ensure the security of supply were appropriate in terms of their design and application in practice.
- 4.1.4 whether any load shedding by Eskom in the recent two years was in all instances necessary and appropriate under the circumstances.
- 4.1.5 whether the maintenance philosophy and regime adopted and followed by Eskom in the recent past and any recent enhancements thereto are appropriate to achieve the required UCLF and justifiable under the circumstances.
- 4.1.6 whether the present reports on the state of the generation fleet has been faithfully reported on a consistent basis and that the reports were correct in terms validity, accuracy, completeness and timeliness of information.
- 4.1.7 whether maintenance contractors ("OEM")²⁶² are giving Eskom value for money and whether there is effective monitoring of their work by Eskom.

4.2 Delays in bringing the new generation plant on-stream, including cost overruns

- 4.2.1 confirm the current status of the new generation plant and the quality of the project management practices designed to bring the generation plant into commissioning stage on time and within budget.
- 4.2.2 whether the project, contracts management philosophies, practices adopted and applied by Eskom compare favourably with international best practices
- 4.2.3 whether the lessons learnt from previous delays and costs overruns have been documented, communicated to relevant stakeholders and institutionalized to prevent recurrence.
- 4.2.4 whether the underlying causes for cost overruns and delays in completing new generation plans are understood, adequately disclosed and properly mitigated against to enhance the likelihood that the projects would be delivered in time and within budget.

²⁶² Original Equipment Manufacturer

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4.2.5 whether the organization is likely to deliver all these projects within the current targeted timelines and financial budgets or whether there are significant constraints beyond the control of management which require special intervention.

4.2.6 whether the reports from EXCO with regard to the status of the new build are correct and can be relied on.

4.3 High Cost of Primary Energy (Nuclear, Coal, Diesel, Liquid Oils and Water)

4.3.1 confirm the current primary energy costs currently incurred by Eskom and whether they are necessary, unavoidable and are in line with industry practice.

4.3.2 whether the underlying causes for increase in primary energy costs are fully understood, adequately reported and that strategies, tactics and plans adopted to ensure the security of supply in the most economical and efficient manner most appropriate in the circumstances.

4.3.3 whether the strategies and tactics adopted by Eskom to procure primary energy (Nuclear, Coal, Diesel, Liquid Oils and Water) are the most appropriate to both Eskom and the country as a whole, in particular the use of *ad hoc* Diesel suppliers.

4.3.4 whether the forecasting model for the use of diesel is appropriate and in line with best industry practice.

4.3.5 whether the primary energy costs paid by Eskom are reasonable and commercially viable.

4.4 Eskom's Financial Challenges

4.4.1 confirm the current cash flow position of Eskom and whether the methodology and models used for cash flow management are in line with best practice.

4.4.2 whether the cash flow status of Eskom has been faithfully reported consistently and that the reports are correct in terms of validity, accuracy, completeness and timeliness of information.

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- 4.4.3 Confirm the circumstances around the recent high costs incurred with the financial instruments that form the nucleus of the borrowing programme and whether the process that was followed in the circumstances was the most appropriate and efficient (in particular establish the existence of other viable and cost effective financial instruments that could have been pursued as alternatives).
- 4.4.4 Establish whether the interest rates offered to Eskom in the financial instruments that form the nucleus of the borrowing programme are normal under the circumstances.
- 4.5 Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies**
- 4.5.1 Confirm that the integrity of the procurement policy, processes and procedures designed by Eskom and their compliance with the Constitution of the Country, other relevant key legislation and key governance protocols, including best industry practice.
- 4.5.2 whether the procurement policy and related Eskom policies including but not limited to conflict of interest, are consistently adhered to and there are adequate processes to deal with noncompliance. Also, establish whether in instances where transgressions are identified, appropriate sanctions are applied.
- 4.5.3 whether the procurement processes are effective to ensure that Eskom obtains the best quality products and services at the best price.
- 4.6 Contract management, in particular high costs escalation, frequent modifications, penalty costs including capacity within Eskom to manage contracts generally**
- 4.6.1 Confirm that the organization has an appropriate contract management policy, strategic and procedures and resources that are consistently applied to safeguard the organization from failures to enforce its rights to avoid incidents that give raise to third party obligation.
- 4.6.2 whether the design of the contracts (fit for purpose); is appropriate with regard to contract terms.

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- 4.6.3 whether there is a defined modification approval and monitoring process which is adequate and effective. Further, to also establish reasons as to why contract modifications always result in increased costs and delays.
- 4.6.4 whether there exists a contract performance monitoring system, particularly in the maintenance of the Generation fleet.

4.7 Security failures and accountability at Eskom as a National Key Point

- 4.7.1 Whether the Eskom's strategies/plans with regard to safeguarding of Key National Points are adequate and effective.
- 4.7.2 Whether there is any reason why the persistent information leaks are not being arrested? If they are or have been dealt with, whether there has been a sanction imposed upon the responsible people.

6 PROCESS [SIC]

The Service provider/s will follow the guidelines below in conducting the enquiry

- 6.1 Conduct interviews with employees in its investigation.
- 6.2 In addition to employees, mentioned in terms of clause 6.1 above, the Service provider/s may further conduct interviews with any other party/ies or person/s who may have information regarding this enquiry.
- 6.3 Obtain and analyse, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by an employee or any other person interviewed in accordance with 6.1 to 6.2 above.
- 6.4 At the end of the enquiry, present its Report to the ARC a report which report will contain the following:
 - 6.4.1 Documents relied upon during the investigation;
 - 6.4.2 Details of evidence submitted by the Parties and/ or employees interviewed;
 - 6.4.3 Analysis of the evidence and documentation referred to in 6.3 above as presented by the Parties and/ or employees; and

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6.4.4 Conclusions and remarks

- 6.5 Notwithstanding the provisions of clause 6.4 above, the Service provider/s will provide to the ARC a progress report every two weeks and/or at the finalisation of any critical milestone. The first progress report will be due two weeks from the date of the signing of these terms of reference by the Party signing last.
- 6.6 The Service provider/s shall ensure that it establishes a communication mechanism that will allow for effective and efficient communication between the ARC and the Service provider/s, which communication mechanisms shall be approved by ARC.

7 DURATION OF THE ENQUIRY

- 7.1 The enquiry will be concluded in a period of three (3) months commencing no later than two (2) days after the signing of these terms of reference by the Party signing last.

8. THE OUTCOME OF THE ENQUIRY

- 8.1 The conclusion/s and recommendation/s in the report will be final and will be tabled at the Board and ARC who will in turn recommend the conclusion/s and recommendation/s to the Board.

9. FEES

- 9.1 The Parties will negotiate and agree the fees that Eskom will pay to the Service provider/s, which fees will take into account the imperatives of the Business Productivity Programme that Eskom is presently embarking on.

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Signed at _____ on this the _____ day of _____ 2015

For and on behalf of Eskom

Signature

Name of Signatory

Designation of Signatory

For and on behalf of
Service provider/s

Signature

Name of Signatory

Designation of Signatory

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Schedule 2

Task Order 1

TASK ORDER 1 - 4502166423**FORENSIC FACT FINDING ENQUIRY COMMISSIONED BY ESKOM****1. Introduction**

Eskom appointed Dentons to conduct a Forensic Fact Finding Enquiry (the "Enquiry") into the status of the business and challenges experienced by Eskom in the areas identified by the board (the "Board") of Eskom Holdings (SOC) Ltd. A contract for the execution of the Enquiry was entered into between Dentons and Eskom Holdings (SOC) ("Eskom") on 20 April 2015 (the "Contract"). The Contract defines the key objectives of the Enquiry and the broad areas that are to be considered in the Enquiry. Pursuant to the Contract, task orders are to be agreed between Eskom and Dentons for the execution of the areas identified in the Contract.

This task order defines the details of the scope of work and methodology to be executed by the Dentons team with the associated deliverable and time schedule under this Task Order No 1. The need for additional task orders (which may include specialist studies) may be identified during or after the execution of Task Order No 1 and will be discussed and agreed with Eskom in the form of new task orders to be executed under the broad scope of the Enquiry.

2. Scope of work

In preparing the scope of work for Task Order 1 (the "Scope of Work"), we have sought to address the Problem Statement and key areas of concern described in Eskom's Terms of Reference. The Problem Statement that the scope of work is intended to address is defined as follows:

"The Board seeks to obtain an independent and unfettered view regarding the credibility and the correctness of information that Eskom's Executive Management ("EXCO") provides in their reports relating to:

- *The poor performance of generation plant*
- *Delays in bringing the new generation plant on-stream*
- *High costs of primary energy*
- *Eskom's financial challenges*
- *Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies*
- *Contract management, in particular cost escalations, frequent modifications, penalty costs and Eskom's capacity to manage contracts in general.*

The Board has indicated that it is important for the information to be tested by an independent party without EXCO's involvement ("particularly those members of EXCO,

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whose areas would be directly impacted by the enquiry") so as to lend credence to the reports that the independent party would produce."

Thus, the principal objective of the Enquiry is to obtain an independent view of the credibility and correctness of information provided to the Board by the EXCO. The forensic fact finding enquiry will comprise an independent review of the credibility and correctness of the information provided to the Board in relation to the following aspects:

2.1 The poor performance of the generation plant

2.1.1 the state of the generation plant and the manner in which the fleet has been managed with reference to and in relation to best practice;

2.1.2 whether the underlying causes for the state of the fleet are known (in particular, the increase in the Unplanned Capability Loss Factor ("UCLF") and the actions taken by Eskom in response;

2.1.3 the application and impact of the strategies, tactics and plans to address the decline in the capacity of the fleet to ensure the security of supply over past twelve months;

2.1.4 the underlying reasons for load shedding by Eskom over the past two years;

2.1.5 the maintenance philosophy and regime implemented by Eskom over the past six months in its attempts to achieve the required UCLF;

2.1.6 whether the most recent reports on the state of the generation fleet have been prepared on a consistent basis with other reports in the last six months, and that the reports were credible in terms of validity, accuracy, completeness and timeliness of information;

2.1.7 the pricing of maintenance contracts commissioned by Eskom and the monitoring of performance of these contracts by Eskom.

2.2 Delays in bringing the new generation plant on-stream, including cost overruns

2.2.1 the current status of the new generation plant and the project management practices designed to bring the generation plant into commissioning stage on time and within budget;

2.2.2 the project and contract management philosophies and practices implemented by Eskom in relation to best practices;

2.2.3 whether the lessons learnt from previous delays and cost overruns have been documented, communicated to relevant stakeholders and institutionalized to prevent recurrence;

2.2.4 whether the underlying causes for cost overruns and delays in completing the new generation plants are known and have been disclosed, and whether the actions taken in response are likely to enhance the likelihood that the projects would be delivered on time and within budget;

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2.2.5 the measures that have been taken to ensure that the organization is likely to deliver these projects within the current targeted timelines and financial budgets, and whether any significant constraints beyond the control of management have been identified which require special intervention; and

2.2.6 whether the reports from EXCO with regard to the status of the new build are consistent with underlying reporting.

2.3 High Cost of Primary Energy (Nuclear, Coal, Diesel, Liquid Oils and Water)

2.3.1 the primary energy costs currently incurred by Eskom and whether they are commercially supportable;

2.3.2 whether the underlying causes for increase in primary energy costs are known and reported;

2.3.3 whether the strategies and tactics adopted by Eskom to procure primary energy (Nuclear, Coal, Diesel, Liquid Oils and Water) are commercially supportable, in particular the use of ad hoc Diesel suppliers; and

2.3.4 the forecasting model for the use of diesel.

2.4 Eskom's Financial Challenges

2.4.1 the current cash flow position of Eskom and the methodology and models used for cash flow management;

2.4.2 whether the cash flow status of Eskom has been reported consistently with available contemporaneous information;

2.4.3 the recent costs incurred as a result of the financial instruments that form the nucleus of the borrowing programme, the process that led to their adoption, the existence of other viable and cost effective financial instruments that could have been pursued as alternatives); and

2.4.4 establish whether the interest rates attached to the financial instruments that form the nucleus of the borrowing programme are commercially supportable under the circumstances.

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2.5 Integrity of the procurement processes and compliance with legislation as well as Eskom's procurement policies

2.5.1 the procurement policy, processes and procedures designed by Eskom in relation to the Constitution of the Country, other relevant key legislation and key governance protocols, including best industry practice;

2.5.2 whether the procurement policy and related Eskom policies including but not limited to conflict of interest and the processes to deal with non-compliance, are consistently adhered to. Also, establish whether in instances where transgressions are identified, appropriate sanctions are applied;

2.5.3 whether the procurement processes are effective to ensure that Eskom obtains the best quality products and services at the best price;

2.6 Contract management, in particular high costs escalation, frequent modifications, penalty costs including capacity within Eskom to manage contracts generally

2.6.1 Contract management policy, in relation to its strategic focus, procedures and resources. Are the policies consistently applied to safeguard the organization from failures to enforce its rights and counterparty claims;

2.6.2 whether the design of the contracts (fit for purpose); is appropriate with regard to contract terms;

2.6.3 whether there is a defined modification approval and monitoring process which is adequate and effective. Further, to also establish reasons as to why contract modifications often result in increased costs and delays; and

2.6.4 whether there exists a contract performance monitoring system, in the maintenance of the Generation fleet.

2.7 Security failures and accountability at Eskom as a National Key Point

2.7.1 Eskom's strategies/plans with regard to safeguarding of Key National Points; and

2.7.2 Whether there is any reason why the persistent information leaks are not being arrested? If they are or have been dealt with, whether there has been a sanction imposed upon the responsible people.

3. Methodology

Eskom's Terms of Reference prescribed the following methodology for the Enquiry:

3.1 conducting interviews with employees and any other party/ies or person/s who may have information regarding the Enquiry; and

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3.2 obtaining and analysing, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by employees or any other persons interviewed in accordance with the above.

Shortly following commencement of the Enquiry, the Dentons team will engage with the Audit and Risk Committee ("ARC") to discuss the details of the Scope of Work and methodology and to discuss the logistical arrangements for collection of data, review of documents, points of interface with Eskom, engagement with Eskom staff, reporting, etc. Dentons will thereafter prepare a preliminary list of documents and other data/information as well as a list of meetings/interviews that are required for the Enquiry. It is expected that the data required will comprise, inter alia, minutes of Board and EXCO meetings including supporting information, reports, letters, emails. Interviews will be conducted with Eskom staff and, where deemed necessary for the purposes of the Enquiry, non-Eskom staff. The investigation will be conducted in two phases:

Phase 1: Review of available information

In this phase, the Dentons team will conduct reviews of the available documentary information and interviews to obtain an understanding of the information that has been provided to the Board on the key issues identified under the Scope of Work. This phase will entail review of a large volume of information, a key intent would be to distil and extract from these documents those aspects that are most pertinent to addressing the Scope of Work and will be used for the more detailed assessment to be conducted in Phase 2.

Phase 2: Detailed Assessment

In this phase, the Dentons team will conduct assessment of the credibility and completeness of the information that has been provided to the Board on the key issues identified under the Scope of Work. This may require review of additional information such as more detailed reports as well as further interviews to fully address the issues identified under the Scope of Work.

The review of available information and the detailed assessment will be at a level which can be reasonably expected to be conducted within the time frame of Task Order 1. Although, specialist studies will not be conducted under Task Order 1, the verification of certain matters may require additional studies of a specialist nature that may fall outside the methodology set out in Eskom's Terms of Reference. Any such studies will be discussed and agreed between Eskom and Dentons as part of new task orders.

It is recorded that notwithstanding the date of signature of this Task Order, the Dentons team commenced work on 20 April 2015, pending finalisation of this Task Order No 1, and the items listed under the Scope of Work are at various stages of completion as at the signature of this Task Order No 1.

4. Deliverables

The Dentons team shall submit the following deliverables:

(1) Progress reports to be issued fortnightly. The progress reports will focus on recording the progress that has been made in the execution of the Scope of Work in respect of documents reviewed, people interviewed but will not provide details of findings;

(2) Draft Enquiry Report detailing the independent findings of the Enquiry;

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(3) Final Enquiry Report detailing the independent findings after due consideration by the Dentons team of any comments provided by Eskom following Eskom's review of the Draft Enquiry Report; and

(4) Presentations to ARC and the Board as may be required.

5. Project Schedule

Commencement Date: 20 April 2015

Substantial completion of Phase 1: 15 June 2015

Substantial completion of Phase 2: 13 July 2015

Submission of Draft Enquiry Report: 20 July 2015

Receipt of comments from Eskom on Draft Enquiry Report: 24 July 2015

Submission of Final Enquiry Report: 31 July 2015

6. Remuneration

Remuneration for the execution of Task Order 1 and reimbursement of expenses and disbursements will be in accordance with the Notification of Acceptance executed by the parties on 20 April 2015, read with the Contract Data executed by Dentons on 7 May 2015 and delivered by Dentons to Eskom on 7 May 2015 and the proposal submitted by Dentons to Eskom.

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Schedule 3

Email Request

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**ESKOM FORENSIC & ANTI-CORRUPTION
INFORMATION MANAGEMENT (EMPLOYEE E-MAIL RECORDS)
REQUEST (Project Reference NO: 460057152)**

This document is a pre-requisite for ALL requests to draw employee(s) e-mail records for investigation purposes.

DIVISION/BUSINESS AREA	Denton Investigation Team
DESCRIPTION OF REQUEST	All emails sent and received, and any attachments, from the period 1.1.2013 to current day for the following employees:
	<ol style="list-style-type: none">1. Zola A Tsotsi2. Tshediso Matona3. Tsholofelo Molefe4. Matshela Koko5. Dan Marokane6. Mongezi Ntsokolo7. Kiran Maharaj8. Suzanne Daniels9. Colin Matjila10. Edwin Mabelane11. Mark Palénski12. Malesela Sekhasembe13. Mandla Gobingca14. Leo Dlamini15. Neo Tsholanku16. Paul O'Flaherty17. Brian Dames18. Caroline Henry19. Thava Govender20. A Noah21. Steve Lennon

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- 
- 22. Kannan Lakmeharan
 - 23. B Bulunga
 - 24. E Pule
 - 25. Erica Johnson
 - 26. B Mbomvu
 - 27. A van der Merwe
 - 28. M Phukubje

BACKGROUND

Eskom appointed Dentons to conduct a Forensic Fact Finding Enquiry (the "Enquiry") into the status of the business and challenges experienced by Eskom in the areas identified by the board (the "Board") of Eskom Holdings (SOC) Ltd. A contract for the execution of the Enquiry was entered into between Dentons and Eskom Holdings (SOC) ("Eskom") on 17 April 2015 (the "Contract"). The Contract defines the key objectives of the Enquiry and the broad areas that are to be considered in the Enquiry.

Purpose of obtaining required records

Eskom's Terms of Reference prescribed a methodology for the Enquiry which included *inter alia*: Obtaining and analysing, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by employees or any other persons interviewed in accordance with the above.

TIMING (commencement date, duration and when are the results expected)

Commencement date 28 May 2005.

Duration of investigation is 2 months.

Results to be expected as soon as is practicable

Use, Confidentiality and Storage


The investigator acknowledges that the records requested could contain other unrelated confidential information, and undertakes to respect the employee's privacy, and only focus on information related to the investigation. The records drawn would be saved on an access right controlled Forensic secured drive for review by the requesting investigator. Subsequent to the review, evidence would be printed for filing and continued use to support the investigation, and the investigator would thereafter delete the entire record from the drive.

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REQUESTED BY (Forensic Investigator)	
Name: Kevin Shergold	Signed: 
Position: Dentons Specialist Consultant	Date: 28 May 2015

APPROVAL (Response Manager)	
Request approved (mark with x) <input type="checkbox"/>	Request not approved (mark with x) <input type="checkbox"/>
Name: _____	Signed: _____
Capacity: _____	Date: _____

CONFIDENTIAL

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"AMS"

**public enterprises**

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Suite 301, Infotech Building 1090 Acadia Street Hatfield, 0083 Private Bag X15 Hatfield 0028
Tel: (012) 431 1000 Fax: 086 501 2624 / 086 501 0629

To: All Media

Date: 12 March 2015

For Immediate release

Statement by the Minister of Public Enterprises, Minister Lynne Brown, regarding the decision by Eskom Board

I addressed the Eskom Board yesterday, sharing my concerns, fears and frustration about the state of affairs at the State-Owned Company.

As shareholder Representative, I am concerned about the instability at power plants; the financial liquidity of the utility; the lack of credible information; the unreliable supply of electricity and its dire impact on our economy; progress with the build programme; overruns at Medupi and Kusile; delays of the investigation into incidents at Majuba and Duvha; and the issue of coal and diesel pricing.

I welcome the Board's decision to launch a comprehensive and holistic audit into the matters as highlighted.

In my view it should be deeper than a mere fact finding exercise and it should be deep-dive into the company to tell us what is wrong and how it should be fixed.

Since the start of load shedding, I have been inundated with complaints from the public and business about the reliability of the grid and its impact on the economy and the lives of ordinary men and women..

I have been assured that the audit investigation would not take longer than three months and that it is not directed at any particular individual or group but that it merely seeks to ensure that the current challenges faced by the utility are addressed.

For all media enquiries contact Colin Cruywagen on 082 377 9916 or
colin.cruywagen@dpe.gov.za

Issued by Ministry of Public Enterprises

12 March 2015



" AM 4 "

Anton Minnaar

From: Chairman
Sent: 13 March 2015 03:56 PM
Subject: [All employees] - Introduction of new interim Chief Executive and three acting Group Executives

Importance: High



Chairman's message  Eskom



Dear Guardians

Introduction of new interim Chief Executive and three acting Group Executives

In the past 48 hours, the Board made a resolution to conduct an independent enquiry into the current status of the business. The Board felt that areas that need particular attention are the poor performance of generation plant, the delays in bringing the new generation plant on-stream, the escalating and high costs of primary energy and the cash flow challenges.

To ensure a process that has the integrity of independence, it was necessary to ask certain executives to step aside for the duration of the enquiry. It is important that Guardians appreciate that this process is not an investigation, but an independent enquiry. As you are aware, the executives that have been asked to step aside include the Chief Executive, Mr Tshediso Matona, Finance Director (Ms Tsholofelo Molefe), Group Executive for Group Capital (Mr Dan Marokane) and Group Executive for Group Commercial and Technology (Mr Matshela Koko).

To ensure business stability and continuity, the Board resolved to appoint Mr Zethembe Khoza as the interim Chief Executive. Mr Khoza was appointed onto the Eskom Board as a non-executive director in December 2014 and later appointed as the Chairman of the People and Governance Committee of the Board. He has strong experience in telecommunications, specialist knowledge in the financial sector with a specific focus on capital investments and experience in other areas of the private sector. Mr Khoza will be supported by the Exco members Ms Ayanda Noah, Ms Elsie Pule, Mr Mongezi Ntsokolo, Mr Thava Govender and Dr Steve Lennon. The Exco will be joined by Mr Abram Masango, Mr Edwin Mabelane and Ms Nonkululeko Velei 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 Velei
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:

Mr Donald Liphoko

Contact: 082 901 0766

Issued by: Department of Communications (DoC)



12/3/2019

Eskom Board commissions independent enquiry

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Eskom Board commissions independent enquiry

Eskom Board commissions independent enquiry

2015/03/12

Thursday, 12 March 2015: The Eskom Board has today resolved to commission an independent enquiry on the current status of the business and its challenges. The Board, in its quest to address the current challenges faced by Eskom, has deemed it prudent to seek an independent view on the status of, among other things:

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Cash flow challenges

"To ensure that this process is as transparent and uninhibited as possible, the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this enquiry," said Eskom Chairman, Mr Zola Tsotsi,

The other executives who have been asked to step down while the enquiry is underway are Ms Tsholofelo Molefe (Finance Director), Mr Dan Marokane (Group Capital) and Mr Matshela Koko (Commercial and Technology). One of the current non-executive Board members, Mr Zethembe Khoza, has been asked to assume the position of interim Chief Executive. Mr Khoza will be supported by Ms Nonkululeko Veleti (Finance), Mr Abram Masango (Group Capital) and Mr Edwin Mabelane (Commercial and Technology).

"All these senior executives have been with the organisation a long time and we are confident that they will maintain business continuity during this period," Mr Tsotsi said.

The Board also resolved that the independent enquiry be conducted by external parties, who will be selected within the next week. They will be given unfettered rights of access to all information deemed necessary for this probe to be successful.

The Board has emphasized that this process is a critical step towards ensuring that the situation facing Eskom improves as expeditiously as possible. "To that end, we would like to assure our customers and employees that this was done in the best interest of all our stakeholders, and we hope to come out of this with a better grasp of all the challenges facing the business, and most importantly, with solutions", added Mr Tsotsi.

END

12/3/2019

Eskom Board commissions independent enquiry

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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NEWS / POLITICS



Zola Tsotsi. File photo: Simphiwe Mbokazi/ANA

Zola Tsotsi lied to #EskomInquiry, says Myeni

By Karabo Ngoepe Mar 4, 2018



Cape Town - Former Eskom board chairperson Zola Tsotsi has been accused of lying to the parliamentary inquiry into state capture at the power utility regarding the suspensions of executives.

Former SA Airways (SAA) chairperson Dudu Myeni is set to blow the lid on what actually transpired when she met Tsotsi on two occasions.

Tsotsi told the inquiry that Myeni, along with former president Jacob Zuma, gave him instructions to suspend the executives.

Myeni has confirmed meeting with Tsotsi but

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denied that she summoned him to Durban.

"The information that was given to the parliamentary committee is inaccurate. I did not meddle in Eskom business; I knew nothing about Eskom's financial position or operational issues. I did meet Tsotsi but he asked me for advice on how to go about removing executives," said Myeni.

She further admitted that she brought in her own legal person to advise Tsotsi on the legal routes that needed to be followed.

"I gave him an outline of how I handled the removal of executives at SAA. I also brought in people to give him legal advice because he was trying to circumvent processes because he was saying the board was against him," she said.

Myeni, who is due to testify in Parliament, declined to divulge any other details regarding the meetings. She was supposed to testify on Wednesday but that did not happen. The chairperson of the portfolio committee on public enterprises, Zukiswa Rantho, said they had received notice that she would not be coming.

Two sources have corroborated Myeni's version of events. According to the sources, Tsotsi's testimony in Parliament was fabricated to save his own skin. In it, he implicated Zuma and Myeni.

He claimed that, in March 2015, Myeni requested a meeting with him and Zuma to discuss Eskom operations. The said meeting allegedly took place at the presidential house in Durban on March 7, 2015.

Tsotsi claimed that Myeni was with her lawyer, Nick Lennell, in the meeting. He further

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claimed that during the meeting Myeni told him that he should institute an inquiry because of Eskom's financial woes. The inquiry would look into the conduct of acting chief executive Tshediso Matona, Dan Marokane and Matshela Koko, with the view to suspending them.

The sources have refuted his claims. They insisted that Tsotsi was the one who reached out to Myeni, requesting advice on how to remove the executives.

"Before the four executives were fired, the former chairperson Zola Tsotsi, through Jabu Maswanganyi and a third party, contacted the former chair of SAA to say they would like to meet.

"She was not aware of what it was about but she agreed as it was a colleague. They had the meeting and Tsotsi said he was having issues with some executives which he would like to get rid of. In the meeting, they had discussions and he cited the financial performance of the company as the reason he wanted them to be removed," said one source, speaking on condition of anonymity.

The source added that Myeni told Tsotsi that he could not remove executives without following proper procedures but he was not having any of that; he was hell-bent on having them gone.

"She told him that she followed the normal processes, followed the company's (policies), consulted legal people and her board supported her decision. That is how she got it done. How he wanted to do it was outside of the board because essentially it (the board) was against him. He was alone and, in fact, the board wanted to get rid of him; they were

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forcing him to resign,” said the source.

The sources said they later discovered that Tsotsi was not truthful when he claimed the executives were crippling the power utility. During that period, there was a lot of coverage in the media regarding the executives. Tsotsi allegedly reached out to Myeni once more to meet.

This time, she was in Durban and Tsotsi indicated that he wouldn’t mind going there to meet.

“Myeni was in Durban at the time. She told him that if it’s urgent, he can come to Durban if he did not mind. She was meeting former president Jacob Zuma at his residence regarding foundation issues.

“Tsotsi went to Durban along with Jabu Maswanganyi. When they arrived, they were taken to a meeting room where they had their discussions. He leaves out Jabu Maswanganyi but mentions other people’s names, I don’t know why,” said the source.

Tsotsi’s version was further challenged on the basis that he received instructions from Zuma. The sources said when he and Myeni met, Zuma walked into the room but turned back when he saw them together.

“The situation in the house is that there are numerous meeting rooms in it and the staff places people inside and informs the president of where the meetings are and with who. Myeni and Tsotsi met in one of the rooms.

“When the former president walked into the room, he was under the impression that he was meeting Myeni. When he found them together he greeted and left the room to allow the pair to continue their talk. He never asked

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what the meeting was about.

"We later learnt through the media that Tsotsi claimed he was instructed by the former president to do this, which is untrue. Yes, they met at the presidential home but he (Zuma) did not give anyone instructions nor did the former chairperson of SAA. Why would she meddle in the affairs of another SOE?

"During that, he (Tsotsi) mentions the names of the executives he wanted to get rid of, Matshela Koko, Marokane.

He said they were the core of the problems at the company and they were behind the load shedding.

"At that meeting, because he was insisting that Myeni help him to get rid of the executives and was told it would be impossible without the support of his bosses, she brought in her own lawyer to walk him through the process of dealing with such an issue. Lennell advised Tsotsi that what he wanted to do was not possible and gave the legal ramifications for taking unilateral decisions, but Tsotsi was set in his ways," said the source.

The sources believe Tsotsi used the names of Myeni and Zuma to convince the board to support him. It appeared as though he was being blackmailed and believed the best solution was to get rid of the board members.

Koko has also hit out at Tsotsi, maintaining that he was only suspended because he refused to carry out unethical things.

He repeated what he told Parliament when he testified. He said he was suspended because the board thought that he, along with the other executives, were sabotaging the country

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because of load shedding. He also refuted the allegations that he was blackmailing Tsotsi.

"I knew why I was being suspended. I was being suspended for refusing to take unlawful instructions from the chairman at the time, Zola Tsotsi," he said.

Lennell declined to comment on the matter. He said the evidence should first be presented in Parliament. "May I respectfully suggest that the versions be first presented in front of the parliamentary committee. It would be better to analyse all the evidence there and then attempt to rationalise all the contradictory versions - that will make great journalism," he said.

Maswanganyi also took that route, saying he would comment once the parliamentary process had been concluded.

"The matter between Zola Tsotsi and Dudu Myeni is in Parliament. It would not be proper for me comment until the parliamentary process has been completed," Maswanganyi said.

Two hours before going to print, Maswanganyi's lawyer, Themba Langa, accused the paper of not affording his client an opportunity to respond and threatened to sue the publication and reporter.

Sunday Independent

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JZ told me to 'shed these top execs': Zola Tsotsi

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SOUTH AFRICA

JZ told me to 'shed these top execs': Zola Tsotsi

State capture: Eskom chairman implicates No 1

23 November 2017 - 06:22

BY BIANCA CAPAZORIO



SPILLING THE BEANS Former Eskom board chairman Zola Tsotsi at the parliamentary inquiry into state capture

Image: Esa Alexander

Former Eskom board chairman Zola Tsotsi was the first witness in parliament's state- capture inquiry to implicate President Jacob Zuma in the capture of the power utility.

Tsotsi dropped several bombshells in his testimony before the inquiry.

He told of how, in March 2015, former SA Airways board chairman Dudu Myeni asked him to arrange an "audience" with Zuma to discuss Eskom.

Tsotsi told MPs he went to Zuma's Durban home on March 7 2015 where he met Myeni, her son Thalete and Nick Lennell, introduced as a lawyer.

JZ told me to 'shed these top execs': Zola Tsotsi

<https://www.timeslive.co.za/news/south-africa/2017-11-23-jz-told-me-to...>

Tsotsi said Myeni had told him that, because of Eskom's financial difficulties, an inquiry should be instituted and three of the utility's executives - acting CEO Tshediso Matona, Dan Marokane and Matshela Koko - should be suspended.

Shortly after that Zuma entered the room.

After some pleasantries he requested to know what was up for discussion, whereupon "Ms Myeni repeated what she had previously stated", he said.

Myeni then suggested that Lennell draft a resolution to present to the board.

Asked whether he believed that the convening of an inquiry and the suspension of the executives were on the instructions of the president, Tsotsi said: "I took it that he has an interest in seeing that this happens."

**“I took it that
[President Jacob
Zuma] has an interest in
seeing that this happens ”**

- TONY GUPTA
as quoted by ZOLA TSOTSI ,
former Eskom board chairman

Tsotsi said, even though it was not clear whether the idea came from Zuma, his interest indicated "it would be prudent for the board to take this issue and examine it".

On March 11 2015 the board called Public Enterprises Minister Lynne Brown to a meeting at which the inquiry and the suspensions were discussed and the corresponding resolutions were adopted.

Tsotsi said he made it known that the "suggestion" had come from the meeting with Zuma. He said that a few weeks earlier he had received a phone call from Zuma.

The board, installed in December 2014, was due to hold its first meeting in February. The night before the meeting Zuma "then informed me that the board meeting will not be taking place".

Tsotsi said he had already begun to feel that "sinister clouds were gathering". In February 2015 Tsotsi said Brown told him that if he did not stop interfering in the work of Eskom management she would replace him. Later that day, he said, Tony Gupta asked to meet him.

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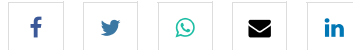
"At the meeting Tony told me: 'Chairman, you are not helping us with anything. We are the ones who put you in the position you are in. We are the ones who can take you out,'" Tsotsi said.

Tsotsi told of a meeting at Brown's home at which Tony Gupta and Salim Essa were present - allegedly to discuss appointments to the board that Essa, the "Gupta lieutenant", had become involved in.

"I got a list [from Essa] and I changed the list on the basis of what I thought it should be and I sent it to the minister. She sent it back and it hadn't changed from when I got it," he said. Tsotsi detailed how Gupta would threaten to go to "uBaba" - a name used in political circles for Zuma - when Tsotsi was unable to cater to his requests.

Brown, who testified after Tsotsi, refuted his statements by saying: "I've never consulted anyone on my executive functions. Not Tony Gupta or Salim Essa - why would I hand over my conscience to anyone else?"

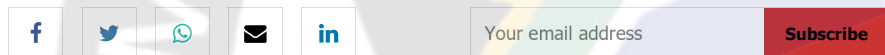


BUSINESSTECH Eskom 'not in crisis' as CEO challenges suspension


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Eskom 'not in crisis' as CEO challenges suspension

SAPA 25 March 2015



Eskom board chairman Zola Tsotsi has not been removed, the power utility said on Wednesday.

Eskom media desk was responding to questions on a report that the four executives, suspended earlier this month, were not suspended because they initiated an audit of the parastatal's tender processes.

"No, the chairman was quite clear at the media briefing two weeks ago in explaining the suspensions took place so that an independent inquiry into the business could be commissioned," the media desk said.

Business Day reported that the four senior executives, including chief executive Tshediso Matona, were suspended a week after they had initiated an audit into Eskom's tender processes.

The media desk confirmed that it had received a notice from Matona that he would challenge his suspension in the Labour Court.

On March 12, Tsotsi said that four senior Eskom executives were asked to step aside as the power utility embarked on a fact-finding inquiry.

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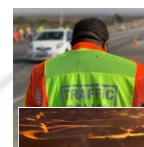
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executives, including the chief executive, should step down for the duration of this inquiry.”

“There is no intent or suspicion of wrongdoing, there are no charges against them. There is no malice, there is no wrongdoing that is under consideration.”

The other three are finance director Tsholofelo Molefe, group capital executive Dan Morokane and commercial and technology executive Matshela Koko.

Tsotsi said they were asked to step down in the interest of achieving results.

It was important to note that it was an inquiry, not an investigation, into the poor performance of generation plants, delays in bringing plants on-stream, the high costs of primary energy, and cash-flow problems.

On Wednesday, Business Day reported that at the beginning of March Eskom published a notice on its website asking for a panel of audit firms to submit tenders for a review of its tendering processes for transactions more than R300 million.

In recent months, Eskom has battled to keep the lights on since the collapse of one of its coal storage silos, diesel shortages, and maintenance issues.

On March 12, Tsotsi said the “critical” process would not last longer than three months. There was no hidden agenda behind the inquiry, but the board needed to establish a baseline of where Eskom was.

The inquiry would be independent and conducted by external parties who would be chosen in the next week.

Non-executive board member Zethembe Khoza would assume the position of interim chief executive, while non-executive board members who would support Khoza were Nonkululeko Veleli in finance, Abram Masango in group capital, and Edwin Mabelane in commercial and technology.

Tsotsi said the inquiry would ensure that the “situation faced by Eskom improved as expeditiously as possible”.

Responding to a question on why he did not step down, Tsotsi said: “I wish I had the time for us to sit down and really talk about this.... There is nothing as misunderstood as the issue of where this company is today and where it comes from.”

He reiterated that Eskom was not in a crisis.

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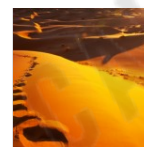
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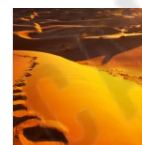
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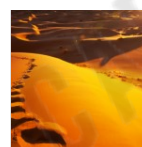
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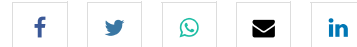
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Eskom CEO 'suspended' amid inquiry

Staff Writer 12 March 2015


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Embattled South African power utility Eskom has told four of its top executives to "step down" as an inquiry takes place.

The executives sent to the sidelines include CEO Tshediso Matona, finance director, Tsholofelo Molefe, and two others.

One of the current non-executive Board members, Zethembe Khoza, has been asked to assume the position of interim Chief Executive.

Eskom chairman, Zola Tsotsi made the announcement at a press briefing held on Thursday morning (12 March).

According to Tsotsi, the request was not made on the suspicion that any wrongdoing had taken place.

Tsotsi said that the process was not expected to last more than three months.

Matona was appointed CEO of Eskom less than six months ago, having assumed duty on 1 October 2014.

He was previously director general of Public Enterprises and is a former DG of Trade and industry, between 2006 – 2010.

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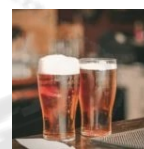
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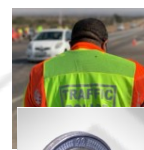
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The Eskom Board has today resolved to commission an independent enquiry on the current status of the business and its challenges.

The Board, in its quest to address the current challenges faced by Eskom, has deemed it prudent to seek an independent view on the status of, among other things:

- *The poor performance of generation plant*
- *Delays in bringing the new generation plant on-stream*
- *High costs of primary energy*
- *Cash flow challenges*

"To ensure that this process is as transparent and uninhibited as possible," said Eskom Chairman, Mr Zola Tsotsi, "the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this enquiry".

The executives who have been asked to step down while the enquiry is underway are Ms Tsholofelo Molefe (Finance Director), Mr Dan Marokane (Group Capital) and Mr Matshela Koko (Commercial and Technology).

One of the current non-executive Board members, Mr Zethembe Khoza, has been asked to assume the position of interim Chief Executive.

Mr Khoza will be supported by Ms Nonkululeko Velezi (Finance), Mr Abram Masango (Group Capital) and Mr Edwin Mabelane (Commercial and Technology).

"All these senior executives have been with the organization a long time," added Mr Tsotsi, "and we are confident that they will maintain business continuity during this period".

The Board also resolved that the independent enquiry be conducted by external parties, who will be selected within the next week. They will be given unfettered rights of access to all information deemed necessary for this probe to be successful.

The Board has emphasized that this process is a critical step towards ensuring that the situation facing Eskom improves as expeditiously as possible.

"To that end, we would like to assure our customers and employees that this was done in the best interest of all our stakeholders, and we hope to come out of this with a better grasp of all the challenges facing the business, and most importantly, with solutions", Tsotsi said.

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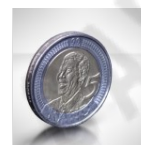
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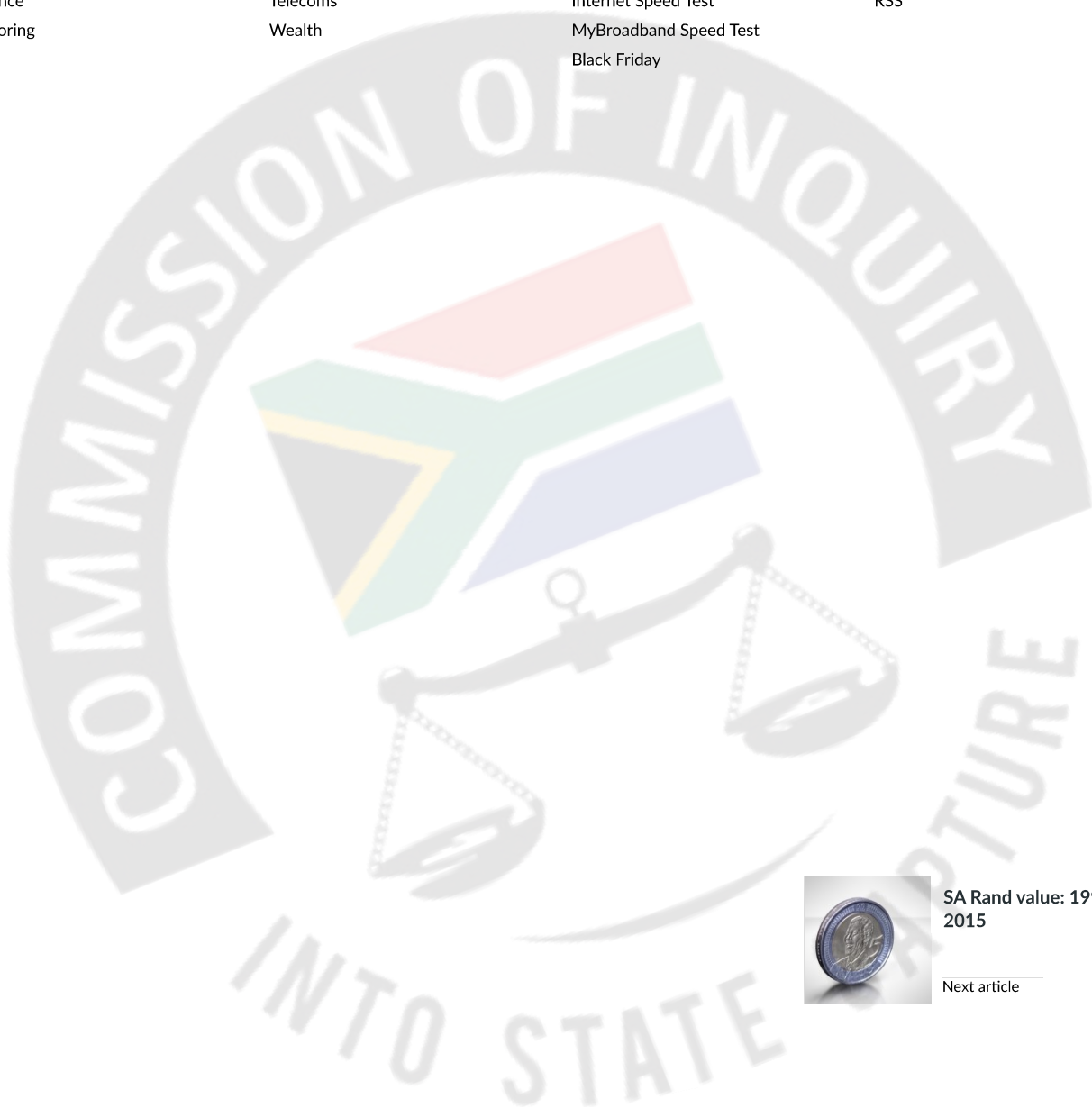
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BUSINESS REPORT / ECONOMY

*Public Enterprises Minister Lynne Brown. File photo: ANA*

Lynne Brown denies Gupta links

By Staff Reporter Nov 22, 2017



JOHANNESBURG - Minister of Public Enterprises Lynne Brown began her testimony to Parliament's Eskom inquiry by denying claims she consulted with members of the Gupta family before making decisions.

Earlier today former Eskom chairperson Zola Tsotsi said that Tony Gupta and Gupta business partner Salim Essa worked with Brown to compile a list of board members that Tsotsi had the responsibility of appointing to head various committees on the Eskom board.

"There is a clear association between Minister Brown and the Gupta family," he said.

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Tsotsi told members at Parliament's Eskom Inquiry that Minister Brown invited him to her house after he was named CEO of Eskom in December 2014. "Tony Gupta and Salim Essa were present," said Tsotsi.

"I have never consulted with anyone on my executive functions. Not Tony Gupta or Salim Essa or anyone else. Why would I hand over my functions to anyone else? In as far as Board appointments are concerned, I report to Cabinet, and Cabinet decides who serves on Boards," she said.

"Recommendations to establish Board sub committees come to me from the Boards in writing and I generally approve them as they know their members better than I do."

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08 Nov 18:42

Daniels opens up about Eskom's 'Gupta-run' board

The Gupta family's influence at Eskom was confirmed by suspended Eskom head of legal Suzanne Daniels, who spoke on how she had met Ajay Gupta and Salim Essa on separate occasions on matters related to executives at the power utility.

Daniels was testifying before the Public Enterprises Committee's inquiry into state capture at Parliament on Wednesday. She relayed details of how she had first met Essa in March 2015, alongside suspended Eskom executive Matshela Koko. At this meeting Essa asked what it would take to have employees suspended.

Later that year Eskom suspended four of its executives including former CEO Tshediso Matona. Koko was one of the four who "survived" the suspension.

Daniels had met with Essa on July 29, 2017. At this meeting she was introduced to Ajay Gupta and Duduzane Zuma. Ajay had mentioned he would speak to someone at the deputy judge president's office to have a labour court application lodged by former Eskom CEO Brian Molefe postponed to a more "favourable" date.

The question around Molefe's early retirement packages were a "smokescreen" from the confusion that arose, she added. Daniels also spoke on the legality of the payments made for a contract with Gupta-owned Tegeta. She added that Molefe had undue influence in the deal.

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During the briefing Daniels also spoke about threats to her life for speaking up. Apart from telephone calls she had been intimidated on the road. She explained that the Eskom board was also trying to discredit her Trillian report.

08 Nov 17:45

Guptas tried to intervene on Molefe case - Daniels

Eskom's suspended head of legal Suzanne Daniels said she had met Ajay Gupta in July 2017, where he mentioned that he would try postpone a case against former CEO Brian Molefe.

Daniels spoke on her first meeting with the Gupta brother who was barefoot with a t-shirt, and wearing a grey tracksuit pants. "My view is he looked worse than if he was at a shebeen," she said.

Gupta associate Salim Essa had contacted Daniels to meet with him on Saturday July 29, 2017. She had met him at the reception area of the African Pride Hotel at Melrose Arch, thereafter they walked to a set of apartment blocks.

"We went into one of those apartments. As we walked into the lounge area there were four people, of which I was introduced to Ajay Gupta, Duduzane Zuma, Deputy Minister [of Public Enterprises] Ben Martins and a Chinese lady whose name I could not remember," she said.

"The purpose of the discussion was around the process of the Molefe court proceedings. Mr Gupta wanted to know how far they were." Daniels said that she informed him that Eskom was to meet with the deputy judge president to discuss when to set down the matter as the DA, the EFF and trade union Solidarity had joined the application and it was to be heard on the same day. The court application relates to Molefe's bid to have the Labour Court overturn Eskom's decision to rescind his reappointment.

Ajay said that he would speak to someone at the deputy judge president's office to have the hearing take place after December 2017. Daniels said that it appeared that they were trying to push out the date so that it would look more favourable than it does now.

"Nkosazana Dlamini Zuma was mentioned. I could not follow what he was saying because I could not believe where I was, and what I was hearing," she added. Daniels then drove home from Melrose Arch. "I locked the door and poured myself a stiff whiskey and went to sleep."

She also spoke on the first time she met Essa. Suspended Eskom executive Matshela Koko had called her to meet at Melrose Arch on March 9, 2015. Koko had met her at restaurant JB Rivers and then they walked to what she now knows is Essa's office.

After meeting Essa, he had asked about how disciplinary procedures work. Daniels said that she explained that if someone is to be disciplined they should have the right of a hearing.

"He got specific and asked what must be done to suspend people." Daniels then explained that a valid reason is needed to suspend an employee, and that the employee should be given a chance to respond. Thereafter the employers can make a decision.

"Then he proceeded in the presence of Matshela Koko to sketch out what will happen in the next couple of days," said Daniels. Essa had informed her that Eskom's executives would be suspended, including former CEO Tshediso Matona and Koko. There would also be an investigation and that the board would communicate this in due course.

"Little did I know that this was going to happen the next day," said Daniels.

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Later that year in October, Daniels had met Essa at Eskom, where he congratulated her on her position as company secretary.

[DA/EFF can intervene in Molefe's labour court bid](#)

08 Nov 16:46

Payments to McKinsey and Trillian 'brazen theft'

Payments made by Eskom to Trillian and McKinsey was "brazen theft", suspended head of legal Suzanne Daniels told the Eskom Inquiry. Daniels spoke on what such a contract meant for South Africans. "In my view, based on what I know and what I have discovered, there is only one way to describe this to people of SA, this was brazen theft." "The people implicated and who I identify as thieves is Matshela Koko, Anoj Singh, Edwin Mabelane and Charles Kalima." The current disciplinary inquiry into Koko, over his alleged failure to declare a conflict of interest regarding Eskom contracts awarded to the firm International where his daughter was a director, is a "sham", Daniels added.

By this she meant that there has been "considerable board interference" in the investigation. Charge sheets so far had been changed twice. Daniels said that she was surprised by the final published charge sheet. The chance of Koko being exonerated from the set of charges is "quite high", she said.

[Koko declared 'conflict of interest' to former CEO Brian Molefe - as it happened](#)

08 Nov 14:49

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08 Nov 14:46

Eskom made R1.5bn spreadsheet error in Optimum fine - Daniels

Suspended Eskom head of legal Suzanne Daniels said Eskom's board tender committee recommended she settle about R200m lower than what the calculations showed regarding the Optimum fine.

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The struggling Optimum mine was bought by Tegeta Exploration & Resources, a company owned by the Gupta family and President Jacob Zuma's son Duduzane, after it went into business rescue.

The original fine had been R2.2bn (which saw the firm go into business rescue), but when Daniels met with a committee to discuss this, they discovered there had been an error in the spreadsheet.

"I was shocked at the answer," she said. "There was an error in the spreadsheet. At that point, I was beyond furious. We have gone out in the media to say it was R2.2bn."

"The final analysis of the claim showed the fine should have been R722m. I was quite pleased to hear Mr Marsden (Optimum business rescue practitioner) estimated it to be around R700m."

"I was quite perturbed as there was reputational issue and risks for Eskom."

She took this new information to the tender board committee. Here, board member Pat Naidoo said she should settle at no less than R500m, according to Daniels.

She was not happy with this, as it should have been around R700m. She said she eventually settled with Optimum (and Tegeta) at R577. R248m had already been paid, so Optimum owed the balance to paid over duration of contract, which ends next year, she said.

Suspended Eskom chief financial officer Anoj Singh told media in July 2017 that the fine was reduced because of a problem with the coal crusher.

Eskom struck a deal with Tegeta on the fine in March during arbitration. However, the power utility refused to disclose the details of the agreement, citing a confidentiality agreement. "Eskom went into this process with legal opinion saying it should settle this claim," said Singh.

He said the underlying nature that gave rise to the claim was that Eskom was disputing coal quality from the mine. The poor quality was because of a change in sampling equipment in 2010, said Singh.

"The change meant it was different than the original sampling equipment. The new design had a crusher, which increased the reject coal put in the plant. It gave a false positive of quantity of reject coal. This was the outcome of investigations over three to four years," he explained.

"We realised the contract was punitive and poor quality coal was being delivered. That is why the amount ramped up so quickly. When we realised the crusher was the problem, we understood that we had sufficient information that the crusher was causing this.

"That is why we went into settlement. The contract manager said the claim should be R700m. This was then discounted to R255.4m."

08 Nov 14:26

Former Finance Minister Pravin Gordhan listens as suspended Eskom head of legal Suzanne Daniels gives testimony in Parliament on Wednesday.

<p>Former Finance Minister Pravin Gordhan listens as suspended Eskom head of legal Suzanne Daniels gives testimony in Parliament on Wednesday. </p><p></p>

08 Nov 14:00

Eskom legal head believes Molefe had undue influence in Gupta deal

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Evidence leader Advocate Nthuthuzelo Vanara asked suspended Eskom head of legal Suzanne Daniels whether former Eskom CEO Brian Molefe could have arranged or been influential in the Eskom meeting on 11 April 2016 through the chair of the board tender committee.

“Based on what I know, as what happened at the time, and based on what has subsequently come out in the media, I am convinced that there must have been some undue influence,” she said.

“It would be very unusual for me to get a phone call from the chairman of the board tender committee for a meeting for that day at such a late hour.”

She had been called by Zethembe Khoza (now acting Eskom chair and at the time the chair of the tender committee board) to set up the meeting late in the evening.

She said had the meeting taken place two days later, Tegeta would not have received the R659m and would not have had time to pay the R600m shortfall it had for Optimum by 14 April 2016.

She agreed with Vanara that the Guptas paid for Optimum with Other People's Money.

She also said that when faced with the Public Protector's State of Capture report, which detailed Molefe's phone records, he was surprised, “Mr Molefe was quite surprised by that,” he said.

“I asked for his telephone records so we could verify this information. As I sit here, I have not received them.”

08 Nov 13:56

Suspended Eskom head of legal Suzanne Daniels.

<p>Suspended Eskom head of legal Suzanne Daniels. </p><p></p>

08 Nov 13:41

Daniels doubts Eskom prepayment to Tegeta was legal

Eskom's decision to give Gupta-owned Tegeta a R659m prepayment for coal in April 2016 was likely illegal, according to suspended Eskom head of legal Suzanne Daniels.

The Public Protector's State of Capture report shows how this money was channelled to the Guptas so they could pay for the purchase of Optimum Coal Mine from Glencore.

Evidence leader Advocate Nthuthuzelo Vanara asked her if she was aware that part of that amount of money was used as part of the purchase price of the Optimum Coal Holding.

She said she became aware of this in the Public Protector's State of Capture report.

Asked if the payment to Tegeta was legal, she responded:

“The legalities were sort of murky. In the primary energy environment, there is usually this practise amongst suppliers who have more than one source that they supply coal amongst each other.

“What actually makes this very doubtful is this is the exact amount that was claimed to be the shortfall.”

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“Based on the agreements that I drew up, yes it did not go to Optimum, it went to Tegeta directly.”

Daniels did not know about a meeting between the business rescue practitioners and the banks, where the Guptas shortfall to pay for Optimum was discussed.

This new evidence, which was provided by former Optimum business rescue practitioner Piers Marsden to Parliament last week reinforced her concerns around Eskom's prepayment, she said.

Vanara asked if it was a fair inference to say that, after the banks had declined the R600m, Mr Salim Essa or someone powerful made a board to sit and source the shortfall.

“It is a fair and reasonable inference to make,” she said.

08 Nov 13:06

Suspended Eskom head of legal Suzanne Daniels is testifying at the Public Enterprises Committee's inquiry into state capture at Parliament.

Evidence leader Advocate Nthuthuzelo Vanara has asked for an explanation of an Eskom meeting that took place on 11 April 2016 with regard to a prepayment to Tegeta, which was owned by the Guptas.

Eskom paid in advance for coal supplied by Tegeta to guarantee supplies to a power plant before winter.

08 Nov 11:51

Former Eskom finance director Tsholofelo Molefe (photo by Gallo) told Parliament that it was only after she left and read the news on Eskom that she joined the dots and realised the actions of some executives were part of something bigger than she originally thought when she was still at Eskom. She resigned in 2015 after being suspended in dubious circumstances.

Former Eskom finance director Tsholofelo Molefe (photo by Gallo) told Parliament that it was only after she left and read the news on Eskom that she joined the dots and realised the actions of some executives were part of something bigger than she originally thought when she was still at Eskom. She resigned in 2015 after being suspended in dubious circumstances.

08 Nov 11:33

Eskom had skills to deal with financial challenges, says ex-Eskom exec

Former finance director Tsholofelo Molefe said Eskom had the capacity in the company to deal with the financial plan to resolve Eskom's financial issues in 2014.

She was commenting on why consultants like Regiments – which together with Trillian has been accused of fleecing state-owned entities – was required.

Molefe said the work of the financial plan went on while a draft agreement with Regiments was being discussed.

“We had a good group treasurer and financial controller and economic regulator,” she said.

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“We worked as a team to put together a financial plan.

“After the board meeting, the board chair Zola Tsotsi put together an emergency task team. The financial plan was one the solutions.

“We had to look at solutions to reduce costs by R60bn over five years. We had aimed to reduce costs by R9bn in 2014, but by the time I left we had saved about R5bn.

“Every little cent counted for us. We did not want to just go government to ask for equity or tariff increases.”

The result of the efforts led Treasury to grant Eskom a R23bn bailout as they converted debt into equity.

08 Nov 10:51

The four executives at Eskom that were suspended in 2015. Only Matshela Koko returned. He has since been suspended again, pending a disciplinary hearing into a contract given to a firm that his step daughter had been a director of.

<p>The four executives at Eskom that were suspended in 2015. Only Matshela Koko returned. He has since been suspended again, pending a disciplinary hearing into a contract given to a firm that his step daughter had been a director of.</p><p></p>

[2015: Third suspended Eskom exec resigns](#)

08 Nov 10:47

Former Eskom chairperson Zola Tsotsi. (Photo: Gallo)

<p>Former Eskom chairperson Zola Tsotsi. (Photo: Gallo) </p><p></p>

08 Nov 10:44

Tsotsi was under pressure from people outside, says ex-Eskom exec

Former finance director Tsholofelo Molefe said that it seemed former Eskom chairperson Zola Tsotsi “was under pressure from people outside”.

Molefe, ex-CEO Tshediso Matona, Dan Marokane and Matshela Koko were suspended by Tsotsi in March 2015 in circumstances that eventually saw the appointment of executives Anoj Singh and Brian Molefe at Eskom. Only Koko returned after the suspension was lifted.

Tsotsi also resigned as chairperson a few weeks after he implemented the suspension.

Molefe was asked about the suspension and her eventual exit from Eskom.

“I was suspended on 11 March 2015 alongside three other executives. The board had two meetings – the first on 9 March. This was a new board. The board that had been deliberating on the earlier issues were no longer there.

“We were asked to recuse ourselves from the board meeting on 10 March. We were then called back in and informed that we would be suspended.

“I was issued with a letter of suspension, saying that the board had been instructed to do an investigation and was asked to step aside so that I did not interfere with the process. It was interesting that it said we had done

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nothing wrong.

“If we did not provide our laptops, further disciplinary measures would take place. This was confusing. We signed the letters.

“It was said that the inquiry would take three months. After two months, we had not been called as it had not started. I started engaging my lawyers. I started asking Eskom’s questions regarding the terms of reference.

“They called to have a discussion to have an amicable exit – they said we could not work together as the investigation would take some time.”

She resigned in June 2015.

08 Nov 10:42

Former Eskom finance director Tsholofelo Molefe pictured in 2014. (Photo: Gallo)

<p>Former Eskom finance director Tsholofelo Molefe pictured in 2014. (Photo: Gallo)</p><p></p>
</p>

08 Nov 10:20

Matjila pushed Eskom ex-finance chief to sign Regiments contract - witness

Former finance director Tsholofelo Molefe has given scathing testimony about how former Eskom CEO Collin Matjila pressurised her to sign a contract with Regiments without following correct procurement processes in 2014.

It has been alleged that former Regiments executive Eric Wood and Gupta associate Salim Essa set up Trillian Capital Partners to fleece contracts at state-owned entities in partnership with McKinsey.

The entrance into Eskom came at a time when former Eskom CEO Brian Dames left the firm and Matjila – a board member at the time – was made acting chief executive. It was during this time that Regiments first made its move on Eskom contracts, it has been reported.

#GuptaLeaks shows that the Guptas received Matjila’s CV shortly before he was appointed acting CEO at Eskom in 2014.

Zola Tsotsi was the board chairperson at the time and Malusi Gigaba was the minister of Public Enterprises.

Matjila also reportedly pushed for the Eskom/New Age breakfast sponsorship deal to go through.

Advocate Nthuthuzelo Vanara asked Molefe to give a briefing on how Regiments was brought to Eskom as a contractor.

She told the Public Enterprises Committee the following:

“A meeting was convened regarding Eskom’s financial plan.

“A gentleman joined us – his name is Salim Essa. The question about how we took the matter forward (financial sustainability). He was asked who should help us – he told us Regiments was the right company. I listened to what would have been the way forward. We were asked to have a meeting with Regiments. I had

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never heard of Regiments before. We are open to anyone that comes to us and wants to help.

"A meeting was convened with Regiments to see how they could help with Eskom's financial plan. Eric Wood came to the meeting. Representing Eskom was Steve Lennon. What does the company do, how can they help us, do they understand the challenge and how big the balance sheet is.

"They said they had worked on a EuroBond with Goldman Sachs. They said they normally don't work alone – they said they normally partner with McKinsey. Mr Matjila asked them to give us a proposal. I went to Steve Lennon – I told him that they would have to follow a procurement process.

"I went to Mr Matjila's office and told him we need to follow a procurement plan. I said we need a robust financial plan but there are companies lining up to work with Eskom.

"He told me that unfortunately we will go with Regiments – he said previous companies had not yielded any results. He said the board needed a plan. I said it was an emergency, (it is clear defined), I said it was urgent but said there are ways to take it through a closed procurement process. He said he could see I was uncomfortable.

"The issue we were faced with was the financial challenges. It was important that we settle those issues since the MYPD 2012/13 tariff agreement. We were highly geared in the company for us to go into the market to seek borrowing. We needed cost-reflective tariffs to back up our revenues. Because we knew we did not have very good financial metrics, we needed government to know what are the challenges: equity, guarantees, tariff adjustments – so we could meet operational requirements. The huge new build programme was one of the reasons we needed the funding.

"Regiments said they would put together a proposal. If it is an emergency, then we told them to bring it back in five days. They brought it back in 14 days – but this was not a proposal, it was a draft agreement with pricing and what they would achieve.

"I wrote an email to Mr Matjila – It was on this basis that this does not constitute an emergency. We could request suppliers to give us responses in 14 days. This therefore did not constitute an emergency. He then called me and reprimanded me for putting such things in an email.

"We had a meeting and said he was not being supported – he had a mandate from the board and shareholder. He said we don't have the time to go through procurement process. I told him to ask board to change the rules.

"He said he would do no such thing. Legal didn't make many changes to Regiments draft agreement and I left it on the desk of Mr Matjila. I told him I would not sign it based on the discussions. He threatened to bring a driver to bring agreement to me to sign it. I had to give him reasons in writing why I would not sign it.

"Mr Tsotsi called a meeting based on the letter I had written. In the meeting, I got support from other board members because we had not followed process. The pricing was not competitive. It appeared that we should have followed the process.

"I was told we are wasting time on processes and said heads would roll if this was not done."

08 Nov 09:42

Ex-finance director at Eskom Tsholofelo Molefe testifies

Molefe agreed to leave Eskom in June 2015 after her suspension was lifted following the Dentons investigation found no wrong doing.

AS IT HAPPENED #StateCapture: Daniels opens up about Eskom's 'Gu... file:///C:/Users/rohanh/AppData/Local/Microsoft/Windows/INetCache/C...

In March 2015, Eskom's former chairperson Zola Tsotsi placed four senior executives, including former CEO Tshediso Matona, on suspension when he announced an inquiry into the utility.

Matona initially challenged the suspension in the Labour Court, but decided to resign on May 18.

The other executives were group executive for group capital Dan Marokane, who resigned on June 1, and technology and commercial head Matshela Koko, who remains on suspension.

Matona testified at the inquiry on Tuesday.

See the link below for the full coverage.

[Matona: Eskom has a culture of fear](#)

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Ajay Gupta denies Suzanne Daniels's claim he was at meeting with Ben Martins

NATIONAL

Ajay Gupta denies Suzanne Daniels's claim he was at meeting with Ben Martins

His lawyer says Gupta has not yet received an invitation by the inquiry into state capture to make a written submission, which suggests unfair treatment

BL PREMIUM

06 DECEMBER 2017 - 11:56 LINDA ENSOR

Ajay Gupta has denied a "malicious" claim that he was present at a meeting earlier in 2017 at which Public Enterprises Deputy Minister Dikobe Ben Martins was present. In an unsigned lawyer's letter from Goitseone Pilane Attorneys sent to the parliamentary inquiry into state capture, Gupta has threatened to report the claims against the suspended head of legal and compliance at Eskom, Suzanne Daniels — who made the allegation under oath — to the police and speaker of Parliament Baleka Mbete. Criminal charges would be investigated against her. In November, Daniels told the committee that Gupta was present along with his associate Salim Essa, Duduzane Zuma and Martins at a meeting in Johannesburg on July 29 2017. She said matters related to former CEO Brian Molefe were allegedly discussed and the intention expressed was to contact to the deputy judge president to ensure that Molefe's court hearing was held after December 2017. The letter by Gupta's lawyers was read out at the committee...

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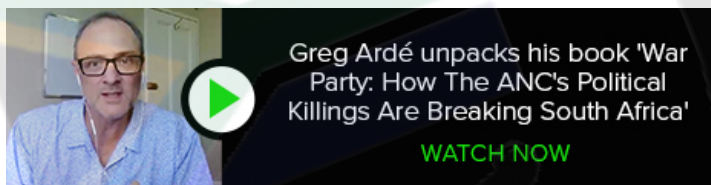
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is that the employee could claim additional compensation if the suspension is regarded as being unfair. In a well-publicised case, the CCMA awarded an employee five months' remuneration in addition to the normal pay that the employee received while on suspension.

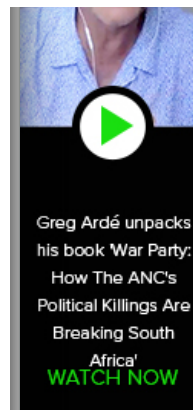
It is common practice for employers to suspend employees pending disciplinary action. However, the Labour Relations Act includes 'unfair suspension' as one of the grounds for a referral of a labour dispute to the CCMA. The question arises as to what grounds an employee may be suspended on and how an employer should go about it.

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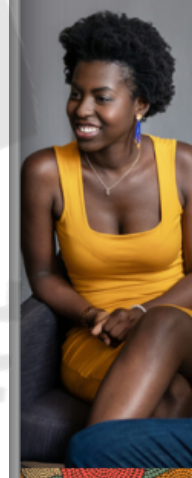
Grounds and procedures for suspension

The case law indicates that a so-called 'precautionary suspension' of an employee pending an inquiry should only be used when there is a reasonable apprehension that the employee will interfere with witnesses, investigations, or pose some other threat. The employee should not be suspended unless there are prima facie grounds for believing that the employee has committed serious misconduct. The employee may then only be suspended once the employee has been given an opportunity to make representations as to why he or she should not be suspended.



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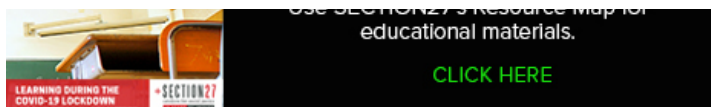
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The Labour Court has pointed out that the prejudice an employee may suffer as a result of suspension is not limited to financial loss. Where the suspension is linked to suspicions of misconduct, the integrity and dignity of the employee may also be assailed. Pre-suspension hearings are not intended to afford employees an opportunity to prove their innocence; they relate merely to why employees should not be suspended.

The Eskom case

Much publicity was given to the dubious circumstances under which Eskom made significant payments to the companies McKinsey and Trillion. The matter surfaced again in the CCMA award in Suzanne Daniels v Eskom SOC Ltd (March 2018). According to the facts presented at the CCMA, a forensic report provided by an independent attorneys' firm (dated 1 August 2017) linked several senior executives to misconduct. At the time Suzanne Daniels, Group Executive for Legal and Compliance, was very much involved in the matter. She was also instrumental in giving instructions to Eskom's attorneys to send a letter of demand to McKinsey and Trillion to return the amounts that had been paid to them.

In rather obscure circumstances, Ms Daniels received a notice of intention to suspend her for alleged misconduct that had occurred several months earlier. Daniels objected but was, nevertheless, suspended on full pay. No disciplinary action followed, though. That suspension was later withdrawn without any explanation. A second notice of intention to suspend was issued; this time on other allegations. Although Daniels again opposed the suspension, she was served with notice of a disciplinary hearing with charges. It appears that no date was set for the hearing. She subsequently received a notice that she was

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Analysis of facts

In his analysis of the facts, the CCMA commissioner pointed out, amongst other things, that the newly appointed GCEO did not apply his mind when he confirmed the first suspension; that the charges in the notice of suspend were totally different from the notice of intention to suspend; and that Daniels was not given an opportunity to make representations. As far as the second suspension is concerned, the charges were based on incidents that Eskom had been aware of seven months before suspending her. By the time the matter came before the CCMA almost a year had passed and still no date had been set for a disciplinary hearing. Eskom did not give evidence at the arbitration hearing and had offered no explanation for the delay.

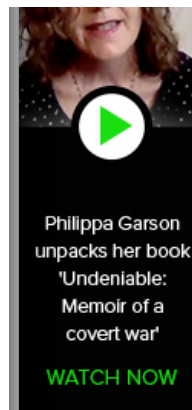
According to the commissioner "the proverbial axe hanging over the applicant's head is more punitive than an actual disciplinary hearing". There was no indication that Daniels would obstruct the investigations or interfere with witnesses. The charges against her were also not serious.

Compensation

The commissioner concluded that the suspension was more punitive than precautionary. There was no basis for it being so prolonged. On the other hand, Daniels had acted swiftly in challenging her suspension. The suspension was humiliating and had a negative impact on her reputation. It also impaired her dignity. For these reasons the commissioner ordered Eskom to pay Ms Daniels compensation equivalent to five months' remuneration.

Unanswered questions

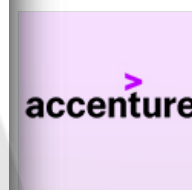
One must bear in mind that the considerations in determining compensation in the Daniels-case occurred against the background of rather sinister and extreme circumstances. Let's



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tampering with the evidence, interfere with witnesses or pose any other threat. If one were to be guided by the case law to date, there would be no justifiable reason for a 'cautionary suspension'. This does not seem right. Should the tension and discomfort experienced in the workplace not be a good enough reason to suspend, provided the disciplinary hearing occurs soon thereafter? It would be useful if the Labour Court were to contemplate situations such as these and provide appropriate guidelines.

Where does this leave employers?

While most employers are not equipped for the elaborate procedures that large organisations such as Eskom follow before suspending employees, this case does again illustrate that employers should think twice before suspending an employee. At the very least the employer should give the employee an opportunity to state why he or she should not be suspended pending the hearing. If the employer then decides to proceed with the suspension, the disciplinary hearing should be held without delay.

Written by Jan Truter for www.labourwise.co.za

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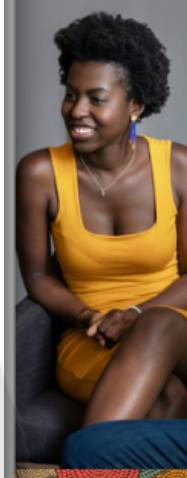
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Eskom whistle-blower Suzanne Daniels fired for involvement in dodgy deals

BUSINESS

Eskom whistle-blower Suzanne Daniels fired for involvement in dodgy deals

20 July 2018 - 18:51
BY CAROL PATON



Eskom CEO Phakamani Hadebe says he believed the charges faced by the power utility's former legal and compliance department Suzanne Daniels were serious enough to be fully interrogated before she could return to work.

Image: FREDDY MAVUNDA/FINANCIAL MAIL

Suzanne Daniels, the Eskom whistle-blower who was formerly head of its legal and compliance department, has been dismissed from the power utility after a disciplinary hearing found she was implicated in several of the dodgy transactions that have come under scrutiny.

Daniels, who was a key figure in providing evidence against Eskom's former executives Brian Molefe and Anoj Singh in parliamentary hearings last year, has been suspended from the company herself.

While Daniels was praised for her courageous disclosure, CEO Phakamani Hadebe believed the charges were serious enough to be fully interrogated before she could return to work.

An independent inquiry headed by Nazir Cassim found Daniels involved in the distribution of confidential Eskom information to a third party, and in Trillian consulting transactions: and involvement in the T

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Eskom whistle-blower Suzanne Daniels fired for involvement in dodgy deals

The hearing also found that Daniels approved an Eskom payment to a firm of attorneys for legal services rendered to the former SABC board chair in the SABC parliamentary inquiry, a payment that had nothing to do with Eskom.

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Hawks to investigate whistleblower Suzanne Daniels' wrongdoing at Eskom

Hawks to investigate whistleblower Suzanne Daniels' wrongdoing at Eskom

20 March 2019 1:27 PM by [Matshepo Sehloho](#)

Tags: Eskom Suzanne Daniels Eskom's Matshela Koko

Hawks spokesperson Hangwani Mulaudzi says it is interested in hearing Daniels version following her admission of wrongdoing.

Former legal head at Eskom Suzanne Daniels admitted in an interview with Eusebius McKaiser on Wednesday, that accepts she may be prosecuted for unlawfully signing off on former Eskom chairperson Ben Ngubane's legal fees which he incurred while he was still working for the SABC.

Read: Daniels admits wrongdoing: 'I signed off invoices for Ngubeni's legal fees'

Daniels was a whistleblower who made submissions to Parliament, but a disciplinary hearing chaired by Advocate Nazeer Cassim found her to have been involved in questionable contracts at the power utility.

There is debate as to whether Daniels should have signed the invoices, or rather taken a stand not to do so.

Corruption Watch executive director, David Lewis speaks to Clement Manyathela about Daniels admission.

Of course, we would prefer that a public servant take a stand and do what is correct, but there are three classes of whistleblowing.

David Lewis, Executive director - Corruption Watch

He outlines the three categories of whistleblower:

There is the heroic whistleblower who takes a stand and does what is right after they find corruption.

David Lewis, Executive director - Corruption Watch

8/29/2020

Hawks to investigate whistleblower Suzanne Daniels' wrongdoing at Eskom

There is also a group which Suzzane falls under where she did things that she knew at the time were wrong but because of enormous pressure, they did those things.

David Lewis, Executive director - Corruption Watch

The third category of whistleblowers is the likes of Angelo Aggrizi, who is as crooked as Gavin Watson himself, but because he feared that Watson would spill the beans on him, got his knife in first.

David Lewis, Executive director - Corruption Watch

Hawks spokesperson Hangwani Mulaudzi talks about the legal implications of Daniels admission and says it looks forward to hearing her version of events.

We feel it is necessary to get a hold of Daniels, however, there are legal implications that we need to take care of before we get to that stage.

Hangwani Mulaudzi, Spokesperson - Hawks

Firstly she has to give us her statement in the presence of her lawyer so that if there are any comebacks we can deal with that matter as and when they come.

Hangwani Mulaudzi, Spokesperson - Hawks

What is critical for us is that people should know that despite the fact that there was this admission, there are a lot of investigations that we are dealing with at Eskom.

Hangwani Mulaudzi, Spokesperson - Hawks



HAWKS TO PROBE SUZANNE DANIELS' ADMISSION OF UNLAWFUL CONDUCT

Daniels admitted on the 'Eusebius McKaiser Show' on Wednesday that she unlawfully signed off on the R800,000 payment of former board chair Ben Ngubane's legal fees.



Former head of legal at Eskom, Suzanne Daniels. Picture: Christa Eybers/EWN

Eskom (<https://ewn.co.za/topic/eskom>) State Capture (<https://ewn.co.za/topic/state-capture>) Ben Ngubane (<https://ewn.co.za/topic/ben-ngubane>)
 Barry Bateman (<https://ewn.co.za/contributors/barry-bateman>) | [about a year ago \(527 days ago\)](#)

PRETORIA - The Hawks have confirmed that they will investigate the admission of unlawful conduct by Eskom's former head of legal and compliance, Suzanne Daniels (<https://ewn.co.za/2019/03/20/suzanne-daniels-i-could-have-done-more-to-halt-eskom-state-capture>).

Daniels admitted on the *Eusebius McKaiser Show* on Wednesday that she unlawfully signed off on the R800,000 payment of former board chair Ben Ngubane's legal fees.

The Hawks are engaged in numerous investigations stemming from state capture allegations.

While Daniels tried to spread the blame between herself and the Eskom board, she conceded her wrongdoing to McKaiser.

"You authorised legal fees knowingly, unlawfully, that means you broke the law, you're an officer of the court, is an officer of the court allowed to do what you did?"

To which Daniels replied: "No."

McKaiser continued probing: "So what now? What happens to officers of the court who broke the law?"

An emotional Daniels responded: "They get prosecuted."

The Hawks' Hangwani Mulaudzi says that they would like to obtain Daniels' admission under oath.

"She has to give her statement in the presence of her lawyer so that if there are any comebacks we will be able to deal with that matter when it comes."

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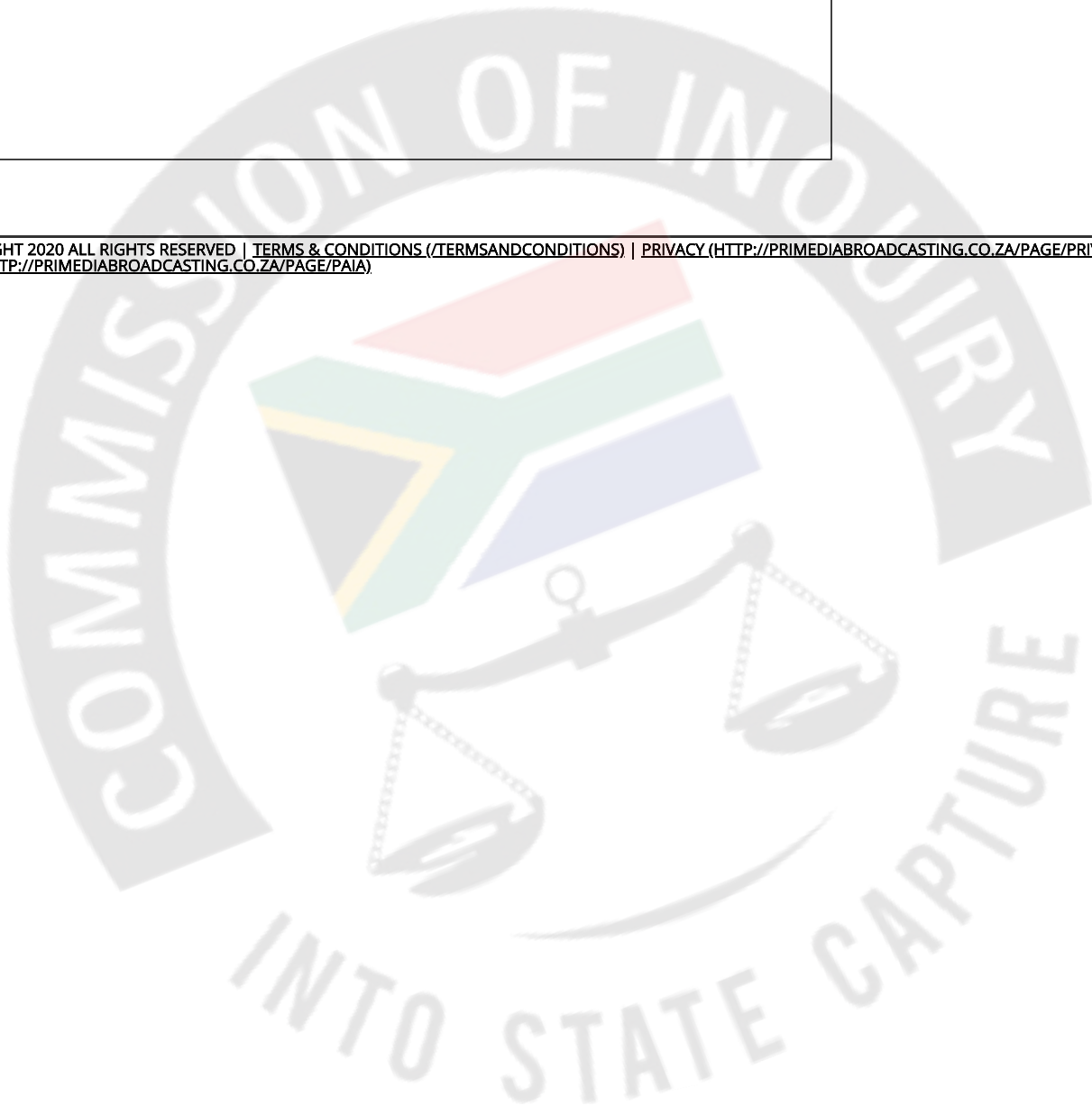
Daniels is presently in the United States.

LISTEN: Suzanne Daniels becomes emotional during interview on Eskom conduct

Suzanne Daniels: I have no regrets



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Eskom's Koko implicates colleagues, maintains innocence | eNCA

Eskom's Koko implicates colleagues, maintains innocence

Thursday 25 January 2018 - 7:00am



The disciplinary hearing of Eskom's suspended acting CEO Matshela Koko's disciplinary hearing is underway.

PARLIAMENT - Eskom's head of generation Matshela Koko on Wednesday implicated (<https://www.enca.com/south-africa/eskoms-koko-prepares-to-tell-all>) former colleagues in corruption and insisted his hands were clean during his testimony before the parliamentary inquiry into the power utility.

He claimed that he was victimised because he sought to block shady dealings, telling MPs: "I feel hurt and aggrieved."

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Koko singled out Eskom's former head of legal turned whistleblower Suzanne Daniels. He said she had called him a liar in her testimony to the inquiry but that he had refused to sign off an irregular payment of R460 million to consulting firm McKinsey which she had recommended, though there was no valid contract between the two companies.

WATCH: Koko testifies at Eskom inquiry (<https://www.enca.com/south-africa/koko-to-testify-at-eskom-inquiry>)

"What the committee must deal with, is [her] coming here saying Mr Koko is a thief and Mr Koko puts before you a recommendation to pay R460-million to McKinsey," he said, adding that he refused.

Last year, Daniels told the inquiry she viewed payments for consultancy fees, in the absence of any formal contract, as "brazen theft".

On Wednesday, Koko told the inquiry: "I have been called a thief by people I trusted, by people I still trust. I have been called a thief by Suzanne Daniels, who I regard as an extremely competent lawyer... People abuse these forums."

Last week, the National Prosecuting Authority accused McKinsey of using its relationship with Eskom to create a semblance of legitimacy that allowed Trillian, a firm linked to the Gupta family, to drain R600 million from Eskom for no services rendered.

Daniels testified that the utility never had a contract with Trillian's subsidiaries, but made at least two payments of R30-million and R500-million for consultancy fees.

Koko told the committee that he saw an instruction on direct invoicing but "could not support it" because "simply put, there was no direct contract between Trillian and Eskom".

He also claimed that Daniels was lying when she told the committee that he was present at a meeting in Melrose Arch where the Gupta's close associate Salim Essa told her that four senior Eskom executives would be suspended, among them Tshediso Matona who was eventually replaced by Brian Molefe.

READ: Gigaba pleads with Koko, Singh to resign (<https://www.enca.com/south-africa/gigaba-pleads-with-koko-singh-to-resign>)

The evidence leader in the inquiry, Advocate Ntuthuzelo Vanara, told Koko that he should expect his denial to be contradicted by other witnesses.

"At the end of this meeting, there will be two witnesses who place you at Melrose Arch."

One of the other witnesses who would place Koko at the meeting, is suspended senior executive Abram Masango, who was responsible for group capital. He was a witness at the disciplinary hearing that recently cleared Koko of charges of nepotism and conflict of interest, relating to a contract awarded to a company in which his stepdaughter is involved.

Koko, who served as acting chief executive when he was suspended, described Masango as a close friend but said he had been forced to act against him because of indications of corruption. He said he was forced to act against him and Kusile power station's senior manager for contract management, France Hlakudi.

Unlike former chief financial officer Anoj Singh (<https://www.enca.com/south-africa/anoj-singh-resigns-with-immediate-effect>), who bowed to pressure to quit on Monday and appeared before the inquiry on Tuesday, Koko responded in detail to questions about Eskom's

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contracts and operations.

But he repeatedly pleaded ignorance when he was grilled by Vanara and MPs about the apparent preferential treatment of the Gupta family's Tegeta Exploration, notably the slashing of a penalty for sub-standard coal from the Optimum mine from R2.1-billion to less than a quarter of a million rand.

Koko said there had been a clear instruction from Molefe that the fine was open to arbitration, as indicated by a conflict resolution mechanism in the sale contract for Optimum.

He said he wanted to dispel any notion that the penalty was imposed on the seller Glencore to bankrupt it and pave the way for Tegeta to snap up the mine.

"I want to address the myth that Eskom created fines to force Glencore into bankruptcy so that it [the Optimum mine] can be bought by the Guptas."

Questioned by MPs on the public enterprises committee conducting the inquiry, he added: "South Africans do not know that Optimum went into business rescue when I was on suspension, I was sitting at home. The part I tell this committee comes out of my knowledge of reading the documents."

He said he had to accept that the executives involved in concluding the contract with Tegeta had "applied their minds".

The Democratic Alliance (<https://www.enca.com/south-africa/da-lays-criminal-charges-against-eskom-ceo-matshela-koko>)'s Natasha Mazzone said the biggest issue she had with Tegeta was that she failed to understand why it was necessary for the company to get a R1.6-billion prepayment for coal as Eskom could simply have issued a guarantee if not for the obvious conclusion of having to assist the Guptas to buy the mine.

"I would like an answer from you as to why I should not come to this conclusion."

Koko flatly said he did not think she should draw the conclusion. He said the best he could offer was to show her Eskom's independent audit report reflecting that the coal was duly received. He stressed that the company acted in the manner it did because it "wanted to avoid load shedding at all cost".

She asked who had negotiations that prompted an eleventh hour, extraordinary board meeting that agreed to the prepayment. He put the responsibility on Eskom's board tender committee.

"The board tender committee is a decision maker, not us."

Pressed by her about evidence that Sahara Computers, another company in the Gupta business empire, had booked his hotel accommodation for a visit to Dubai in 2016, Koko flatly denied that his booking at the Oberoi hotel was handled by the CEO Ashu Chawla.

"I can tell you that I did not meet Chawla in Dubai, he did not book for me. If you have a chance, contact the hotel."

Mazzone replied that she had the booking note from the hotel.

"I would like to see that," he replied.

Steve Swart from the African Christian Democratic Party insisted that Eskom engineered a coal crisis at the Arnot power station to pave the way for the Tegeta deal.

"Eskom bent over backwards to accommodate Tegeta to obtain coal at Arnot at a much higher price. But is it criminal? It is corruption," Swart charged.

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It was a lie that the prepayment was used for capital, because "it was used to buy a mine", he said.

Koko demurred that he did not follow Swart's argument.

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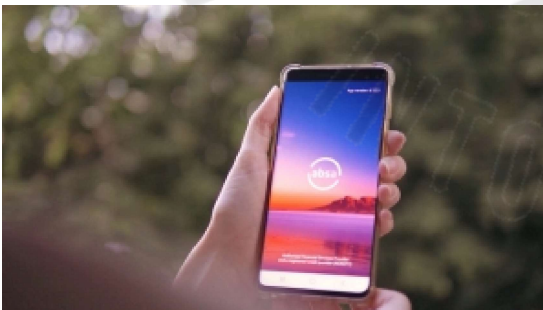
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Minister Ben Martins is perplexed by Suzanne Daniels's claims

**IOL**

BUSINESS REPORT

Ben Martins File picture: Leon Nicholas/Independent Media

Minister Ben Martins is perplexed by Suzanne Daniels's claims

By Staff Reporter  Nov 9, 2017

Cape Town – Deputy Public Enterprises Minister Ben Martins said he never met with Duduzane Zuma, Suzanne Daniels and Ajay Gupta at an apartment in Johannesburg in 2017.

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Minister Ben Martins is perplexed by Suzanne Daniels's claims

"I am perplexed by Ms Suzanne Daniels' testimony to the parliamentary inquiry into Eskom".

Read Also: [Suspended Eskom legal head details 'brazen theft', Gupta influence](#)

"She falsely claimed that I had attended a tea party in Johannesburg with her, Mr Ajay Gupta, Mr Salim Essa and Mr Duduzane Zuma.

"As the head of Eskom's legal department Ms Daniels should account to Parliament for what happened under her watch rather than seek to use the occasion to reinvent herself as clueless ignoramus."

Former Finance Minister Pravin Gordhan said that Daniels should be aware that the people involved would deny these accusations. He also warned her in Parliament that her character would be attacked.

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Minister Ben Martins is perplexed by Suzanne Daniels's claims

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Daniels said that it was her word against theirs. She also noted that as state capture evidence came in all the dots would be connected and her evidence will ring through at truth.

Daniels testified at the Public Enterprises committee's inquiry into state capture on Eskom. The suspended executive said quite frankly that Salim Essa, a Gupta executive and Ajay Gupta himself tried on numerous occasions to guide and influence Eskom's executives.

[Have you read: IN DEPTH: A timeline of how the Guptas bought South Africa](#)

When discussing the meeting in Johannesburg this year Daniels said that "The purpose of the discussion was around the process of the [former Eskom CEO Brian] Molefe court proceedings. Mr Gupta wanted to know how far they were."

Molefe's wanted to have the Labour Court disavow Eskom's decision to terminate his reappointment. Daniels told Ajay Gupta the Deputy Judge President and Eskom would meet to discuss the matter. Opposition parties at the time had also joined the suit.

What was shocking was that Ajay Gupta said that he would speak to someone at the Deputy Judge President's office so that the meeting could be moved, Daniels said.

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Public Enterprises' Ben Martins denies secret meetings with Gupta family

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Martins has accused Eskom's suspended head of legal Suzanne Daniels of lying.

Deputy Public Enterprises Minister Ben Martins has denied any secret meetings with the Gupta family but has admitted that he did meet them on a few occasions.

He has accused Eskom's suspended head of legal, Suzanne Daniels, of being a "liar" saying she fabricated a story about meeting him and Ajay Gupta at Melrose Arch.

On Wednesday Daniels told Parliament's Public Enterprises portfolio committee that she met with Martins, President Jacob Zuma's son Duduzane and Gupta in July this year.

READ: [Eskom's legal head takes her suspension battle to CCMA](#)

Eyewitness News reporter Rahima Essop has more on the story.

“ He says he did not attend a meeting with Ajay Gupta and Duduzane Zuma in Melrose Arch on the 29th of July this year. ”

Rahima Essop, EWN reporter

“ He suspects that Daniels fabricated the story because he had on previous occasions admonished her for governance lapses under her watch as



Weekend Breakfast with Sara-Jayne King
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Public Enterprises' Ben Martins denies secret meetings with Gupta family

Meanwhile, Eskom has served another senior executive with a suspension letter for allegedly receiving kickbacks.

“ He conceded yes, he did meet with the Gupta brothers a handful of times, throughout his career in government, he mentioned the Indian fair at their Saxonwold home, later at a media event. ”

Rahima Essop, EWN reporter

“ He also spoke about an occasion where he called Tony Gupta and former Prasa CEO Lucky Montana to meet with him at his Pretoria home to discuss issues at the railway agency. On that particular issue, he said that Montana had raised allegations that some of the Gupta's wanted to influence leadership changes at Prasa. ”

Rahima Essop, EWN reporter

Abram Masango has until Friday to motivate why he must not be suspended for an incident which happened while he was still the group executive for capital, which includes projects such as the Kusile Power Station.

Energy Expert and MD at EE Publishers, Chris Yelland says the scandals surrounding the power utility may have a harsh impact on Eskom.

“ It must be very disturbing for investors and lenders. Eskom is in a situation of severe liquidity at the moment leading up to next year where it is likely that they will go into a negative liquidity position. ”

Chris Yelland, Energy Expert and MD at EE Publishers

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SUZANNE DANIELS: MATSHELA KOKO IS LYING ABOUT EMAILS

Daniels shared her side of the story on the Eusebius McKaiser Show.



Former head of legal at Eskom, Suzanne Daniels. Picture: Christa Eybers/EWN

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CAPE TOWN – Former Eskom head of legal and compliance Suzanne Daniels has accused the power utility's former acting chief executive Matshele Koko of lying.

Daniels was dismissed in July last year after she was found guilty of misconduct following revelations about Eskom's transactions with Gupta-linked Trillian and McKinsey.

Daniels has responded to Koko's claims that she was aware of the transactions as she received emails.

"Let me just look at the facts like Mr Koko said in his interview. These emails started in July 2015. Mr Koko was still on suspension at the time. I wasn't yet company secretary, so I would have no reason to point out emails or ask for it to be sent to me for the chairman's attention."

McKaiser then asked her whether she was made aware of the transactions once she was named Eskom's legal secretary.

She laughed and responded: "That's absolute nonsense. He walked to the chairman's office as he required. It didn't require me as the gatekeeper."

Listen to the audio for more.



The Clement Manyathela Show

Suzanne Daniels admits to breaking the law

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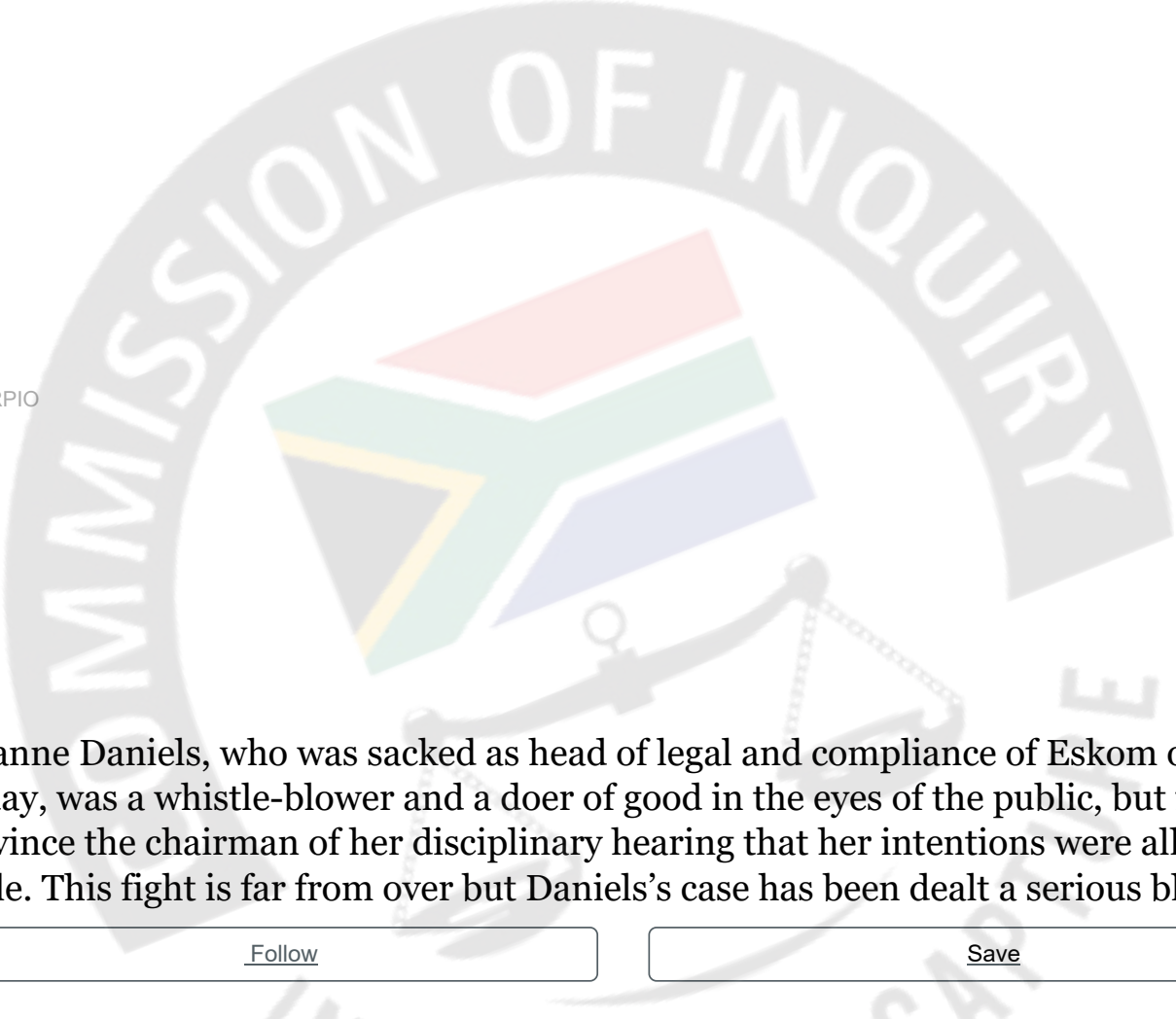
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Victim, villain or pawn: Why Eskom 'whistle-blower'...

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Suzanne Daniels, who was sacked as head of legal and compliance of Eskom on Friday, was a whistle-blower and a doer of good in the eyes of the public, but failed to convince the chairman of her disciplinary hearing that her intentions were all that noble. This fight is far from over but Daniels's case has been dealt a serious blow.

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Suzanne Daniels shared the stage with key State Capture whistle-blowers during a parliamentary enquiry into Eskom in late 2017. She was celebrated among the likes of former Trillian executives, Bianca Goodson and Mosilo Mothepu, the woman who lifted the lid on the firing of Nhlanhla Nene during his first stint as finance minister in 2015.

And some of Daniels' revelations helped plug holes in the overall scandal around the Gupta heist of the state-owned power company, the events that led to R1.6-billion in payments to global consulting firm, McKinsey & Co and Trillian Capital Partners, as well as a controversial pre-payment for coal that helped fund the Gupta purchase of Optimum Coal Mine.

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Victim, villain or pawn: Why Eskom 'whistle-blower'...

On Friday, nine months after her suspension as head of legal and compliance, Daniels was fired by Eskom – ironically over her role in those very transactions.

The parastatal announced its decision following a ruling by senior advocate Nazeer Cassim who presided over her disciplinary hearing.

Cassim found Daniels guilty on all charges, among those that she had authorised just over R800,000 towards legal fees to help former chairman, Dr Ben Ngubane, in a matter that had nothing to do with Eskom and for sharing internal documents with an email address that was in all probability that of Gupta kingpin, Salim Essa.

Daniels confirmed that her lawyers have been provided with a copy of the ruling and indications are that she is considering her legal options.

Read her full statement

One of the most devastating elements of Cassim's ruling is the total rejection of Daniels' contention that she was a whistle-blower and that the charges against her had been engineered as punishment for her having spilled the beans.

She had made a series of disclosures to senior executives at Eskom as well as the media in the months before her appearance before the parliamentary portfolio committee on public enterprises in 2017.

Cassim was not convinced, instead labelling those disclosures as "selective" and "opportunistic".

Daniels, he said, had on one instance relating to the Tegeta pre-payment sought to cover up for the wrongdoing when she assisted in preparing a response to a media enquiry from the *Mail & Guardian* about the involvement of Trillian as "baseless and factually incorrect" when she knew that to be false.

"She willingly participated in misrepresenting to the public at large the role of the Guptas and their associates, in particular Essa..."

Essa at the time held a 60% stake in Trillian Capital Partners.

In written submissions, it was contended that Daniels made disclosures between July and September 2017 to Eskom's lawyers, senior people at Eskom, the media, as well as the then acting group chief executive, which amounted to protected disclosures.

"Thus, she claims protection from any disciplinary steps on the premise that she was advancing the eradication of criminal and other irregular conduct at Eskom.

"Taken to its logical conclusion, Ms Daniels argues that case against her constituted a reprisal as a result of such disclosures and should not be allowed."

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Victim, villain or pawn: Why Eskom 'whistle-blower'...

Cassim disagreed on Daniels' claim that the hearing was tantamount to occupational detriment as a result of her disclosures and noted that it was necessary due to her conduct over a sustained period of time and her intricate involvement in promoting irregular practices which directly prejudiced Eskom.

"Whilst I do not have the power to make a determination as to whether the PDA (Protected Disclosures Act) protects Ms Daniels or not, I am not satisfied that the disclosures made by Ms Daniels were in good faith."

"Having regard to the content of the disclosure as well as its timing, I am persuaded that the disclosures are selective in nature, inconsistent with an employee who genuinely endeavours to protect the interest of her employer and, in the circumstances, opportunistic."

Daniels, through her conduct, promoted irregular practices which prejudiced Eskom and advanced the interests of corrupt colleagues and third party racketeers over a sustained period of time, the ruling states.

She failed to convince Cassim of her contention that she was merely following orders or that she had feared losing her job.

Cassim highlighted, several times, Daniels' qualifications, that she is an officer of the court (as a lawyer) who had been placed in an extremely senior position at Eskom.

She had a "meteoric" rise in the corridors of power at the state-owned power company and by the time she was fired Daniels was on a hefty pay cheque of just under R2.7-million a year.

But he adds that she was either too willing to please those in control of Eskom at a time when the controversial deals were unlawfully pushed through – else, that she was incompetent for the job.

That the McKinsey/ Trillian deal was a "scam and a fraud" on the South African public is well documented, Cassim said.

"I would have thought that somebody in Ms Daniels' position would have immediately acknowledged that the transaction was imbued with wrongdoing and illegality."

In determining whether she had misconducted herself or not, Cassim said he had taken into account her evidence that she did not at the material time realise that she was doing anything wrong, or that she was just following orders or that she had relied on external legal advice.

In motivating the Eskom executive and/ or board that a sole source appointment was justified in the appointment of McKinsey, Daniels should, as a competent lawyer and senior employee, have advised that it was necessary to follow an open competitive bidding process, the ruling states.

She was further found guilty of misconduct for the abuse of public funds in providing authorisation for legal fees in excess of R800,000 to be paid on behalf of then Eskom chairman, Dr Ben Ngubane, whose legal woes related to his previous tenure on the board of the SABC.

"Ms Daniels behaved as if the Eskom resources belonged to her, unlawfully spent taxpayers' money for the personal benefit of Ngubane."

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Victim, villain or pawn: Why Eskom 'whistle-blower'...

Daniels, during the hearing, said she believed Eskom needed to assist Ngubane in order to spare the already embattled power utility further embarrassment as Ngubane, at that stage, was the “face” of Eskom.

But, said Cassim in his ruling, at that stage there were already serious question marks over Ngubane’s reputation following the release of the Public Protector’s State of Capture reports and media reports linking him to business dealings with Essa.

“Ms Daniels’ explanation for authorising use of Eskom’s resources to fund the private concerns of Ngubane lacks any credibility and demonstrates to my mind her unresolved dedication to the group of senior people at Eskom looting this SOC for their own benefit and, shamelessly, the benefit of the Guptas and their associates.”

And then, that email that may or may not belong to Salim Essa. Cassim chose to accept evidence of an Eskom witness that the email, Businessman: Infoportal1@zoho.com in all probability belonged to Essa.

Daniels testified that she believed it was one belonging to Public Enterprises DG, Richard Seleke.

Said Cassim: “On the probabilities, I reject the suggestion that the emails were intended for the attention of Seleke. First, Seleke in his official position would generally speaking be entitled to such information. There would be no need for secrecy. Secondly, Ms Daniels’ explanation was that Ngubane had informed her that it was Seleke’s email when they started working together in April 2015.”

This, Cassim said, cannot be correct because Seleke was only appointed as DG in December 2016 whereas the first email copied onto the “Businessman” email address was on 11 June 2016.

“If truth be told, the monumental financial transactions in Eskom could have been averted had any of the major role players taken a stand and done the right thing.

“She had a choice. She could have done the right thing. Her suggestion that she would have lost her job undermines the value of the Public Disclosures Act and the protection afforded to employees in the Labour Relations Act,” the ruling states.

Daniels has become somewhat of a media darling, an exceptionally skilled professional with a high level of knowledge of various facets of the business of Eskom.

Unlike many of her former colleagues, popularly dubbed the “Dubai club”, Daniels has not enjoyed expensive overseas trips courtesy of the Guptas and neither has there been a shred of evidence of any quid pro quo.

But Cassim, in his recommendation to Eskom, said he had to consider whether Daniels was up to the task of returning to Eskom to help with the arduous task of normalising the cash-strapped parastatal.

“The concept of honesty in the employment context does not merely mean refraining from criminal conduct. It embraces any conduct which involves deceit. Ms Daniels, in my view, knowingly aided corrupt practices at Eskom with the reasonable foresight that these would imperil the very existence of Eskom.” **DM**

8/29/2020

Victim, villain or pawn: Why Eskom 'whistle-blower'...



From: server-16.tower-212@notification.messagelabs.com on behalf of Suzanne Daniels
<DanielSM@eskom.co.za>
Sent: Sunday, 28 August 2016 17:09
To: Matshela Koko
Cc: Ayanda Nteta; Marumo Lekoto
Subject: Fourth Addendum to the Coal Supply Agreement between ESKOM HOLDINGS SOC LTD and KOORNFONTEIN MINES (PTY) LTD
Attachments: Fourth Addendum to the Coal Supply Agreement between ESKOM HOLDINGS SOC LTD and KOORNFONTEIN MINES (PTY) LTD

Sender: DanielSM@eskom.co.za

Subject: Fourth Addendum to the Coal Supply Agreement between ESKOM HOLDINGS SOC LTD and KOORNFONTEIN MINES (PTY) LTD

Message-Id: <285ED16040FCDD4485B6F5D99E8ADA0C8E68CB97@MWPXMB10.elec.eskom.co.za>

Bcc: infoportal1@zoho.com



From: Suzanne Daniels <DanielSM@eskom.co.za>
Sent: Sunday, 28 August 2016 17:09
To: Matshela Koko
Cc: Ayanda Nteta; Marumo Lekoto
Subject: Fourth Addendum to the Coal Supply Agreement between ESKOM HOLDINGS SOC LTD and KOORNFONTEIN MINES (PTY) LTD
Attachments: 16h26 20160828 Koorfontein contract-execution copy clean version.doc
Importance: High
Sensitivity: Confidential

Good afternoon Matshela

Please find attached hereto a clean execution copy of the Coal Supply Agreement which is in order for signature.

There are no conditions precedent to be met as it is an extension of a current agreement with the following specific terms:

1. This Agreement replaces all addenda and modifications in its entirety upon execution. This is recorded in the terms and provisions. Thus upon the signature of this agreement it will be the one used to govern the contractual relationship between the parties.
2. The provision that the price adjustment factor will be modified if lower than the NERSA price determination is included in clause 16.2.
3. The provisions regarding Supplier Development and Localisation commitments are included in clause 6.
4. Specific to this agreement are clauses relating to the construction of the conveyor and the parties' rights and obligations in this regard, are included in clause 29 of the Agreement.

Ayanda will prepare the bundle for your signature and that of the Supplier.

Should you have any further queries, please do not hesitate to contact me.

Yours sincerely

SUZANNE DANIELS

Group Company Secretary (Acting General Manager: Legal)

Eskom Holdings SOC Ltd

Phone: +2711 800 3091 Mobile: +2782 580 7832 Fax: +2786 662 7327

Email: danielism@eskom.co.za



Contract Number _____

FOURTH ADDENDUM

to the

COAL SUPPLY AGREEMENT

entered into by and between

ESKOM HOLDINGS SOC LTD

registration number 2002/015527/30, a company incorporated in terms of the laws of the Republic of South Africa with its registered office at Megawatt Park, Maxwell Drive, Sunninghill

("Eskom")

and

KOORNFONTEIN MINES (PROPRIETARY) LIMITED

registration number 2006/013073/07 a company incorporated in terms of the laws of the Republic of South Africa with its registered office at 144 Katherine Street, Grayston Ridge Office Park, Block A Lower Ground Floor, Sandton 21460

("the Supplier")

Eskom Vendor Number: 11063341



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SECTION 1: INTRODUCTION, DEFINITIONS AND INTERPRETATION

1. Introduction

- 1.1 Eskom and the Supplier entered into a Coal Supply Agreement on 14 September 2012, which agreement regulates, inter alia, the supply of coal from the Koorfontein Coal Mine. The Coal Supply Agreement was amended in terms of eight separate Modifications (Modification 01 to Modification 08) and three separate Addenda dated 31 March 2016 ("First Addendum"), 28 April 2016 ("Second Addendum" and 31 May 2016 ("Third Addendum") 2016 respectively.
- 1.2 The Third Addendum, inter alia, extended the duration of the Coal Supply Agreement by two Months from 31 May 2016 to end 31 July 2016.
- 1.3 Eskom wishes to increase the Total Energy Quantity by 386 400 000 ("the Total Energy Quantity") as fully described under Table 1 of this Fourth Addendum and also extend the Contract Period for a further period, as prescribed under clause 10 of this Fourth Addendum.
- 1.4 The Supplier hereby agrees to Deliver deliver, to Eskom, the Total Quantity of Contract Coal produced from coal mine pursuant to the Koorfontein Mining Right, for the Contract Period on the terms and conditions set out herein.
- 1.5 As a result, the Parties hereby agree to amend the entire provisions of the Coal Supply Agreement and enter into this Fourth Addendum, as a complete record of their agreement.
- 1.6 With effect from the date of last signature hereof, this Fourth Addendum shall constitute the complete record of the Agreement, as set out below, and replaces in its entirety, the Coal Supply Agreement entered into between the parties on 14 September 2012 as amended through Modification 01 to Modification 08 and Addendum 01 to 03 respectively and read in conjunction with the Coal Supply Agreement entered into between the parties on 14 September 2012.

2. Definitions and Interpretation

- 2.1 In this Agreement, the following words and expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words and expressions) shall bear corresponding meanings:



- 2.1.1 **"Agreement"** means this Fourth Addendum and shall include all Annexes hereto, as amended from time to time;
- 2.1.2 **"Air Dried"** means the physical condition of coal that has been dried at ambient temperature or at a temperature not exceeding 40°C (forty degrees Celsius) to remove surface moisture until a constant mass is achieved;
- 2.1.3 **"Annexe"** means an annexe attached to the Agreement, as amended or replaced from time to time;
- 2.1.4 **"Annual Quantity"** means the quantity of Contract Coal, measured in GigaJoules, which Parties target Supplying during each Year, as set out in the second column of Table 1;
- 2.1.5 **"As Received"** means the physical condition of coal including both surface and residual moisture contents as received at the Delivery Point;
- 2.1.6 **"Base Date"** means in respect of each cost component set out in Table 2, the date set out in the fifth column of Table 2;
- 2.1.7 **"Base Date Index Value (B)"** means in respect of each cost component set out in the first column of Table 2, the value of the relevant index on the Base Date of such cost component set out in the fourth column of Table 2;
- 2.1.8 **"Base Price"** shall have the meaning ascribed to it in clause 15;
- 2.1.9 **"Black"** is a generic term which means Africans, Coloureds and Indians who are citizens of the Republic of South Africa, by birth or descent or who became citizens by naturalisation before the 27th of April 1994;
- 2.1.10 **"Black Designated Groups"** means Black youth, Black women and Black people living with disabilities;
- 2.1.11 **"Black Ownership"** means a portion of shares owned by Black people in an entity;



- 2.1.12 **"Broad-Based Black Economic Empowerment (B-BBEE)"** refers to the economic empowerment of all Black people including women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies;
- 2.1.13 **"Business Day"** means a day other than a Saturday, Sunday or gazetted public holiday in the Republic of South Africa;
- 2.1.14 **"Calorific Value (CV)"** means the quantity of heat produced by the complete combustion of a given mass of coal, measured in MJ/kg;
- 2.1.15 **"Coal Haulage Rates Model"** means the economic model used by Eskom to determine tariffs applicable to the road transportation of coal as amended from time to time;
- 2.1.16 **"Coal Quality Determination Procedure"** means the coal quality determination principles and procedures set out in **Annexe A**, as well as the procedures referred to in clauses 21, 22 and 23;
- 2.1.17 **"Coal Quality Management Procedure (CQMP)"** means the sampling and analysis principles and procedures set out in **Annexe B**, as well as the procedures referred to in clauses 21, 22 and 24;
- 2.1.18 **"Coal Reserve"** means, at any time during the currency of this Agreement, so much of the Coal Resource from which a quantity of Contract Coal can be produced for Supply to Eskom in terms of this Agreement equal to at least the difference between 386 400 000 (three hundred and eighty six million four hundred thousand) GJ ("the Total Energy Quantity"), being approximately 16.8 (sixteen point eight) million Tons (As Received) and the quantity of Contract Coal in the Coal Resource (expressed as an energy quantity) then actually Supplied to Eskom in terms of this Agreement;
- 2.1.19 **"Coal Resource"** means all in-situ coal occurring naturally in, on and under the land to which the Koornfontein Mining Right relates;



- 2.1.20 **"Coal Supply Agreement"** Means the Coal Supply Agreement entered between the Parties on 14 September 2012 together with all modifications and addenda thereto;
- 2.1.21 **"Codes of Good Practice"** means the Codes of Good Practice as contemplated by section 9 of the Broad-Based Black Economic Empowerment Act 2003 (Act Number 53 of 2003) as amended from time to time;
- 2.1.22 **"Commencement Date"** shall have the meaning ascribed to it in clause 8;
- 2.1.23 **"Consignment"** means
- 2.1.23.1 in respect of Contract Coal transported by conveyor, the approximate quantity Delivered in 1 (one) day;
- 2.1.23.2 in respect of Contract Coal transported by rail, a train load;
- 2.1.23.3 in respect of Contract Coal transported by road, the approximate quantity Delivered in 1 (one) day;
- 2.1.24 **"Container Trains"** means trains consisting of wagon ISO-type 6 (six) meter open top containers on flat bed rail cars;
- 2.1.25 **"Contract Coal"** means the mixed/blended washed no. 2 seam and washed no. 4 seam coal certified at the Power Station or Eskom nominated site or originating from Pre-Certified Stockpiles and/or Verified coal samples, whichever is applicable, in respect of which the measurements of all coal quality parameters comply with the Quality Specifications and none of which is Reject Coal;
- 2.1.26 **"Contract Manager"** means the individual appointed to manage this Agreement and as described more fully in clause 34;
- 2.1.27 **"Contract Period"** means the period described in clause 9;
- 2.1.28 **"CV Adjustment Factor (CVAF)"** means the factor used to adjust the Calorific Value of coal from an Air Dried to an As Received Basis and as set out more fully in clause 25.3;



- 2.1.29 **"DAT"** means Delivered At Terminal as defined in Incoterms at the Delivery Point;
- 2.1.30 **"Deliver"** means the provision, and where applicable, the off-loading of Contract Coal by the Supplier at the Delivery Point, and **"Delivery"** shall have a corresponding meaning;
- 2.1.31 **"Delivery Point"** means:
- 2.1.31.1 in respect of Contract Coal transported by conveyor, the transfer point situated at the Eskom Coal Stockyard at the Mine;
 - 2.1.31.2 in respect of Contract Coal transported by rail, the outbound weighbridge or the handover/departure point situated at the Rail Siding;
 - 2.1.31.3 in respect of Contract Coal, where the Supplier is responsible for road transportation, the outbound weighbridge situated at the Power Station or any other points as contained in a written instruction by Eskom; and
 - 2.1.31.4 in respect of Contract Coal, where Eskom is responsible for the road transportation, the outbound weighbridge situated at the Mine;
- 2.1.32 **"Drawdown Order"** means a written order issued by Eskom to the Supplier for the Delivery of Contract Coal as further described in clause 12.4;
- 2.1.33 **"Eskom Coal Stockyard"** means the coal stockyard situated at the Mine for use by Eskom to stockpile Contract Coal for the Power Station as more fully defined in clause 29.1;
- 2.1.34 **"Expected Quality"** means the quality of Contract Coal that the Supplier expects to Deliver as modelled and presented according to the SAMREC Code and as set out in the third column of Table 3;



- 2.1.35 **"FCA"** means Free Carrier as defined in Incoterms at the Delivery Point;
- 2.1.36 **"Foreign Material"** means all extraneous matter, other than coal, coal associated material and/or water, including without limitation metal, concrete, wood, plastic, roof bolts, picks from mining equipment, conveyor idlers and oversize stone;
- 2.1.37 **"GigaJoule (GJ)"** one thousand million Joules (being the derived unit of energy in the International System of Units) and being the metric terms used for measuring energy;
- 2.1.38 **"Incoterms"** means the standard trade definitions used in sales contracts published by the International Chamber of Commerce as at 2010, as amended or replaced from time to time;
- 2.1.39 **"Jumbo Trains"** means trains capable of being operated on TFR's heavy haul rail system and typically consisting of wagons having a rated payload of 83 (eighty three) Tons per wagon and an axle load of no more than 26 (twenty six) Tons per axle;
- 2.1.40 **"Latest Index Value (L)"** means, in relation to each cost component in Table 2, the latest available value for the relevant index for such cost component, as set out in the third column of Table 2 and at the time of calculating any price adjustment, which shall be the value of the relevant index for each cost component published for the Month prior to the most recent annual Price Adjustment Date except for diesel, which shall be the value of the diesel index published for the current Month;
- 2.1.41 **"Local Procurement"** means procurement targeted at Black designated groups who are residents of the district municipality where the Mine is located;



- 2.1.42 **"Maximum Annual Quantity"** means the maximum quantity of Contract Coal, in GJ, which Eskom is entitled to Take Off and which the Supplier required to Deliver during each Year, being 105% (one hundred and five percent) of the Annual Quantity;
- 2.1.43 **"Maximum Monthly Quantity"** means the maximum quantity of Contract Coal, in GJ, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 120% (one hundred and twenty percent) of the Monthly Quantity;
- 2.1.44 **"Maximum Quarterly Quantity"** means the maximum quantity of Contract Coal, in GJ, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 110% (one hundred and ten percent) of the Quarterly Quantity;
- 2.1.45 **"Mine"** means the Koorfontein coal mine established to exploit the Coal Resource;
- 2.1.46 **"Mining Right"** means mining right as defined in the MPRDA;
- 2.1.47 **"Koorfontein Mining Right"** means the Mining Right MP 30/5/1/2/2/156 MR, granted to BHP Billiton Energy Coal South Africa, registration number 1963/000537/06 and notarially ceded to the Supplier, relating to coal in respect of various portions of the farms Aberdeen 152, Boschmanskop 154 Broodsneyersplaats 25, Bultfontein 187, Driefontein 153, Dunbar 189, Geluk 26, Gloria 186, Hartbeeskuil 185, Koorfontein 27, Leeuwfontein 48, Roodepoort 151, Welverdiend 23 and Wilmansrust 47 Registration Division IS, in the Magisterial District of Middelburg, in the province of Mpumalanga, measuring 13952.8087 hectares and which notarial deed of cession was registered in the Titles Office on 01 July 2007 under registration number 07/2007;



- 2.1.48 **"Minimum Annual Quantity"** means the minimum quantity of Contract Coal, in GJ, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Year, being 95% (ninety five percent) of the Annual Quantity;
- 2.1.49 **"Minimum Monthly Quantity"** means the minimum quantity of Contract Coal, in GJ, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 80% (eighty percent) of the Monthly Quantity;
- 2.1.50 **"Minimum Quarterly Quantity"** means the minimum quantity of Contract Coal, in GJ, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 90% (ninety percent) of the Quarterly Quantity;
- 2.1.51 **"MJ/kg"** means MegaJoules (being 1,000,000 Joules) per kilogram;
- 2.1.52 **"Month"** means a calendar month;
- 2.1.53 **"Monthly Quantity"** means the quantity, in Tons, of Contract Coal which Parties target Supplying during each Month, as set out in the fifth column of Table 1;
- 2.1.54 **"MPRDA"** means the Mineral and Petroleum Resources Development Act, No. 28 of 2002, as amended or replaced from time to time, including all regulations promulgated in terms thereof;
- 2.1.55 **"NEMA"** means the National Environmental Management Act, No. 107 of 1998, as amended or replaced from time to time, including all regulations promulgated in terms thereof;
- 2.1.56 **"Nominated Laboratory"*** means the laboratory appointed by Eskom for the purpose of analysing coal samples in terms of this Agreement;
- 2.1.57 **"NWA"** means the National Water Act, No. 36 of 1998, as amended or replaced from time to time, including all regulations promulgated in terms thereof;



- 2.1.58 **"Party"** means Eskom or the Supplier, as the context in which the word appears requires and **"Parties"** means both Eskom and the Supplier;
- 2.1.59 **"Power Station"** means Komati Power Station or any other Eskom owned or operated power station within the Republic of South Africa and which has been designated by Eskom as the destination of Contract Coal;
- 2.1.60 **"PPI"** means the producer price index for domestic output in South Africa, Table 1 (which is, at the Signature Date contained in Statistical Release P0142.1) as published by Statistics South Africa. In the event that the above producer price index ceases to be published or is replaced during the currency of this Agreement, then PPI shall mean an alternative index measuring substantially the same elements as that measured by the above mentioned producer price index;
- 2.1.61 **"Pre-Certified Stockpile"** means stockpile(s), approximately equivalent to a day's delivery, unless otherwise agreed which have been sampled, analysed and certified, in accordance with this Agreement (including the Coal Quality Management Procedure) as meeting the Quality Specifications, or otherwise as accepted by Eskom;
- 2.1.62 **"Price"** shall have the meaning ascribed to it in clause 16.3;
- 2.1.63 **"Price Adjustment Date"** shall have the meaning ascribed to it in clause 16.1;
- 2.1.64 **"Price Adjustment Factor (PAF)"** means 1 (one) plus [the sum of (L-B)/B for each applicable index in Table 2 multiplied by the corresponding proportion for that index as set out in the second column of Table 2, where 'L' is the Latest Index Value and 'B' is the Base Date Index Value];
- 2.1.65 **"Progress Reports"** means annual achievements updates that shall be submitted to Eskom;



- 2.1.66 **"Qualifying Alternative Coal"** means coal sourced from the Supplier's production facilities other than the Mine, and which complies with the Quality Specification and which production facilities comply with all legislative requirements contained in this Agreement;
- 2.1.67 **"Quality Specification"** means in respect of each coal quality parameter set out in the first column of Table 3, the specification stipulated in the fourth column of Table 3, which coal Delivered by the Supplier to Eskom in terms of this Agreement must comply with;
- 2.1.68 **"Quarter"** means a period which consists of 3 (three) consecutive Months, the first of such period to commence on the Commencement Date and thereafter on the anniversary of the Commencement Date;
- 2.1.69 **"Quarterly Quantity"** means the quantity, in GJ, of Contract Coal specified in the Drawdown Order for that Quarter, determined as set out in clause 12;
- 2.1.70 **"Rail Siding"** means the Koornfontein railway siding situated at the Mine and operated by the Supplier;
- 2.1.71 **"Reject Coal"** means coal in respect of which one or more quality parameters does not meet the Quality Specification, or coal deemed to be reject coal in terms of the provisions of clause 26.2 whichever is applicable;
- 2.1.72 **"SAMREC Code"** means the 2007 edition of the South African Code for Reporting of Exploration Results, Mineral Resources and Mineral Reserves prepared by the South African Mineral Resources Committee Working Group under the joint auspices of the South African Institute of Mining and Metallurgy and the Geological Society of South Africa, as amended or replaced from time to time;
- 2.1.73 **"SD&L Commitments"** means the targets agreed upon the Parties as contained in **Annexe C: Supplier Development and Localisation Targets**;



- 2.1.74 **"Signature Date"** means the date on which this Agreement has been signed by both Parties hereto and if signed on different dates, the date of signature of the Party signing last in time;
- 2.1.75 **"Small Trains"** means trains which shall operate primarily on TFR's general freight business rail system and which shall typically consist of wagons having a rated payload of no more than 58 (fifty eight) Tons and an axle load of no more than 20 (twenty) Tons per axle;
- 2.1.76 **"Supplier"** means Koornfontein Mines (Proprietary) Limited registered under the laws of South Africa registration number 2006/013073/07;
- 2.1.77 **"Supply"** means both when used as a noun and a verb, means the completed process of Delivery and Off Take which will take place more or less simultaneously, and **"Supplied"** shall have a corresponding meaning;
- 2.1.78 **"Take Off"** when used as a verb, in respect of all Contract Coal Delivered, means the removal of such coal from the respective Delivery Points by Eskom in such quantities and at such rates as set out in this Agreement and the noun **"Off Take"**, shall bear a corresponding meaning;
- 2.1.79 **"Technical Liaison Meeting"** means the meeting to be held between the Parties as set out in clause 34;
- 2.1.80 **"TFR"** means Transnet Freight Rail, a division of Transnet SOC Ltd, registered in terms of the company laws of the Republic of South Africa under registration number 1990/000900/30 and having its registered office at 47th floor, Carlton Centre, 150 Commissioner Street, Johannesburg, 2001.
- 2.1.81 **"Titles Office"** means the Mineral and Petroleum Titles Registration Office of South Africa;
- 2.1.82 **"Ton"** means a metric ton of 1 000 (one thousand) kilograms;



- 2.1.83 **"Tonnage Adjustment Factor"** means the factor used to adjust the tonnage of any Contract Coal that exceeds the maximum total moisture content, but which is accepted for Delivery in terms of clause 25.1, for the moisture in excess of the Equilibrium Moisture;
- 2.1.84 **"Total Energy Quantity"** shall have the meaning ascribed to it in clause 11.3;
- 2.1.85 **"Ultrafines"** means material below 100 (one hundred) microns resulting from the thickener underflow process recovered either as filter cake, arising from the filter press process or harvested from slimes dams;
- 2.1.86 **"Under Delivery"** means Under Supply caused by the Supplier's failure to Deliver Contract Coal and/or Qualifying Alternative Coal for any reason other than *force majeure*;
- 2.1.87 **"Under Off Take"** means Under Supply caused by Eskom's failure to Take Off Contract Coal Delivered for any reason other than *force majeure*;
- 2.1.88 **"Under Supply"** means:
- 2.1.88.1 in respect of any Month, Supply of less than the Minimum Monthly Quantity applicable to that Month;
- 2.1.88.2 in respect of any Quarter, Supply of less than the Minimum Quarterly Quantity; or
- 2.1.88.3 in respect of any Year, Supply of less than the Minimum Yearly Quantity applicable to that Year,
- as a result of either Under Delivery and/or Under Off Take for any reason other than *force majeure*;
- 2.1.89 **"Verification"** means the process undertaken by Eskom to verify coal qualities at the Delivery Point, **"Verify"** and/or **"Verified"** shall have a corresponding meaning; .



2.1.90 "VAT" means value added tax levied from time to time in terms of the Value Added Tax Act, No. 89 of 1991 or any similar tax levied on the supply of goods imposed in terms of any law passed in substitution of the Value Added Tax Act, No. 89 of 1991 and for which tax a purchaser of such goods will be liable in terms of such substituting law; and

2.1.91 "Year" means a 12 (twelve) Month period beginning on the Commencement Date and thereafter, each subsequent period of 12 (twelve) consecutive Months.

2.2 In this Agreement:

2.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;

2.2.2 notwithstanding anything to the contrary contained herein, all reference to legislation shall include a reference to such legislation as amended or replaced from time to time;

2.2.3 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;

2.2.4 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;

2.2.5 a range of values indicated by the words "between...and..." or "from...to..." shall include both values that demarcate the range;

2.2.6 Any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears. If there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;



- 2.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day and shall refer to calendar days unless specifically stated otherwise;
- 2.2.8 any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement;
- 2.2.9 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 2.2.10 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and
- 2.2.11 each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e. the *contra proferentem* rule), shall not apply.

SECTION 2: WARRANTIES, UNDERTAKINGS, LEGAL COMPLIANCE AND REVIEW

3. General

- 3.1 The warranties contained in this Agreement shall be deemed to be representations and undertakings, material to the entering into of this Agreement, by the Supplier in favour of Eskom and by Eskom in favour of the Supplier where applicable;
- 3.1.1 Each warranty shall be a separate warranty and in no way limited or restricted by reference to, or inference from, the terms of any other warranty;
- 3.1.2 Each warranty is given as at the Signature Date and shall endure for the duration of this Agreement; and



3.1.3 Insofar as any of the warranties are promissory or relate to a future event, they shall be deemed to have been given as at the due date for fulfilment of the promise or the happening of the event, as the case may be.

3.2 Where any warranty is qualified by the expression "the Supplier and/or Eskom is not aware", "to the best of the Supplier's and/or Eskom's knowledge and belief" or any similar expression, that expression shall be deemed to include an additional statement that it has been made after due enquiry.

3.3 Nothing contained in this Agreement shall relieve a Party from its obligations to make those disclosures which it is in law obliged to make but which are not recorded in this Agreement.

4. Warranties Applicable to both Parties

Each Party hereby warrants unto and in favour of the other Party:

- 4.1 the Party and its representative(s), as applicable, have the requisite power, right and authority to enter into and perform the obligations to be assumed or performed by it in accordance with this Agreement and any other documents to be executed in accordance with this Agreement;
- 4.2 to the best of the Party's knowledge and belief, all facts and circumstances material to this transaction, or which would be material or would be reasonably likely to be material and which may affect the willingness of the Parties to enter into this Agreement or which may affect the Base Price and which are known to the Party, have been disclosed by the Party to the other Party; and
- 4.3 as at the Signature Date, no legal proceedings of any kind or administrative proceedings in terms of any law, and which shall prevent either Party from fulfilling its obligations in terms of this Agreement, have been instituted against such Party, and at all times during the currency of this Agreement neither Party has any obligations/duties to third parties which, if discharged, shall prevent the Party from fulfilling its obligations in terms of this Agreement.

5. Warranties by the Supplier

The Supplier hereby warrants unto and in favour of Eskom that:

- 5.1 the Supplier is the holder of the Koorfontein Mining Right, has and shall retain the unencumbered right to dispose of the Contract Coal so produced to Eskom in accordance with the provisions of this Agreement;



- 5.2 upon Delivery of the Contract Coal, Eskom will become the owner of the Contract Coal free of any encumbrances, liens, rights of pre-emption or similar rights in favour of any third party;
- 5.3 as at the Signature Date the Supplier has complied, and shall continue to comply with all material terms, conditions and obligations, contractual and statutory, which apply to all rights, titles, permits and other authorisations held by it, or applicable to any of its operations;
- 5.4 the Supplier has not and shall not pledge, mortgage, cede or grant any other security rights over the Koornfontein Mining Right, any coal produced pursuant thereto and/or this Agreement except for the purposes of raising finance required in order for the Supplier to comply with its obligations in terms of this Agreement and the Mine, in which event the Supplier shall request Eskom's consent in accordance with clause 45.2;
- 5.5 the Supplier is able to prove title to all rights held by it, including the Koornfontein Mining Right;
- 5.6 the Supplier is not aware of any facts or circumstances which may result in the withdrawal, suspension, cancellation, material alteration or non-renewal of any rights, titles, permits and other authorisations held by it or applicable to any of its operations, as such matters relate to this Agreement and/or the Coal Resource, as the case may be;
- 5.7 the Coal Resource has sufficient Coal Reserves to satisfy its Delivery obligations in terms of this Agreement;
- 5.8 to the best of its knowledge and belief, the Supplier has disclosed to Eskom all legal, environmental matters and rehabilitation obligations relating to the Coal Resource, life of mine plan, and the Koornfontein Mining Right;
- 5.9 the Supplier shall ensure that the existing infrastructure at the Mine is operated and managed in accordance with the environmental laws and regulations as stipulated in clause 7.1;
- 5.10 the Supplier shall co-operate with Eskom's requirements for carrying out a due diligence process over the Coal Resource and shall grant Eskom and its representatives access to all information and documents forming part of such due diligence process;
- 5.11 the Supplier shall notify Eskom of any changes made to the documentation supplied to Eskom in terms of this Agreement, where such changes have an impact on the warranties provided by the Supplier in terms of this Agreement; and



- 5.12 the Supplier shall ensure that it maintains its Black Ownership percentage of at least 50% (fifty percent) plus 1 (one) share for the duration of this Agreement.

6. Supplier Development and Localisation (SD&L) Undertakings by the Supplier

- 6.1 The Supplier shall adhere to the SD&L commitments set out more fully in **Annexe C** of this Agreement.
- 6.2 The Supplier undertakes to achieve and fulfil these SD&L commitments during the Contract Period or at an earlier date.
- 6.3 The Supplier shall, during the course of the execution of the Agreement, take all steps, and do all things required so as to reasonably demonstrate, at any given time, that it is acting with due diligence and seeking in good faith to achieve and comply with the SD&L commitments.

Black Ownership

- 6.4 The Supplier undertakes to achieve and maintain a direct Black Ownership of at least 50% (fifty percent) plus 1 (one) share in terms of both voting rights and economic interest in the entity that holds the Koorfontein Mining Right as well as the Agreement with Eskom. Calculation of Black Ownership must be in compliance with the Codes of Good Practice on Broad-Based Black Economic Empowerment issued by the Department of Trade and Industry in terms of the Broad-Based Black Economic Empowerment Act, No 53 of 2003.
- 6.5 Should the Supplier lose its Black Ownership status during the term of this Agreement, the Supplier will be required within 3 (three) months thereof, to submit a rectification plan to Eskom, which plan shall set out in detail the manner and timelines by which the Supplier will re-establish the required minimum 50% (fifty percent) plus 1 (one) share Black Ownership status.
- 6.6 The Supplier shall consult with Eskom on the rectification plan and Eskom undertakes within 7 (seven) Business Days after submission to it of the rectification plan, to advise whether the plan is acceptable which acceptance will not be unreasonably withheld or delayed.
- 6.7 On Eskom's acceptance, the Supplier shall implement the rectification plan in the form and on the terms acceptable to Eskom.



- 6.8 In the event that the Supplier fails to re-establish its Black Ownership within a 12 (twelve) Month period, such failure shall constitute a breach of material provisions of this Agreement in terms of clause 41.2.

Local Procurement

- 6.9 The Supplier shall aim to set aside 30% (thirty percent) of its procurement spend for Black Designated Groups that are within the district municipality of the Mine.
- 6.10 The Supplier shall provide copies of invoices, proof of payment, B-BBEE certificate of the service provider and proof of address if different from one in the certificate as well as evidence that the service provider is either youth or disabled.

Skills Development

- 6.11 As part of this Agreement, the Supplier shall train candidates in the skills and according to the distribution identified in the skills development matrix of the SD&L **Annexe C** of this Agreement. Candidates shall consist of currently unemployed graduates from universities; Further Education and Training Campuses (FETs) and schools. Candidates should also come from historically disadvantaged communities within the district municipality of the Mine. Candidates may not comprise of individuals who, at the signing of this Agreement, are employees of the Supplier.
- 6.12 For the Supplier to fulfil its obligations in respect of skills development, the Supplier shall:
- 6.12.1 provide the specified number of individuals with sufficient on-the-job and other skills training in the specified trade or discipline to reach the level of competence required to pass the level of qualification stated in the SD&L Commitment and accordingly to be certified to that level; provided that if there is no industry standard test or certification for the trade or discipline in question then the Supplier shall provide sufficient on-the-job and other skills training in that trade or discipline to enable that individual to reach the level of competence stated in the SD&L Commitment so that that person is generally regarded as being employable in that trade or discipline;
 - 6.12.2 register and pay for the testing and evaluation of that individual in the specified trade test (if applicable); and
 - 6.12.3 provide the details below in the Progress Reports for each individual in respect of which the Supplier will claim fulfilment of the skills development element of the Supplier's SD&L Commitments:



6.12.3.1 the names of the individuals as well as copies of identity documents and, if applicable, the specified trades in respect of which the individuals are to be trained; and

6.12.3.2 details of individuals who have successfully completed the skills development for the relevant period (including details of their personal information and certified copies of their test results and certificates received, if applicable).

Performance Guarantee in Respect of Local Procurement and Skills Development

6.13 To ensure compliance to the agreed upon SD&L targets requirements, the Supplier shall be required to choose one of the following options in case the Supplier fails to meet the targets at the time of review after 12 (twelve) months :

6.13.1 Option 1 – to provide Eskom with an annual performance guarantee to the amount of 2% (two percent) of the value of the Annual Quantity, on the terms and conditions to be agreed between the Parties, acting reasonably, within 30 (thirty) days of the anniversary of the Commencement Date; or

6.13.2 Option 2 – Eskom shall retain 2% (two percent) of every invoice submitted by the Supplier.

6.14 The Parties shall meet on the Commencement Date and on each anniversary of the Commencement Date, for the duration of the Contract Period, to discuss the Local Procurement and Supplier's skills development obligations in terms of this Agreement, and where appropriate, agree in writing on a set of annual milestones which the Supplier shall satisfy with regard to the Local Procurement and skills development obligations. At such meetings, the Parties shall review the Supplier's performance with regard to fulfilling the Local Procurement and skills development obligations of this Agreement. The Local Procurement and skills development obligations shall be equally weighted between the Local Procurement and the skills development obligations as set out in **Annexe C**, to:

6.14.1 determine whether the Supplier has fulfilled the Local Procurement and skills development obligations of this Agreement for that particular Year and, if this is the case, release the annual performance guarantee for that applicable Year; or

6.14.2 to the extent that the Supplier has failed to fulfil all or any portion of the Local Procurement and Skills Development obligations of this Agreement, Eskom shall be entitled to call on the performance guarantee to the extent of non-



fulfilment with reference to the stated weightings between the Local Procurement and skills development obligations; and

6.14.3 agree on the value of the annual performance guarantee for the next Year.

7. Legal Compliance and Review

7.1 The Supplier warrants that it is complying and will continue to comply with all its obligations under all current and future applicable South African and International Regulatory Framework applicable to a Mine and mine associated infrastructures, including but not limited to the Specific Environmental Management Acts ("SEMA"); MPRDA; the National Water Act, No. 36 of 1998 ("NWA"); the National Environmental Management Act, No. 107 of 1998 ("NEMA"); the National Environmental Air Quality Act, No. 39 of 2004; the Hazardous Substances Act, No. 15 of 1973; the National Heritage Resources Act, No. 25 of 1999; the Mine Health and Safety Act, No. 29 of 1996 and the Occupational Health and Safety Act, No 85 of 1993 as amended.

7.2 Eskom shall be entitled to conduct reviews in respect of the provisions of this clause 7 to ensure the Supplier's compliance herewith and the Supplier agrees to co-operate with Eskom in this regard. To that end, Eskom and its designated representatives, including without limitation, its attorneys, auditors, safety and health representatives, environmental representatives, engineers and geologists shall at all reasonable times, with reasonable prior notice to the Supplier, have access to the Mine and facilities utilised for the production and supply of Contract Coal under this Agreement and to all records, wherever located, pertaining to the supply of Contract Coal in terms of this Agreement, which access will be at Eskom's expense and risk.

7.3 Eskom will provide feedback on outcomes and risks identified from the reviews conducted in 7.2 above. The Supplier shall provide Eskom with an action plan and the Parties shall mutually agree on the said action plan, including the timelines, to address the identified risks. Should the parties be unable to agree on the risks and/or the action plan, then the dispute will be resolved in terms of Section 9 of this Agreement.

7.4 The Supplier shall address the agreed risks as indicated 7.3 and shall report on progress of addressing such risks during the scheduled technical meetings or as and when required.

7.5 In the event that Eskom is approached by the Government of South Africa or any regulatory authority under the SEMA, MPRDA, NEMA and/or NWA with a view to remedying pollution relating to or resulting from the Parties' respective rights and obligations under this Agreement, the Supplier shall assist Eskom by making appropriate



representations and taking appropriate steps to mitigate any statutory liability which Eskom may have under that legislation.

- 7.6 Eskom shall not at any time or for any reason be liable for any rehabilitation and/or closure costs incurred in connection with the Mine, save where Eskom caused the pollution, nor the possible cost of remedying pollution under NEMA and the NWA. To the extent that, after taking the steps referred to in clauses 7.1 and 7.5, Eskom incurs any such costs, for which Eskom is not responsible, then the Supplier shall compensate Eskom for all reasonable costs and expenses incurred by it, provided that Eskom shall take all reasonable steps to mitigate its loss and shall be obliged to prove such loss.
- 7.7 The Supplier shall comply with the provisions detailed in **Annexe D: The Safety and Health Requirements** and **Annexe E: The Environmental Legal Requirements**.
- 7.8 Where either Party's employees, agents and/ or its representatives enter the premises of the other Party, they shall comply with any of the applicable legislation set out in clause 7.1 above.
- 7.9 In the event of material changes to the legislation referred to in clause 7.1 or the introduction of new legislation which results in an increase or reduction of the direct cost of producing and Delivering Contract Coal at the Delivery Point ("**the Cost Differential**"), the then applicable Price may (subject to clause 7.11 below) be increased or reduced as the case may be, by a pro rata portion of the Cost Differential, and following early notification to, and agreement by Eskom.
- 7.10 Subject to clause 7.9, the pro rata portion shall be equal to the proportion which the value (expressed in Rand) of the sales to Eskom in terms of this Agreement bears to the aggregate of all sales from the Mine(s).
- 7.11 Eskom shall at any time, for the purpose of clause 7.9, upon reasonable notice to the Supplier, be entitled to audit the Supplier's costs related to the production and Delivery of such coal at the Delivery Point and financial information relating to the Supplier's income as a result of sales of coal. In the event that Eskom, as a result of its audit, disputes the Cost Differential, Eskom and the Supplier shall attempt to resolve the dispute amicably within 20 (twenty) days after a dispute being declared by either of them in this regard. Where Eskom and the Supplier are unable to resolve the dispute, either Eskom or the Supplier may then refer the dispute to an independent expert for determination in accordance with clause 39.
- 7.12 Where either Party's employees, agents and/ or its representatives enter the premises of the other Party, they shall be required to comply, and each Party shall procure that they



comply, with the relevant legislation set out in clause 7.1 above and other health and safety rules applicable to the premises of the other Party. The Parties hereby agree, in terms of section 37(2) of the Occupational Health and Safety Act no, 85 of 1993 ("OHSA") (if applicable) that the other Parties are relieved of any of their liabilities in terms of section 37(1) of the OHSA in respect of any act or omissions of either Party's employees, agents and/or its representatives to the extent permitted by the OHSA.

SECTION 3: COMMENCEMENT OF DELIVERIES, DURATION, RISK AND OWNERSHIP OF COAL

8. Commencement of Deliveries

Notwithstanding the Signature Date the Supply of Contract Coal shall be deemed to have commenced on 01 August 2016 ("**the Commencement Date**") in accordance with clause 12.

9. Duration

The term of this Agreement shall be for a period commencing on the Commencement Date and expiring when the Total Energy Quantity has been Delivered, which period ("**the Contract Period**") is estimated to be 7 (seven) years, unless extended or earlier terminated in accordance with the terms of this Agreement.

10. Risk and Ownership of Contract Coal

- 10.1 The risk in, and ownership of, the Contract Coal Delivered in terms of this Agreement shall pass to Eskom upon Delivery, notwithstanding the provisions of clause 20.
- 10.2 Eskom shall be entitled to use all Contract Coal Supplied to it in terms of this Agreement for consumption at any Power Station owned and/or operated by Eskom from time to time and Eskom shall be entitled to use the Contract Coal in accordance with its sole requirements including selling or disposing of such coal to any third party.
- 10.3 The Supplier shall Deliver Contract Coal to the designated Delivery Point in the quantities and at the rates set out in this Agreement for Off Take by Eskom.

SECTION 4: QUANTITIES, DELIVERY, OFF TAKE AND SUPPLY OF COAL

11. Coal Quantities

- 11.1 The Supplier shall at all times throughout the duration of this Agreement ensure that the Coal Resource remains sufficient to enable the Supplier to comply with all its obligations in terms of this Agreement.



11.2 The Supplier shall Deliver and Eskom will Take Off in each Month, a quantity of Contract Coal between the Minimum Monthly Quantity and the Maximum Monthly Quantity in accordance with clause 12 at an expected CV of 23 (twenty three) MJ/kg on an As Received basis.

11.3 The total quantity of Contract Coal to be supplied under this Agreement shall equal an energy quantity of 386 400 000 (three hundred and eighty six million four hundred thousand) GJ ("the **Total Energy Quantity**"), being approximately 16.8 (sixteen point eight) million Tons (As Received) at an expected CV of 23.0 (twenty three point zero) MJ/kg on an As Received basis.

11.4 The Supplier shall Deliver Contract Coal as set out in Table 1 hereunder.

Table 1: Contract Coal Supply Schedule

Year Aug - Jul	Annual Quantity	Minimum Annual Quantity	Maximum Annual Quantity	Monthly Quantity	Minimum Monthly Quantity	Maximum Monthly Quantity
2016/17 (Tons)	2 400 000	2 280 000	2 520 000	200 000	160 000	240 000
2016/17 (GJ)	55 200 000	52 440 000	57 960 000	4 600 000	3 680 000	5 520 000
2017/18 (Tons)	2 400 000	2 280 000	2 520 000	200 000	160 000	240 000
2017/18 (GJ)	55 200 000	52 440 000	57 960 000	4 600 000	3 680 000	5 520 000
2018/19 (Tons)	2 400 000	2 280 000	2 520 000	200 000	160 000	240 000
2018/19 (GJ)	55 200 000	52 440 000	57 960 000	4 600 000	3 680 000	5 520 000
2019/20 (Tons)	2 400 000	2 280 000	2 520 000	200 000	160 000	240 000
2019/20 (GJ)	55 200 000	52 440 000	57 960 000	4 600 000	3 680 000	5 520 000
2020/21 (Tons)	2 400 000	2 280 000	2 520 000	200 000	160 000	240 000
2020/21 (GJ)	55 200 000	52 440 000	57 960 000	4 600 000	3 680 000	5 520 000
2021/22 (Tons)	2 400 000	2 280 000	2 520 000	200 000	160 000	240 000
2021/22 (GJ)	55 200 000	52 440 000	57 960 000	4 600 000	3 680 000	5 520 000
2022/23 (Tons)	2 400 000	2 280 000	2 520 000	200 000	160 000	240 000
2022/23 (GJ)	55 200 000	52 440 000	57 960 000	4 600 000	3 680 000	5 520 000
Total Contract Coal Quantity						
Tonnage (Tons)	16 800 000					
Energy (GJ)	386 400 000					

The tonnages indicated above are on an As Received basis assuming an expected CV of 23.0MJ/kg As Received (CV of 24.2MJ/kg on Air Dried Basis), a Total Moisture content of 10.0% (Air dried basis) and Inherent Moisture of 4.0%.



11.5 Any quantities of Contract Coal not Delivered in a Year and for which the Supplier has paid a penalty in terms of clause 13.3, shall not be carried over to the next Year.

12. Planning and Supply of Contract Coal

12.1 The Parties shall use their reasonable endeavours to ensure that all Delivery and Off Take of Contract Coal is spread evenly across each day and Month so as to comply with the limits stipulated in clauses 11.1 to 11.3.

12.2 Eskom shall, before the end of the second week of the last Month of each Quarter specify, in the Technical Liaison Meeting, the quantity of Contract Coal that shall be Supplied for each Month of the subsequent Quarter such that:

12.2.1 the quantity specified in respect of each Month will not be:

12.2.1.1 less than the Minimum Monthly Quantity; and

12.2.1.2 not more than the Maximum Monthly Quantity; and

12.2.2 the quantity to be Supplied each Year will not be:

12.2.2.1 less than the Minimum Annual Quantity stipulated in Table 1; and

12.2.2.2 more than the Maximum Annual Quantity stipulated in Table 1; and

12.2.3 it takes into account the provisions of any rectification plans agreed to by the Parties.

12.3 Either Party may request at the Technical Liaison Meeting to Deliver or Take Off less than the Minimum Monthly Quantity and/or Minimum Annual Quantity or in excess of the Maximum Monthly Quantity and/or the Maximum Annual Quantity applicable to any Month or Year, provided that the other Party shall not be obliged to agree to such quantity below the minimum quantities or above the maximum quantities as set out in Table 1, save in order to make up an Under Supply of Under Off-Take in terms of a rectification plan approved by the other Party. Should the Parties not agree the Monthly Quantity and/or Annual Quantity shall apply.

12.4 Once the Monthly Quantity for each month of the subsequent Quarter has been determined in terms of clause 12.2, Eskom shall issue a written order for the Delivery of Contract Coal for each Month in the subsequent Quarter ("**the Drawdown Order**") in respect of the quantities so determined. The Supplier shall Deliver and Eskom shall Take Off:



12.4.1 not less than the Minimum Monthly Quantity and not more than the Maximum Monthly Quantity during each Month of the subsequent Quarter; and

12.4.2 not less than the Minimum Quarterly Quantity and not more than the Maximum Quarterly Quantity during the subsequent Quarter.

12.5 For avoidance of doubt, the quantities set out in each Drawdown Order shall expressly exclude any quantities planned for Supply under any agreed rectification plan. Where applicable, such quantities shall be noted separately in the Drawdown Order.

13. Under Delivery

13.1 In the event of an actual or expected Under Delivery:

13.1.1 the Supplier shall, within 3 (three) Business Days, submit a rectification plan to Eskom, which plan shall set out a schedule of how the Supplier shall make up the actual or expected shortfall in the shortest time reasonably possible, but in any event before the end of the Quarter, or before the expiry of the Agreement where the remaining period of the Agreement is less than a Quarter;

13.1.2 the Supplier may Deliver Qualifying Alternative Coal, subject to Eskom's written approval, which approval shall not be unreasonably withheld or delayed, as part of the rectification plan;

13.1.3 the Supplier shall source such Qualifying Alternative Coal and Deliver it to the Delivery Points or to such other points of approved by Eskom, provided that the Supplier shall be liable for any reasonable additional direct costs which Eskom may have to incur (including all penalties for which Eskom may become liable to its transport contractors as a result of the shortfall);

13.1.4 the Supplier shall consult with Eskom on the rectification plan and, Eskom undertakes, within 7 (seven) days after submission to it of the rectification plan, to advise whether the plan is acceptable, which acceptance will not be unreasonably withheld or delayed; and

13.1.5 on Eskom's acceptance, the Supplier shall implement the rectification plan in the form and on the terms acceptable to Eskom and make up the actual or expected shortfall in accordance with the rectification plan.

13.2 Where, as a result of the Under Delivery, Eskom takes coal from its own stockpiles to manage the shortfall, Eskom shall be entitled to recover from the Supplier its reasonably incurred and demonstrable costs for additional direct handling and stockpiling.



13.3 In the event of:

- 13.3.1 the Supplier failing to submit and implement the rectification plan in terms of clause 13.1; or
- 13.3.2 Eskom's rejection of the rectification plan; or
- 13.3.3 the Supplier's failure to make up the Under Delivery in another manner acceptable to Eskom,

Eskom shall be entitled to purchase coal to make up for the shortfall, and to recover from the Supplier its proven costs for purchasing such coal. Where Eskom is unable to purchase coal to make up the shortfall within 1 (one) month of the conditions in clauses 13.3.1, 13.3.2 and 13.3.3 occurring, Eskom shall be entitled to recover from the Supplier a financial penalty calculated as:

$$P = \left[(API\#4 \times ZAR - CLT) \times 0.77 \times \frac{24.2}{23.0} \right] - CP$$

where:

- P*: is the effective penalty in Rand per ton;
- API#4*: is the past month's average of API#4 index price of RB1 grade coal, Free on Board (FOB) Richards Bay and in US Dollars per ton as published by Argus/McCloskey;
- ZAR*: is the USD:ZAR Exchange Rate;
- CLT*: is the Coal Line Tariff of R152.33 per Ton, being the indicative average tariff charged by TFR for main line services from Mpumalanga to Richards Bay inclusive of the port charges levied by the Richards Bay Coal Terminal as at 01 April 2016 which shall be escalated annually by PPI on 01 April of each subsequent year;
- 0.77: represents a yield factor that accounts for the combined yield of the primary and secondary washes, and for any lost earnings on middlings product;
- 24.2: is the expected Calorific Value of Contract Coal in MJ/kg on an Air Dried basis;
- 23.0: is a typical Calorific Value of run-of-mine export coal in MJ/kg on an Air Dried basis;
- CP*: is the Price of Contract Coal in Rand per ton assuming a Calorific Value of 24.2MJ/kg on an Air Dried basis.



13.4 The quantity of any Under Delivery shall be measured:

13.4.1 in any Month, as the Minimum Monthly Quantity in respect of that Month less the quantity of Contract Coal actually Delivered in that Month;

13.4.2 in any Quarter, as the difference between the Minimum Quarterly Quantity in respect of that Quarter and the quantity of Contract Coal actually Delivered in that Quarter; and

13.4.3 in any Year, as the difference between the Minimum Annual Quantity applicable to that Year and the quantity of Contract Coal actually Delivered in that Year.

13.4.4 For avoidance of doubt, when calculating the quantity of an Under Delivery, the Supplier must first meet the Minimum Quarterly Quantity each Quarter before any quantity of Contract Coal Delivered in terms of a Supplier Rectification Plan is credited against that rectification plan.

13.5 Any Under Delivery shall, unless otherwise agreed to in writing between the Parties, only constitute a material breach of a material term for purposes of clause 40 if such Under Delivery:

13.5.1 occurred more than 3 (three) times during any rolling 12 (twelve) Months; and

13.5.1.1 in any Month, is less than 50% (fifty percent) of the Monthly Quantity in respect of that Month; or

13.5.1.2 in any Quarter, is less than 60% (sixty percent) of the Minimum Quarterly Quantity in respect of that Quarter; or

13.5.1.3 in any Year, is less than of 70% (seventy percent) of the Minimum Annual Quantity in respect of that Year.

13.6 Where Eskom is responsible for the transportation of Contract Coal, Eskom shall be entitled, but not obliged to recover from the Supplier any penalties for the cancellation and/or underutilisation of rail and road transport resulting from any rectification plan accepted by Eskom or any Under Delivery, determined in accordance with **Annexe H: The Rules of Road Transportation** and/or **Annexe G: The Rules of Rail Transportation**, as the case may be.



14. Under Off Take

14.1 In the event of an actual or expected Under Off Take, Eskom shall, within 3 (three) Business Days thereof submit a rectification plan to the Supplier, consult with the Supplier thereon and obtain the Supplier's reasonable acceptance of the rectification plan (which may not be unreasonably withheld or delayed), implement the rectification plan and make up the Under Off Take in accordance with the rectification plan by Taking Off additional Contract Coal in order to make up the Under Off Take within the shortest time reasonably possible, but in any event within the Quarter after the date on which the Under Off Take arose or before the expiry of the Agreement where the remaining period of the Agreement is less than a Quarter.

14.2 Should Eskom fail to submit a rectification plan to the Supplier, fail to implement such rectification plan, fail to make up the Under Off Take within a reasonable period pursuant to any of the aforesaid effort, Eskom shall make full payment of any Under Off Take not made up within the timelines set out in clause 14.1 without applying premiums or penalties to the Price.

14.3 Eskom shall remain entitled to Take Off the Contract Coal so paid for within the applicable quantity limitations, unless otherwise agreed. When Taken Off, appropriate adjustments to the Price paid shall be made for the quality of the Contract Coal actually Taken Off.

14.4 Eskom shall further be liable for the payment of any reasonable demonstrable additional direct handling and stockpiling costs incurred by the Supplier occasioned by any Under Off Take subsequently made up, provided that the Supplier shall notify Eskom in writing before incurring any additional costs and shall seek Eskom's involvement in minimising such additional costs.

14.5 The quantity of any Under Off Take shall be measured:

14.5.1 in any Month, as the Minimum Monthly Quantity less the quantity of Contract Coal actually Taken Off in that Month;

14.5.2 in any Quarter, as the difference between the Minimum Quarterly Quantity in respect of that Quarter and the quantity of Contract Coal actually Taken Off in that Quarter; and

14.5.3 in any Year, as the difference between the Minimum Annual Quantity in respect of that Quarter and the quantity of Contract Coal actually taken Off in that Year.



14.5.4 For avoidance of doubt, when calculating the quantity of an Under Off Take, Eskom must first meet the Minimum Quarterly Quantity each Quarter before any quantity of Contract Coal Taken Off in terms of an Eskom Rectification Plan is credited against that Rectification Plan.

14.6 Any Under Off Take shall, unless otherwise agreed to in writing between the Parties, and unless paid for in terms of clause 14.2, only constitute a material breach of a material term for purposes of clause 40 of this Agreement if such Under Off Take:

14.6.1 has not been made up as set out in clause 14.1 above within 90 calendar days after the Under Off Take first occurred;

14.6.2 occurred more than 3 (three) times during any rolling 12 (twelve) Months; and

14.6.3 in any Month, is less than 50% (fifty percent) of the Monthly Quantity; or

14.6.4 in any Quarter, is less than 60% (sixty percent) of the Minimum Quarterly Quantity; or

14.6.5 in any Year, is less than 70% (seventy percent) of the Minimum Annual Quantity.

14.7 Where the Supplier is responsible for the transportation of Contract Coal, the Supplier shall be entitled, but not obliged to recover from Eskom any reasonably demonstrable penalties actually and reasonably incurred for the cancellation and/or underutilisation of road transport resulting from any rectification plan accepted by the Supplier or any Under Off Take, determined in accordance with **Annexe H: The Rules of Road Transportation**.

SECTION 5: PRICE, ADJUSTMENTS, INVOICING AND PAYMENTS

15. Base Price

15.1 The price for Contract Coal on the Base Date ("**the Base Price**") shall be R18.00 (eighteen Rand) per GJ excluding VAT, Free Carrier (FCA) at the Delivery Point for Contract Coal Supplied.

15.2 For the avoidance of doubt, the Base Price excludes any consideration due to the Supplier by Eskom for road or other transportation. Such consideration shall be determined in accordance with clause 32.



15.3 The Base Price and Price adjustments have been negotiated on an arm's length basis and the Supplier accepts all risks of cost elements, cost increases other than provided for in clauses 16 and 17.

16. Annual Adjustment

16.1 The Base Price stipulated in clause 15, shall be adjusted upwards or downwards as the case may be on 01 June 2017 and annually thereafter on 01 June of each subsequent Year ("**the Price Adjustment Date**"), by the Price Adjustment Factor, subject to clause 16.2.

Table 2: Base Price Adjustment Indices

Cost Component	Proportion	Index and Source Table	Base Date Index Value (B)	Base Date	Frequency of Adjustments
Labour	26%	SEIFSA Table C-4	127.4	Jun 16	Annually
Mining Supplies	3%	Mechanical Engineering index P0151, Table 3	113.5	Jun 16	Annually
	6%	PPI Mining Machinery P0151 Table 4	124.0	Jun 16	Annually
	3%	Imported Rubber P0151 Table 4	86.9	Jun 16	Annually
	3%	Structural and fabricated metal products P0142.1 Table 1	119.7	Jun 16	Annually
Diesel	8%	DME 0.05% Sulphur Reef	1128.87	Jun 16	Monthly
Electricity	4%	Electricity PPI P0142.1 Table 3	188.4	Jun 16	Annually
Overheads	7.5%	CPI headline P0141 Table A All Items	122.1	Jun 16	Annually
	7.5%	PPI Coal & Gas P0142.1 Table 4	109.8	Jun 16	Annually
Profit & Capital	11%	CPI headline P0141 Table A All Items	122.1	Jun 16	Annually
	11%	PPI Coal & Gas P0142.1 Table 4	109.8	Jun 16	Annually
Fixed	10%	Fixed	Not applicable		Not applicable
Total	100%				

16.2 If in respect of any Year, the increase in the Base Price as a result of applying the Price Adjustment Factor in accordance with clause 16.1 exceeds the price increase for Eskom coal as determined by the National Energy Regulator of South Africa (NERSA), the increase as determined by NERSA shall apply.

16.3 The Base Price as adjusted in terms of clause 16.1 on 01 June of each Year shall be the price ("**the Price**") of Contract Coal applicable until 31 May of that Year, subject to any Monthly price adjustments determined in accordance with clause 17.



- 16.4 If the published value of any index in the third column of Table 2 is changed after it has been used in calculating a Price Adjustment Factor, the calculation shall be repeated and a correction included in the Supplier's next invoice.
- 16.5 If the value of any index in the third column of Table 2 for the applicable Month is not yet published and available for the calculation of the Price Adjustment Factor in any Year, the most recent published index shall be used. The calculation of the Price Adjustment Factor shall then be repeated when the applicable index is published and made available, and a correction shall be included in the Supplier's next invoice.
- 16.6 In the event that any index in the third column of Table 2 is no longer published and the Parties are unable to agree on a replacement index, the matter shall be referred for expert determination in accordance with clause 39.1.
- 16.7 In the event that the matters referred to in clauses 16.4 to 16.6 are disputed by any Party, the matter shall, notwithstanding the provisions of clause 38, be referred to an independent expert for determination in accordance with clause 39.1 at least 6 (six) Months before the commencement of the next Year.
- 16.8 Should Parties have not resolved any dispute as set out in clause 16.7 above before the commencement of the next Year, the adjustment sources in use before the dispute was declared shall be applied on a provisional basis until the dispute has been resolved, where after the determination of the independent expert as referred to in clause 16.7 shall be applied retrospectively and any necessary adjustment payments shall be made.
- 16.9 For the avoidance of doubt, the Parties note that the calculation of the Price Adjustment Factor each Year automatically adjusts the proportions set out in the second column of Table 2 in line with the changes in the values of the indices. **Annexe I shows Example Calculations of the Price Adjustment Factor.**
- 16.10 For the avoidance of doubt, the annual price adjustment each Year shall be based on the Base Price and disregarding the monthly Price adjustments.

17. Monthly Adjustment for Diesel Price Changes

- 17.1 The Price determined in accordance with clause 16.1 shall be adjusted upwards or downwards on the first Business Day of each Month to reflect the change in the price of diesel only, during the previous Month, by multiplying the Base Price by the Price Adjustment Factor.
- 17.2 The provisions of clauses 16.4 and 16.5 shall apply *mutatis mutandis* to this clause 17.



18. Adjustments of Other Monetary Amounts

Unless specified otherwise, any other monetary amount used in this Agreement and which is expressed in South African Rand shall also be adjusted annually, by the Price Adjustment Factor, on the Price Adjustment Date.

19. Review of Table 2: Base Price Adjustment Indices

19.1 On a date not earlier than 2 (two) Years from the Commencement Date, and annually thereafter, the Parties shall consult with each other in good faith with the objective of reaching agreement on the following:

19.1.1 whether or not any of the indices and source tables (as set out in the third column of Table 2) measuring changes in the cost elements as set out in the first column of Table 2 are still applicable as an accurate measurement of actual cost movement in respect of that cost element in the South African coal mining industry; and

19.1.2 appropriate replacement indices and sources tables to be utilised, if necessary.

19.2 Should the Parties be unable to reach agreement in respect of any of the aforesaid matters, at least 6 (six) Months before the commencement of the next Year, such matters shall be resolved in terms of the provisions of clause 39.

19.3 Should the Parties not have resolved any dispute, as set out in clause 19.2 above, before the commencement of the next Year, the indices and source tables in use before the dispute was declared shall be applied until the dispute has been resolved, where after, the determination of the independent expert shall be applied retrospectively and any necessary adjustment payments shall be made.

20. Invoicing and Payment

20.1 The Supplier shall render a tax invoice to Eskom on or before the third Business Day of each Month together with a statement reflecting the Delivery dates; the mass of the Contract Coal on an As Received basis; the mass of the Contract Coal on an Air Dried basis; the As Received CV; the Price in respect of each Consignment (rounded-off to the nearest cent) and the total Contract Coal Supplied during the immediately preceding Month.

20.2 The amount payable in respect of each invoice shall, in the absence of manifest error and without set off, and provided that it has been timeously rendered, be payable within



30 (thirty) days of receipt of the invoice by Eskom, provided that disputed items or amounts on an invoice shall only be payable when the dispute has been resolved.

20.3 In terms of clause 13.6 of this Agreement, Eskom shall be entitled, but not obliged to recover from the Supplier any penalties for the cancellation and/or underutilisation road transport resulting from any rectification plan accepted by Eskom or any Under Delivery. In the event that Eskom elects to recover any such penalties, Eskom shall be entitled to set-off the said penalties against any invoice rendered by the Supplier.

20.4 Without prejudice to any other of its remedies in law and/or this Agreement, the Supplier shall be entitled to recover interest on any amount payable by Eskom in terms of this Agreement which is overdue, at the prime overdraft lending rate charged from time to time by First National Bank of Southern Africa Limited less 2% (two percent). The amount of such prime rate shall *prima facie* be proved by a certificate signed by any manager or accountant (whose appointment need not be proved) of any branch of such bank.

SECTION 6: QUALITY OF COAL

21. Contract Coal Quality

21.1 The Supplier shall ensure that each quality parameter of the Contract Coal Delivered to Eskom in terms of this Agreement shall comply with the Quality Specifications set out in the fourth column of Table 3 hereunder.

Table 3: Contract Coal Quality Specifications

Quality Parameter	Unit	Expected Quality	Quality Specifications	Measurement basis
Calorific Value	MJ/kg	24.2	≥22.5	Air Dried
Total Moisture	%	8.6	≤10.0	As Received
Inherent Moisture	%	4.0	Not applicable	As Received
Ash	%	28.0	≤28.5	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<425	≤425	Air Dried
Sulphur	%	1.00	≤1.20	Air Dried
Volatiles	%	21.0	≥20.0	Air Dried
AFT (Initial deformation)	°C	>1300	≥1300	Not applicable
Sizing				
+50mm	%	<5.0	≤5.0	Not applicable
-3mm (cumulative)	%	<35.0	≤35.0	
-1mm	%	<15.0	≤15.0	

All parameters are measured to 1 (one) decimal place, except AI and AFT which shall be measured to the nearest integer and sulphur to the nearest 2 (two) decimal places.

21.2 The Supplier shall ensure that the Contract Coal Delivered to Eskom in terms of this Agreement shall constitute a minimum 50% (fifty percent) washed coal.



21.3 The Supplier shall ensure that no Ultra-fines are added or blended into the coal to be Delivered to Eskom.

22. Determination of Coal Quality

22.1 The Parties shall implement the provisions of clause 23 or clause 24, whichever is applicable, for the purpose of determining coal qualities, certification, reporting and resolution of disputes relating to the qualities of coal Supplied in terms of this Agreement.

22.2 Where facilities for the determination of coal quality, for payment purposes, are available at the Power Station or Eskom nominated site, Contract Coal qualities shall be determined at such Power Station or Eskom nominated site.

22.3 Where facilities for the determination of coal quality, for payment purposes, are not available at the Power Station or Eskom nominated site, Contract Coal qualities shall be determined at the Mine.

23. Determination of Coal Quality at the Power Station or Eskom Nominated Site

23.1 Eskom shall be responsible for the determination and certification of coal quality at the Power Station or Eskom nominated site and the related costs thereof. In this regard, Eskom shall ensure that acceptable facilities are available for the determination and certification of coal quality and shall be responsible for the maintenance of the facilities thereof.

23.2 Eskom undertakes, as soon as reasonably possible but in any event within 30 (thirty) days of Eskom notifying the Supplier, to implement the provisions relating to the determination of coal quality at the Power Station or Eskom Nominated Site. The yet to be developed **Annexe A: The Coal Quality Determination Procedure at the Power Station or Eskom Nominated Site** and/or **Annexe F: The Rules of Conveyor Transportation**, first need to be agreed to between the Parties in writing before they become in force and effect.

23.3 In order to ensure compliance with the provisions of clause 22.2 Eskom shall ensure that:

23.3.1 prior to acceptance by Eskom, the quality of coal contained in each consignment, train and/or truck is determined and certified to meet the Quality Specifications and is identified as such in accordance with the processes and procedures set out in **Annexe A** and/or **Annexe F**, once these processes and procedures have been agreed between the Parties in writing; and



23.3.2 where the coal quality determination process indicates that the coal does not meet any one of the Quality Specifications set out in Table 3 such coal may not be accepted by Eskom, subject to the provisions of **Annexe A** and/or **Annexe F**, once these processes and procedures have been agreed between the Parties in writing .

23.4 Eskom shall ensure that a daily report of the coal quality results is submitted simultaneously to Eskom and the Supplier.

23.5 Disputes in respect of the coal quality results shall, notwithstanding the provisions of clause 38, be dealt with in terms of the dispute resolution procedure included in **Annexe A** and/or **Annexe F**, once these processes and procedures have been agreed between the Parties in writing.

24. Precertification of Coal at the Mine

24.1 In order to ensure compliance with the provisions of clause 22.3 the Supplier shall ensure that:

24.1.1 prior to Delivery to Eskom, coal contained in each separate stockpile is sampled and pre-certified to meet the Quality Specifications and is identified as such in accordance with the processes and procedures set out in **Annexe B: The Coal Quality Management Procedure**;

24.1.2 only coal that has been sampled, pre-certified and identified in accordance with the provisions of clause 24.1.1, may be placed on the Pre-Certified Stockpile. The Supplier shall only Deliver Contract Coal to Eskom from Pre-Certified Stockpiles allocated for Delivery to Eskom in terms of this Agreement; and

24.1.3 where the precertification process indicates that a product stockpile does not meet any one of the Quality Specifications set out in Table 3 such stockpile may not be delivered to Eskom, subject to the provisions of **Annexe B**.

24.2 The Supplier shall be responsible for the sampling of coal and associated costs related to precertification. In this regard, the Supplier shall ensure that acceptable auto-mechanical sampling equipment is available and used for sampling of coal and shall be responsible for the maintenance thereof.

24.3 Eskom shall, at its cost and including the cost of transport, procure the analysis of such samples by the Nominated Laboratory.



- 24.4 The Supplier shall submit a daily report to Eskom in the format set out in **Annexe B**. Eskom reserves the right to amend **Annexe B** from time to time in order to align same with its operational arrangements and shall notify the Supplier in writing of any such amendments within 7 (seven) days of the amendments being effected.
- 24.5 Eskom shall procure that the Nominated Laboratory shall submit a daily report of the analysis results simultaneously to Eskom and the Supplier. .
- 24.6 Eskom may provide on-site representatives to monitor the sampling and pre-certification processes. The Supplier consents that Eskom's on-site representatives shall have full access to the sampling and the precertification process.
- 24.7 The Supplier undertakes to grant to Eskom and its representatives, on request, access to all available geological information relating to the Coal Resource.
- 24.8 Eskom shall further be entitled to conduct site visits on reasonable notice to the Supplier, to monitor the Supplier's application of effective grade and contamination controls.
- 24.9 Disputes in respect of the analytical results shall, notwithstanding the provisions of clause 38, be dealt with in terms of the dispute resolution procedure included in **Annexe B**.
- 24.10 In order to ensure assurance of the precertification process and that the Contract Coal Supplied to Eskom is of consistent quality the Supplier shall be required to adhere to the mixing/blending, precertification sampling and load-out controls processes and procedures as set out in **Annexe B**. Eskom shall provide surveillance and conduct variability tests as set out in **Annexe B**.
- 24.11 Verification of Pre-certified Stockpiles at the Mine, Power Station or Eskom Nominated Site**
- 24.11.1 Eskom shall be entitled, at its own cost and in line with applicable ISO standards, to conduct Verification of the Pre-Certified Stockpiles either at the Mine or upon delivery at the Power Station or any other Eskom nominated site in accordance with the processes and procedures set out in **Annexe B**.
- 24.11.2 Where variances occur between the precertification results and the Verification results, the remedies stipulated in **Annexe B** shall apply.



25. Adjustments for Moisture Content

25.1 In the event of high rainfall at the Mine, such that only the Total Moisture content of the coal exceeds the Quality Specification limit set out in the fourth column of Table 3, the Supplier must make a formal request in writing for approval to Deliver such coal. The Supplier's request must state the quantity (in millimetres per 24 (twenty four) hour period) of rain that has fallen as well as the Total Moisture content of the coal at the time of the request being made. Eskom may, at its sole discretion, give the Supplier such approval and coal so accepted shall not be classified as Reject Coal and accordingly the provisions of clauses 26.1 to 26.4 of this Agreement shall not apply to such coal, but will be subject to the moisture adjustment in terms of clause 25.2 Eskom's acceptance or rejection of such request must be in writing and provided no later than the day following such request from the Supplier.

25.2 For invoicing purposes, the mass of any Contract Coal accepted by Eskom and coal Delivered in terms of clause 25.1 shall be adjusted by multiplying the mass of such coal, as determined in accordance with clause 32, by the Tonnage Adjustment Factor. The Total Moisture content as stated in the Supplier's request in terms of clause 25.1 shall be used in the calculation of the Tonnage Adjustment Factor. Examples and the formulae used for this calculation are provided in **Annexe J: Adjustments for Moisture Content**.

25.3 For the purposes of converting the Calorific Value (CV) of coal from an Air Dried to an As Received Basis in order to determine the energy Delivered for invoicing purposes, the CV of coal measured on an Air Dried basis by the Nominated Laboratory shall be adjusted by multiplying the Air Dried CV by the CV Adjustment Factor (CVAF). Examples and the formulae used for this calculation are provided in **Annexe J**.

26. Reject Coal

26.1 In the event that coal is Supplied which does not meet any one of the parameters in the Quality Specifications, Eskom shall treat such coal as Reject Coal. The following price reduction will be applicable to Reject Coal:

26.1.1 If the relevant quality parameter is within 10% (ten percent) of the applicable reject level for that parameter, Eskom shall pay the Supplier a fixed amount of R30.00 (thirty Rand) per Ton for such coal, which amount shall be not be adjusted for the duration of the Agreement; or

26.1.2 If the relevant quality parameter deviates from the applicable reject level by more than 10% (ten percent), Eskom shall not be liable to pay the Supplier for such coal.



26.2 Coal Delivered to Eskom in terms of this Agreement shall also be deemed to be Reject Coal in the event that:

26.2.1 Eskom has reasonable ground to believe that coal Delivered to it in terms of this Agreement has not been delivered from a Pre-Certified Stockpile;

26.2.2 during the sampling of the coal Delivered the Supplier did not adhere to the processes set out in the Coal Quality Management Procedure;

26.3 The onus to rebut the deeming provision of this clause 26 shall be on the Supplier.

26.4 Reject Coal supplied shall not constitute Supply or Delivery and shall not reduce the Monthly, Yearly or Total Energy Quantity to be supplied in terms of this Agreement.

26.5 If and to the extent that Reject Coal is mixed or co-mingled with other coal so that it is no longer separately identifiable, Eskom may have to burn such Reject Coal. The Parties record and agree that Reject Coal will be of no value to Eskom and will adversely affect Eskom in various ways including, without limitation, to:

26.5.1 its coal handling facilities, pulverisers, boilers and back-end plant;

26.5.2 boiler efficiency;

26.5.3 ash handling facilities;

26.5.4 compliance with air emission licence conditions; and

26.5.5 load losses in the generation system.

26.6 The Parties further agree that the price reduction in clause 26.1 constitutes the agreed reduction or lack of value of Reject Coal to Eskom and the adverse effects referred to herein. The price reduction and the non-payment of transport costs by Eskom in terms of clauses 26.8 and 31.5 will, as between the Parties, not constitute a penalty(ies) as contemplated in the Conventional Penalties Act, No. 15 of 1962.

26.7 To the extent that Reject Coal is not mixed or co-mingled with other coal, Eskom reserves the right, at its sole discretion, to dispose of the Reject Coal. The Supplier shall be liable for any demonstrable and reasonable additional costs occasioned by the disposal of such coal, including the cost of transporting the coal from the Power Station to the Mine or any other Eskom nominated site.

26.8 Eskom shall not be liable to refund any transport costs to the Supplier in respect of Reject Coal irrespective of the extent to which Reject Coal deviates from the quality parameters.



27. Foreign Material

27.1 In the event that the Supplier delivers coal, as part of a pre-certified consignment, that is contaminated with Foreign Material, Eskom shall reserve the right to immediately stop the supply until the root cause or lack of quality control is identified and the following shall occur:

27.1.1 Upon identification of Foreign Material, Eskom shall provide evidence of the Foreign Material, including but not limited to photographic evidence, within 24 (twenty four) hours.

27.1.2 Eskom shall instruct the Supplier to temporarily stop supply from the identified contaminated stock pile.

27.1.3 Eskom and the Supplier shall jointly conduct and conclude an investigation of the source and/or the root cause of the Foreign Material contamination within 48 (forty eight) hours of stoppage.

27.1.4 In the event that during the investigation it is concluded that the other stockpiles may be affected, Eskom reserves the right to extend the stoppage to the entire operation.

27.1.5 Upon conclusion of the investigation, the Supplier shall provide Eskom with the root cause and the remedial action plan in writing. Eskom undertakes to respond in writing within 24 (twenty four) hours of submission of the remedial action plan advising if the plan is acceptable.

27.1.6 On Eskom's acceptance the Supplier shall implement the remedial action plan on the terms and form as accepted and the Supplier shall resume supply.

27.1.7 In the event that Eskom does not accept the remedial action plan, which acceptance shall not be unreasonably withheld, the Supplier may not resume supply. Either party may declare a dispute and then refer the dispute to an independent expert for determination in terms of clause 39.

27.1.8 In the event that the investigation is inconclusive, the Supplier may, if it deems fit, resume supply.



SECTION 7: TRANSPORTATION AND DETERMINATION OF CONTRACT COAL QUANTITY

28. Modes of Take Off of Contract Coal

- 28.1 Eskom shall use conveyor, rail and/or road modes of transport to Take Off Contract Coal. Eskom, shall in consultation with the Supplier, have the right to elect the mode of transport.
- 28.2 Eskom shall, not less than 30 (thirty) calendar days before each anniversary of the Commencement Date for the currency of this Agreement, notify the Supplier in writing of the provisional estimates of the relevant portions of the Annual Quantity which it requires to be Delivered for Take Off by conveyor, rail and/or road during each Month of the following Year.
- 28.3 The Supplier shall Deliver the quantities stipulated by Eskom in the notice contemplated in clause 28.2 at the Delivery Points for Contract Coal respectively, provided that the Parties shall liaise with each other:
- 28.3.1 on a Monthly basis at the Technical Liaison Meetings to confirm the quantities Eskom requires to be Delivered for Take Off by conveyor, rail and/or by road; and
- 28.3.2 in order to be responsive to Eskom's operational needs which may arise from time to time, Eskom may request a variation of transportation previously agreed to by requesting a change to the mode and/or Delivery Point. The additional reasonable and demonstrable direct costs which the Supplier may incur to comply with such variation request from Eskom will be borne by Eskom. Eskom shall also be entitled to any reasonable and demonstrable additional savings resulting from such request.
- 28.4 The provisions of this clause 28 are subject to the provision that the maximum quantity of Contract Coal required by Eskom shall not be more than 2.52 (two point five two) million Tons in any Year, unless the Parties agree otherwise.

29. Conveyor Transportation of Contract Coal

- 29.1 The Supplier shall allocate a 100 000 (one hundred thousand) ton capacity coal stockyard ("the **Eskom Coal Stockyard**") at the Mine for use by Eskom to stockpile Contract Coal for the Power Station.
- 29.2 For efficient and cost effective transportation of Contract Coal from the Eskom Coal Stockyard at the Mine to the Power Station, Eskom undertakes to construct and operate a



conveyor as soon as possible, but in any event within 12 (twelve) months from Commencement Date of this Agreement.

29.3 The Supplier shall co-operate with Eskom to fulfill the requirements for constructing the conveyor in terms of clause 29.2. In this regard, the Supplier shall grant Eskom and its representatives access to the site, relevant servitudes as well as all information and documents necessary for the successful construction thereof.

29.4 Eskom shall ensure that the Eskom Coal Stockyard is available for the Delivery of Contract Coal in accordance with the provisions of this clause 29 and the yet to be developed **Annexe F: The Rules of Conveyor Transportation**, to be agreed between the Parties.

30. Rail Transportation of Contract Coal

30.1 Eskom shall ensure that locomotives and rail wagons are available at the Delivery Point to Take Off Contract Coal by rail in accordance with the provisions of this clause 29 and **Annexe G: The Rules of Rail Transportation**.

30.2 In respect of Contract Coal Delivered to be delivered by rail and when required by Eskom upon due notice, the Supplier will, at its own cost and expense:

30.2.1 ensure that 24 000 (twenty four thousand) Tons (As Received) of the product stockpile capacity and corresponding reclaim system is dedicated to Eskom, which reclaim system must have a capacity of 400 (four hundred) Tons (As Received) per hour; and

30.2.2 provide rail infrastructure which shall be included in the Coal Supply Equipment and Infrastructure Agreement to be signed by the Parties at the time required and which shall include:

30.2.2.1 the Rail Siding; and

30.2.2.2 a rapid load out station which must be maintained to have a consistent loading rate of 400 (four hundred) Tons (As Received) per hour; such that approximately 2.4 (two point four) million Tons (As Received) of Contract Coal per Year can be uniformly loaded into trains. The rapid load out station must be capable of loading heavy haul (for Jumbo Trains) and general freight business trains (for Small Trains).

30.3 Parties shall comply with the provisions of **Annexe G: The Rules of Rail Transportation**, which sets out the detailed procedures for the scheduling and



loading of Eskom Trains, and details the penalties that shall be payable by the Supplier for incorrect loading of Eskom Trains and for cancellations of Eskom trains.

31. Road Transportation of Contract Coal by the Supplier (Supply on a DAT Basis)

31.1 Where the Supplier is responsible for the transportation of Contract Coal by road (i.e. Supply on a DAT basis), the Supplier shall ensure that sufficient road trucks are available to transport Contract Coal from the Mine to the Delivery Point.

31.2 The Supplier shall be responsible for ensuring that all road transportation under its control complies with the provisions of **Annexe H: The Rules of Road Transportation**.

31.3 The transport tariff per Ton payable by Eskom to the Supplier (and which shall be in addition of the Price payable for the Contract Coal so Delivered) shall be determined using the Coal Haulage Rates Model. For the avoidance of doubt, the transport tariff payable in terms of the Coal Haulage Rates Model shall be reviewed each Month and the Price adjustment provisions as set out in clauses 16 and 17 shall not apply to the said tariff.

31.4 Eskom reserves the right to require the Supplier to Deliver Contract Coal to any alternative Power Station or any other Eskom nominated site, and the Supplier shall co-operate with Eskom in relation to such requirements. Unless otherwise provided elsewhere in this Agreement, Eskom shall be liable for any reasonable and demonstrable additional costs incurred by the Supplier as a result of an Eskom request in terms of this clause 31.4 and shall be entitled to any reasonable and demonstrable additional savings resulting from such request.

31.5 The provisions of this clause 31.29 are subject to the express proviso that no transport costs will be payable in respect of Reject Coal.

32. Road Transportation of Contract Coal by Eskom (Supply on an FCA Basis)

32.1 Where Eskom is responsible for the transportation of Contract Coal by road (i.e. Supply on an FCA basis), Eskom will ensure that sufficient road trucks are available at the Delivery Point to Take Off Contract Coal by road.

32.2 The Supplier shall, at its own cost, provide, maintain and operate Pre-Certified Stockpiles with a total capacity of no less than 24 000 (twenty four thousand) Tons, an access road, equipped with a weighbridge, terminating on the Mine road, and truck loading equipment such that a maximum of 2.52 (two point five two) million Tons of coal per annum can be



uniformly loaded into trucks and transported to the Power Station or any other Eskom nominated site by road.

32.3 The Supplier shall ensure that Contract Coal sufficient for a minimum of 3 (three) days' Delivery is available at all times on Pre-Certified Stockpiles.

32.4 The Supplier shall comply with Eskom's rules of road transportation pertaining to coal loading operations, as amended or replaced from time to time, and which, in their present form, are contained in **Annexe H: The Rules of Road Transportation**.

33. Mass Determination

33.1 general responsibilities

33.1.1 Each Party shall ensure that its mass measuring equipment is inspected as assized and certified every 12 (twelve) Months or more regularly if necessary in the case of recurring discrepancies, by a company certified to assize mass measuring equipment in accordance with the Trade Metrology Act, No. 77 of 1973, as amended or replaced from time to time and prevailing South African Bureau of Standards specifications. Each Party shall procure that a certificate signed by the assizing company which is no more than 12 (twelve) Months old is available for inspection by the other Party at all times.

33.1.2 In the event that the Supplier's mass measuring equipment is not operational, the Supplier must inform Eskom within 24 (twenty four) hours of becoming aware of any such problems and Eskom's mass measurements shall be used for invoicing purposes until such time as the Supplier's mass measuring equipment has been repaired.

33.2 mass determination of Contract Coal transported by rail

33.2.1 The Supplier shall measure the mass of Contract Coal Delivered by rail at the load out flask situated at the Rail Siding.

33.2.2 The mass of each rail wagon load of Contract Coal shall be determined by the Supplier's load out flask, and the mass thereof shall be recorded on a waybill issued in triplicate, which recorded mass shall be applicable to this Agreement.

33.2.3 The Supplier shall deliver the original waybill to Eskom with every train load, retain one copy, and forward one copy to TFR. The Supplier shall on a daily basis, forward to Eskom, a schedule depicting the waybills, the train number,



dispatch and delivery time, total number of rail wagons loaded and the mass of each rail wagon together with the said waybill.

33.2.4 The Supplier shall on a daily basis, forward to Eskom a schedule depicting the waybills for that day.

33.2.5 Eskom shall be entitled to weigh each rail wagon received on a full and empty basis and the Parties shall reconcile their respective mass measurements on a weekly basis or no later than the date of the next Technical Liaison Meeting and the following shall apply:

33.2.5.1 in the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied by the Supplier in terms of clause 33.2.3, shall be accepted as final and binding.

33.2.5.2 in the event of a discrepancy of 2% (two percent) or more, and if the Parties agree that such discrepancy is due to a mass determination fault of either Party, the lesser of the two masses shall temporarily be used for the purposes of this Agreement, until the source of the fault has been identified and corrective measures implemented, which shall not be for a period of more than 30 (thirty) days, subject to clause 33.4.

33.3 mass determination of Contract Coal transported by road

33.3.1 The Supplier shall measure the mass of Contract Coal Delivered by weighing same at the Mine. Each truck transporting the Contract Coal shall be weighed empty and full at the relevant weighbridge, and the mass thereof shall be recorded on a waybill issued in triplicate.

33.3.2 The Supplier shall deliver the original waybill to Eskom with every truck load, retain 1 (one) copy, and forward 1 (one) copy to the transport contractor. The Supplier shall on a daily basis, forward to Eskom, a schedule depicting the waybills, the waybill number, vehicle registration number, dispatch and delivery time, total number of trucks loaded and the mass of each truck, and stockpile reference number (as further detailed in the CQMP), together with the said waybill.

33.3.3 Eskom shall weigh each truck received on a full and empty basis and the Parties shall reconcile their respective mass measurements on a weekly basis or no



later than the date of the next Technical Liaison Meeting and the following shall apply:

33.3.3.1 in the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied at the Delivery Point will be accepted as final and binding, subject to clause 33.4; and

33.3.3.2 in the event of a discrepancy of 2% (two percent) or more, and if the Parties agree that such discrepancy is due to a mass determination fault of either Party, the lesser of the two masses will temporarily be used for the purposes of this Agreement, until the source of the fault has been identified and corrective measures implemented, which shall, in any event, not be for a period of more than 30 (thirty) days, subject to clause 33.4.

33.4 disputes regarding mass measurement

33.4.1 Where there are persistent discrepancies or other disputes regarding mass or the mass measurement of Contract Coal, the Parties shall ensure that they use their best efforts to reach agreement within 20 (twenty) days after a dispute being declared by either Party in this regard.

33.4.2 Where the Parties are unable to reach agreement within the time period set out in clause 33.4.1 above either Party may then refer the dispute for an independent expert determination in terms of clause 39 of this Agreement.

33.4.3 The Parties shall retain records of all printouts in respect of mass measurement for a period of at least 3 (three) years after the date of Delivery, or any legislated period, whichever is the greater. In the event that there is an unresolved dispute between the Parties, such records shall be retained until such time as the dispute has been resolved.

SECTION 8: REPORTING REQUIREMENTS AND PROVISION OF INFORMATION

34. Appointment of a Contract Manager

Prior to the Commencement Date or as necessary thereafter, each Party shall appoint an individual, who shall be referred to as the "Contract Manager", to manage this Agreement on its behalf. The Contract Manager shall be the first and single point of contact between Eskom and the Supplier during



the implementation of this Agreement. The Contract Manager shall be replaced at the appointing Party's sole discretion.

35. Technical Liaison Meetings

At least once per Month during the currency of this Agreement, a Technical Liaison Meeting shall be held and be attended by authorised representatives of Eskom and the Supplier to report on, *inter alia*:

- 35.1 the Delivery and Take Off of Contract Coal (including Under Delivery/Under Off Take and planning of the Monthly Quantity, Quarterly Quantity and Yearly Quantity);
- 35.2 any incident where Delivery or Off Take deviated from the Drawdown Order and/or from the quantities set out in clause 12;
- 35.3 safety and health;
- 35.4 environmental and water related matters;
- 35.5 quality issues;
- 35.6 any weight/mass determination issues;
- 35.7 transport and mode of transport of Contract Coal;
- 35.8 general information sharing; and
- 35.9 any other material matter not referred to herein and/or referred to in **Annexe K: The Technical Liaison Meeting Agenda**.

36. Reports

- 36.1 The Supplier shall within 3 (three) days of the end of each Month, provide Eskom with a summary of the qualities, quantities and dates of dispatch of each Consignment of coal Delivered in the previous Month.
- 36.2 The Supplier shall provide Eskom with the following information on an annual basis, within 30 (thirty) days after publication of the Supplier's annual report and upon renewal for documents that have expiry dates:
 - 36.2.1 summary of the qualities, quantities and periods (Month and Quarter) of dispatch of Contract Coal Delivered during the previous Year;



- 36.2.2 the reserve and resource statements, in accordance with the SAMREC Code, relating to the remaining coal to be mined at the Mine;
- 36.2.3 progress on long term issues dealt with in this Agreement;
- 36.2.4 latest tax clearance certificates;
- 36.2.5 its broad-based black economic empowerment status certificate;
- 36.2.6 its employment equity status; and
- 36.2.7 its latest audited financial statements.

37. Legislative Submissions associated with Compliance

The Supplier will provide Eskom, upon Eskom's request, with copies of all legislated submissions submitted to all competent authorities required pursuant to legislation aimed at protecting the environment and water resources, and regulating health and safety, prospecting and mining and black economic empowerment, including but not limited to, the Koorfontein Mining Right, the related Mining Work Program, Environmental Management Programme, compliance submissions in respect of the said programmes and legislative black economic empowerment compliance.

SECTION 9: DISPUTE RESOLUTION AND BREACH

38. Dispute Resolution

- 38.1 This clause is a separate, divisible agreement from the rest of this Agreement and shall:
 - 38.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause;
 - 38.1.2 remain in effect even if this Agreement terminates or is cancelled.
- 38.2 If a dispute (hereinafter collectively referred to as a ("**Dispute**") has arisen between the Parties out of, in relation to, or in connection, with this Agreement, or in regard to:
 - 38.2.1 the existence of, apart from this clause;
 - 38.2.2 the interpretation and meaning of;



- 38.2.3 the effect of;
- 38.2.4 the rectification of;
- 38.2.5 the respective rights or obligations of the Parties under;
- 38.2.6 the breach, termination or cancellation of;
- 38.2.7 any matter arising out of or following the breach, termination or cancellation of; and/or;
- 38.2.8 damages arising in delict, compensation for unjust enrichment or any other claim is valid and enforceable in terms of, this Agreement then and in such event the Dispute will be settled in accordance with the following procedures:

38.2.8.1 step one

The Disputing Party must give a written notice ("**the Dispute Notice**") to the other Party ("**the Receiving Party**") recording the nature of the Dispute as perceived by the Disputing Party, the performance required by the Disputing Party from the Receiving Party in order to resolve the Dispute and/or the manner in which the Disputing Party believes the Dispute must be resolved, and the time period within which such performance is required. The time period, which may not be shorter than seven days and not longer than 14 (fourteen) days, is referred to herein as the "first period".

38.2.8.2 step two

In the event of the Receiving Party not performing in a manner demanded in the Dispute Notice or the Dispute not being resolved within the first period (or such further period as may be agreed to in writing by the Parties), then authorised representatives of the Parties will meet within a period ("**the Second Period**") of no more than 7 (seven) days after the end of the first period to attempt to settle such dispute in an amicable manner, the outcome of which meeting will be reduced to writing.

38.2.8.3 step three

If, irrespective of whether the Parties have met or concluded any meeting, no written agreement recording the resolution of the Dispute is signed by the Parties within the Second Period, then the Dispute



shall within a period of 7 (seven) days calculated from the end of such Second Period, be referred in writing by the Disputing Party to each of the senior executives of the Supplier and Eskom.

38.2.8.4 **step four**

If, irrespective of whether the senior executives (or their appointed nominee) have met or concluded any meeting, no written agreement is signed by the Parties resolving the Dispute within a period of 15 (fifteen) days calculated from the day upon which the Dispute was referred to the senior executives, or within such an extended period as may be agreed to in writing by the Parties, then:

38.2.8.4.1 either Party may refer the Dispute to be finally resolved in accordance with the Uniform Rules of Court or its successor body by an arbitrator appointed by the Chairman of the Johannesburg Bar Council. "Refer" in this sub-clause means delivering or transmitting electronically a written notice to the Chairman of the Johannesburg Bar Council requesting the appointment of an arbitrator to determine the Dispute. Referral of the Dispute shall be completed on delivery to and acknowledgement of receipt by the Chairman of the Johannesburg Bar Council of the notice. The Party referring the Dispute shall thereafter deliver or electronically transmit a copy of the referral notice to the other Party;

38.2.8.4.2 the arbitration will be held in Johannesburg in private at a venue as determined by the arbitrator appointed as envisaged in clause 38.2.8.4.1;

38.2.8.4.3 the arbitrator will have regard to the desire of the Parties to dispose of such Dispute expeditiously, economically and confidentially and shall be obliged to provide written reasons for his/her decision, together with reasons for such decision which shall be delivered in writing to the Parties within 21 (twenty one) days after the conclusion of the arbitration hearing;



38.2.8.4.4 the arbitrator will determine the liability for his/her charges and the costs of the arbitration will be paid accordingly by the Parties;

38.2.8.4.5 subject to the provisions of clause 38.3, the Parties irrevocably agree that the decision in any such arbitration proceedings will be final and binding on them, will forthwith be put into effect and may be made an order of any court of competent jurisdiction.

38.3 Either Party has the right to appeal against the decision of the arbitrator appointed in terms of clause 38.2.8.4.1 provided that this is done within 21 (twenty one) days of receipt by the Parties of the arbitrator's award. The appeal shall be heard by three arbitrators, in accordance with a procedure determined by them, who shall be appointed as follows:

38.3.1 the Party appealing will appoint 1 (one) arbitrator from the ranks of retired High Court Judges or Senior Advocates;

38.3.2 the other Party will nominate 1 (one) arbitrator from the ranks of retired High Court Judges or Senior Advocates; and

38.3.3 the Chairman of the Johannesburg Bar Council must nominate a third arbitrator from the ranks of retired High Court Judges or Senior Advocates.

38.4 Nothing contained in this clause 38 will preclude any Party from applying for, or obtaining, interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator on the merits of the Dispute.

38.5 The provisions of this clause 38 will continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.

38.6 Notwithstanding the provisions of clause 38.2.8 a Disputing Party shall be entitled to refer any Dispute to be finally resolved by an arbitrator as contemplated in clause 38.2.8.4 above, without having commenced, or completed, the procedures prescribed in clause 38.2.8 when in the view of the Disputing Party the prescribed procedures may not have been completed before any claim of the Disputing Party may have become prescribed. In this case the other Party shall be precluded from raising in the arbitration and/or any other forum a special plea or defence to the effect that the Disputing Party is precluded from proceeding immediately to arbitration because of the provisions of clause 38.2.8.



38.7 The provisions of this clause 38 shall not apply in regard to the matters to be determined by an independent expert in terms of clause 39.

39. Determination by an Independent Expert

39.1 applicability of indices to measure changes in cost factors

The resolution of any Dispute between the Parties arising from this Agreement and relating to the applicability of the indices stipulated in Table 2 as actual measurement of the actual cost movement in respect of that cost element in the South African coal mining industry and if necessary an appropriate replacement index, must be determined by an independent expert who must:

39.1.1 have at least a bachelors degree in statistics, economics or equivalent qualifications; and

39.1.2 have proper practical knowledge and at least 10 (ten) years' experience of statistics, indexing, finance and economics and application in South African Mining Industry.

39.2 quality and quantity disputes

The resolution of any Dispute between the Parties arising from this Agreement and which is of a technical nature relating to coal qualities and quantities, must be determined by an independent expert who must:

39.2.1 have a bachelors degree in metallurgy or equivalent qualifications; and

39.2.2 have proper practical knowledge and at least 10 (ten) years' experience of coal mining, coal processing, quality and quantity determination and the use of coal in heat generation applications.

39.3 mining related disputes

The resolution of any Dispute between the Parties arising from this Agreement and which is of a technical nature relating to coal mining and the coal resources in terms of the Koorfontein Mining Right, including the information furnished by the Supplier in respect of the coal resources, all warranties furnished by the Supplier and a replacement code for reporting reserves if the SAMREC Code no longer exists, must be determined by an independent expert who must:

39.3.1 have a bachelors degree in Geology and/or Mining Engineering; and



39.3.2 have proper practical knowledge and at least 10 (ten) years' experience of coal geology, reserve determination and coal mining.

39.4 disputes relating to nature of dispute

Should the Parties be unable to reach agreement on the nature of a Dispute in terms of this clause 39 the Chairperson for the time being of the South African Institute of Mining and Metallurgy, or its successor body, may, at the request of either of the Parties, determine in his/her absolute discretion the nature of the Dispute for purposes of this clause 39.

39.5 appointment of expert

If the Parties are unable to agree upon an acceptable independent expert pursuant to this clause 39 within 15 (fifteen) Business Days after a request by a Party for the appointment of such expert then, within 5 (five) Business Days after the lapse of such period, the Parties shall jointly request the head of the relevant professional body under which the independent expert falls, or if such professional body does not exist, the Chairman of the Johannesburg Bar Council or its successor body to appoint an independent person, who satisfies the requirements of an expert, to act as an independent expert to make the relevant expert determination in terms of this clause 39.5.

39.6 procedure

The independent expert shall determine the procedures to be followed, including the manner in which the expert shall receive written, and if so required by the expert, oral submissions on behalf of each Party. The independent expert shall likewise determine the place where the expert shall meet the Parties, provided that such place must be in Johannesburg or Pretoria. The independent expert may, if the expert deems this necessary, conduct an inspection of any plant, mine, facilities and/or other area that is the subject of the Dispute. The independent expert shall act as an expert and not as an arbitrator or mediator.

39.7 costs

The Parties shall share the costs of the independent expert equally, unless otherwise directed by the expert.



39.8 reasons

The independent expert shall in each case be obliged to give written reasons and motivation for his/her determination within 15 (fifteen) Business Days after the conclusion of the procedure referred to in clause 39.6.

39.9 binding effect

In the absence of grounds for review, the relevant expert's determination shall be binding on both Parties.

39.10 review

39.10.1 Subject to the provisions of clause 39.9, any Party may take the independent expert's determination on review.

39.10.2 In the event that any Party wishes to take the independent expert's determination on review in terms of clause 39.10.1 above, the said Party must notify the other Party and the independent expert thereof in writing within 15 (fifteen) Business Days after receipt of the independent expert's determination and reasons failing which the right to review shall lapse.

39.10.3 In the event of a review, the independent expert's determination shall be suspended, pending finalisation of the review procedure.

39.10.4 Any review as envisaged must be conducted by a practising senior advocate with not less than 10 (ten) years standing or a retired High Court Judge agreed between the Parties.

39.10.5 If the Parties cannot agree upon a particular person to conduct the review within 7 (seven) Business Days after notice has been given in terms of clause 39.10.2, then either Party may request, within 7 (seven) Business Days after the Parties have so failed to agree, the Chairperson of the Johannesburg Bar Council (or any replacement body) to appoint a person to conduct the review.

39.10.6 The person conducting the review shall determine the procedures to be followed, provided that such proceedings must be held in Johannesburg or Pretoria. The powers of the person conducting the review shall be those of the High Court conducting a review as envisaged in Rule 53 of the High Court rules, as amended or replaced from time to time.



40. Termination for Breach

40.1 breach of a warranty

If a Party breaches a warranty under clauses 4, 5 or 6 of this Agreement, and remains in breach of such warranty for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach of warranty, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement or which it is entitled to in law, at its option:

40.1.1 to sue for immediate specific performance of any of the defaulting Party's obligations under this Agreement; or

40.1.2 to cancel this Agreement in which case written notice of the cancellation must be given to the defaulting Party, and the cancellation shall take effect from the date of the notice.

40.2 breach of other material provisions

If a Party breaches any other material provision of this Agreement and remains in breach of such material provision for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement, at its option:

40.2.1 to sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement; or

40.2.2 to cancel this Agreement in which case written notice of the cancellation must be given to the defaulting Party, and the cancellation shall take effect from the date of the notice.

40.3 breach of general provisions

If a Party breaches any other general provision of this Agreement and remains in breach of such general provision for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement to sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement.



SECTION 10: FORCE MAJEURE MATTERS

41. Force Majeure

41.1 general

41.1.1 For the purposes of this Agreement, an exceptional event or circumstance:

41.1.1.1 which prevents or restricts either Party directly or indirectly from performing all or any of that Party's ("**the Affected Party**") obligations in terms of this Agreement;

41.1.1.2 beyond the reasonable control of the Affected Party;

41.1.1.3 not the direct or indirect result of a breach by the Affected Party of any of its obligations under this Agreement; and

41.1.1.4 could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, acting reasonably and prudently, subject to clause 41.1.2 shall constitute a "**Force Majeure Event**" for the purposes of this Agreement.

41.1.2 A "Force Majeure Event" shall, subject to the conditions in clauses 41.1.1 being satisfied, include, without limitation:

41.1.2.1 war, hostilities (whether war to be declared or not), invasion, act of foreign enemies;

41.1.2.2 rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;

41.1.2.3 riot, commotion, disorder, any blockade or embargo, strikes or lock outs that are on a national scale and directly affects the construction, energy and coal mining industry of South Africa, but shall not include any such action that is solely by the Supplier's personnel and other employees of the Supplier or its subcontractors;

41.1.2.4 natural catastrophes such as earthquake, hurricane, typhoon, volcanic activity floods (other than heavy rains), fire, 'Acts of God', or explosions."

41.1.3 An event which satisfies the requirements of clause 41.1, but is the direct or indirect result of any third party fulfilling contractual, statutory or other obligations



to the Affected Party (for reasons which would not in themselves constitute a "Force Majeure Event") shall not constitute a "Force Majeure Event" for purposes of this Agreement.

41.1.4 The Affected Party shall be relieved of performance of its obligations in terms of this Agreement during the period that a Force Majeure Event occurs and its consequences continue (but only to the extent it is so delayed or prevented from performing partially or at all by the Force Majeure Event), and, provided that notice has been given in terms of clause 41.1.5, shall not be liable for any delay or failure in the performance of any of its obligations in terms of this Agreement or losses or damages whether general, special or consequential which the other Party ("the Unaffected Party") may suffer due to or resulting from any such delay or failure.

41.1.5 The Affected Party shall give written notice to the Unaffected Party at the earliest possible opportunity in writing of the occurrence of the event constituting the Force Majeure Event, together with details thereof and a good faith estimate of the period of time for which it shall endure.

41.2 **proportionate reduction**

Should a Force Majeure Event affect the production capacity of the Mine and/or the Supplier's ability to Deliver coal for Supply to Eskom in terms hereof or should such Force Majeure Event affect Eskom's ability to Take Off coal in terms of this Agreement, each of the Parties' respective obligations to Deliver and to Take Off coal in terms hereof shall be reduced in proportion to the reduction in the capacity to Deliver or capacity to Take Off as the case may be.

41.3 **consequences**

At all times whilst a Force Majeure Event continues, the Parties shall meet at regular intervals to discuss and investigate, and if possible, to implement other practical ways and means to overcome the consequences of such a Force Majeure Event, with the objective of achieving the import and intent of this Agreement without unreasonable delay. In this regard the Parties shall explore the possibility of concluding alternative arrangements for the supply or purchase of coal as the case may be. These alternative arrangements may include but are not limited to quantity, quality and penalty amendments; and supply from any source for such periods of time as may be reasonable under the circumstances with due regard to the nature and anticipated duration of the Force Majeure Event.



41.4 termination of Force Majeure Event

The Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on its ability to perform under this Agreement and to terminate the circumstances giving rise to a Force Majeure Event as soon as reasonably possible (provided that nothing in this clause shall require the Affected Party to settle any strike, lock-out or other industrial or labour dispute, whether it is a party thereto or not) and upon termination of the event giving rise thereto, shall forthwith give written notice thereof to the Unaffected Party.

41.5 extension of this Agreement

41.5.1 In the event that a Force Majeure Event occurs as contemplated herein, the Parties shall, on cessation of the Force Majeure Event, or prior thereto, agree on the period, if any, by which the duration of this Agreement should be extended to take account of interruptions caused by such Force Majeure Event. The price payable for Contract Coal during such extension shall be the Price determined under this Agreement as being that applicable for the period in which Contract Coal is actually Supplied, taking into account all adjustments as set out in this Agreement.

41.5.2 In the event of a Force Majeure Event affecting Eskom in terms of this Agreement which is expected to endure for a period of more than 30 (thirty) days, the Supplier may sell Contract Coal, to third Parties for as long as such Force Majeure Event continues. In this event the Agreement shall be extended in terms of clause 41.5.1 above.

41.5.3 In the event of that the Supplier is prevented by a Force Majeure Event from Delivering Contract Coal to Eskom in terms of this Agreement and for as long as such Force Majeure Event continues, Eskom shall not be under any obligation pursuant to this Agreement to purchase coal for use from the Supplier exclusively. Without derogating from that principle, Eskom shall be entitled to source all coal or any shortfall of coal from other sources.

41.6 termination of this Agreement due to Force Majeure Events

Unless otherwise unanimously agreed to in writing between the Parties, this Agreement shall be terminable by either Party if either Party is wholly prevented by a Force Majeure Event from fulfilling its obligations in terms of the agreement and where such prevention endures for a continuous period of at least 24 (twenty four) Months. Neither Party shall have any claim against the other for any loss suffered as a result of such termination.



SECTION 11: GENERAL PROVISIONS

42. Insolvency

Should either Party commit an act of insolvency, make an offer of compromise or composition, become the subject of a liquidation or business rescue proceedings order then the other Party shall be entitled, but not obliged, without prejudice to any other rights which it may have, to terminate this Agreement.

43. Limitation of Liability

Notwithstanding any other provision in this Agreement, neither Party shall be liable in contract or in law or otherwise for any indirect, consequential, punitive and/or special damages or loss of profits or anticipated savings, whether foreseeable or not, and even if a Party has been advised of the possibility of such damages arising, incurred by the other Party arising out of or in connection with this Agreement.

44. Insurance

In order for it to fully comply with its obligations under this Agreement, for the duration of the Contract Period, the Supplier shall:

- 44.1 adequately insure, and keep insured, itself and, *inter alia*, the Mine (including the equipment acquired, and to be acquired, and the infrastructure established and to be established to enable the Supplier to comply with its obligations in terms of this Agreement) against the risks which are in line with, and on terms which are in line with, common mining practice in South Africa;
- 44.2 forthwith apply the proceeds of any insurance policy to replace or repair, as is reasonable in the circumstances, the Mine (including the equipment acquired, and to be acquired, and the infrastructure established and to be established to enable the Supplier to comply with its obligations in terms of this Agreement) in the event of an insurable incident which may cause it to be damaged, lost or destroyed; and
- 44.3 to provide written proof of such insurance at the written request of Eskom.

45. Cession and Delegation

- 45.1 This Agreement shall be binding upon and shall be for the benefit of the Parties and, to the extent permitted by the provisions of this clause 45, their respective successors and assigns.



45.2 Neither Party may delegate this Agreement including to its holding company, an affiliated company, another company wholly and or partially owned by the Parties, to an entity acquiring all or substantially all of the assets of that Party, or for purposes of securing indebtedness and no such assignment shall release the delegating Party from the obligation to perform in terms of this Agreement unless the other Party consents thereto in writing. A Party requesting such consent shall provide the other Party with all the necessary information to conduct a reasonable assessment of the request.

46. Confidentiality

46.1 The Parties acknowledge that any information supplied in connection with this Agreement or in connection with each other's technical, industrial or business affairs which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them ("the Receiving Party") may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Party concerned.

46.2 The Receiving Party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof than for the purposes of this Agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other Party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of this Agreement.

46.3 The undertaking and obligations contained in this clause do not apply to information which is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties.

46.4 The Receiving Party demonstrates that if was already in its possession prior to its receipt by or disclosure to such Receiving Party; is required by law or any regulatory authority to be disclosed after being disclosed to the Receiving Party is disclosed by any other person to the Receiving Party otherwise than in breach of any obligation of confidentiality.

46.5 The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or director or employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or shall be disclosed.

46.6 Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of this Agreement or its content or transaction embodied in this



Agreement shall be made or issued by or on behalf of any Party without the prior written agreement of the other Party.

47. Alienation or Disposal of an Interest

Where any proposed transaction shall result in a change in control and ownership of the holder of the Koorfontein Mining Right and the Supplier, Eskom shall forthwith be notified in writing within 7 (seven) days of such decision and provided with a copy of the application to amend the Koorfontein Mining Right, in terms of the provisions of the MPRDA and written confirmation that the intended transaction shall not affect the Supplier's ability to carry out and comply with the obligations of this Agreement and the terms and conditions of the right as conferred.

48. Entire Agreement

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

49. No Stipulation for the Benefit of a Third Person

Save as expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

50. No Representations

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

51. Variation, Cancellation and Waiver

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of all the Parties.

52. Indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.



53. Applicable Law

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

54. Jurisdiction of South African Courts

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, for any proceedings arising out of or in connection with this Agreement.

55. Service of Documents

55.1 The Parties choose the following addresses at which documents and notices in legal proceedings in connection with this Agreement shall be served (i.e. their *domicilia citandi et executandi*) and at which notices shall be received:

55.1.1 in the case of Eskom to: The Senior General Manager – Primary Energy

physical address

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sunninghill

postal address

PO Box 1091
Johannesburg
2000

55.1.2 in the case of the Supplier to: The Chief Executive Officer

physical address:

Koornfontein Mines (Pty) Ltd
Block "A" Lower Ground Floor, Grayston Ridge
144 Katharine Street
Sandton 2146

postal address

Postnet Suite 458, Private Bag X9,
Benmore
2010

e-mail address:

ronica@oakbay.co.za

55.2 The Parties choose the following address at which invoices and Drawdown Order may be received:

55.2.1 in the case of Eskom, invoices shall be submitted to:

Finance Manager – Primary Energy

physical address

Eskom Holdings SOC Ltd



Megawatt Park
Maxwell Drive
Sunninghill

postal address PO Box 1091
Johannesburg
2000

55.2.2 in the case of the Supplier, Drawdown Orders shall be submitted to:

The Mine Manager

physical address: Koornfontein Mines (Pty) Ltd
144 Katherine Street
Grayston Ridge Office Park
Block A Lower Ground Floor
Sandton 2146

postal address Postnet Suite 458, Private Bag X9,
Benmore
2010

e-mail address: ronica@oakbay.co.za

55.3 Any legal or other notice shall be deemed to have been duly given:

- 55.3.1 on the fifth Business Days after posting (14 (fourteen) Business Days if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of this clause 55;
- 55.3.2 on delivery, if delivered to the Party's physical address in terms of this Clause 55 between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);
- 55.3.3 on despatch, if sent to the Party's then fax number or e-mail address between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if despatched outside such hours) in terms of this clause 55;
- 55.3.4 unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

55.4 A Party may change that Party's address or fax number or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the seventh Business Day after the giving of such notice.



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

56. Costs

56.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

56.2 Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

57. Signature in Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

58. Independent Advice

Each of the Parties hereby respectively agrees and acknowledges that:

58.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

58.2 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

59. Good Faith and Co-Operation

59.1 The Parties shall, at all times, act in good faith towards each other and shall not bring any of the other Parties into disrepute.

59.2 Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.



Thus done and signed at Megawatt Park on the _____ day of August 2016 in the presence of the undersigned witnesses.

For and on behalf of
ESKOM HOLDINGS SOC LTD
(who warrants that he is duly authorised hereto)

Name: _____

Capacity: _____

AS WITNESSES:

1. Full Names: _____ Signature: _____

2. Full Names: _____ Signature: _____

Thus done and signed at Megawatt Park on the _____ day of August 2016 in the presence of the undersigned witnesses.

For and on behalf of
KOORNFONTEIN MINES (PROPRIETARY) LIMITED
(who warrants that he is duly authorised hereto)

Name: _____

Capacity: _____

AS WITNESSES:

1. Full Names: _____ Signature: _____

2. Full Names: _____ Signature: _____



LIST OF ANNEXES

- i. **Annexe A:** The Coal Quality Determination Procedure at the Power Station or Eskom Nominated Site
- ii. **Annexe B:** The Coal Quality Management Procedure
- iii. **Annexe C:** Supplier Development and Localisation Targets
- iv. **Annexe D:** The Safety and Health Requirements
- v. **Annexe E:** The Environmental Legal Requirements
- vi. **Annexe F:** The Rules of Conveyor Transportation
- vii. **Annexe G:** The Rules of Rail Transportation
- viii. **Annexe H:** The Rules of Road Transportation
- ix. **Annexe I:** Example Calculations of Price Adjustment Factor
- x. **Annexe J:** Adjustments for Moisture Content
- xi. **Annexe K:** Technical Liaison Meeting Agenda

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

	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.

	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



(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.

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) 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: danielism@eskom.co.za

I'm part of the 49Million initiative...
www.eskom.co.za/idm

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

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 than 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

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 <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

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

NB: This Email and its contents are subject to the Eskom Holdings SOC Limited EMAIL
LEGAL NOTICE which can be viewed at
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I'm part of the 49Million initiative...
www.eskom.co.za/idm

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

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: danielism@eskom.co.za

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: "baldwin.ngubane"
Date: 2016/06/11 12:19 (GMT+02:00)
To: Suzanne Daniels
Cc: Business Man
Subject: Re: FW: Draft Statement by Chairman

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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

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



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

Forensic Investigation into various allegations at DPE

Tender Number NT 022-2016

RFQ 026-2017



July 2019



FUNDUDZI

14. ACTIVITIES AT DPE AND VARIOUS SOCS DURING MINISTER BROWN'S TENURE

14.1. We determined that Minister Brown served as the DPE Minister from 26 May 2014 to 27 February 2018.

14.2. The table below reflects key officials that served during Minister Brown's tenure as the Minister of Public Enterprises:

Minister	Lynne Brown
Advisors to the Minister	Annelize van Wyk Professor Daniel Plaatjies
Spokesperson	Colin Cruywagen
DG	Mogokare Richard Seleke
Acting DG	Matsietsi Mokholo Kgathatso Tlhakudi
Chief of Staff	Mziwonke Jacobs Khalid Sayed Justine De Allande

14.3. PROCESS FOLLOWED BY DPE IN THE APPOINTMENT OF BOARD MEMBERS DURING MINISTER BROWN'S TENURE

14.3.1. According to Mokholo, the practice of not having board appointment framework continued during Minister Brown's tenure at DPE.

14.3.2. According to Mokholo, during Minister Brown's tenure, DPE adopted a board database and appointment framework relating to the appointment of board members to SOCs.

14.3.3. Ruthnam provided us with a board database and appointment framework,¹ which illustrates the appointment process as follows:

Skills review and identification:

14.3.3.1. The Board members should have the combination of skills necessary to carry out their work.

14.3.3.2. It is important to identify the skills required for each SOC Board following a skill review and performance assessment for the previous year alongside an assessment for future skills requirement.

14.3.3.3. The skills-based process reinforces the role of shareholders in identifying the requirement for a particular position on a SOC Board. Every vacancy creates an opportunity to reassess the needs of a Board, and the skills and experience that will best complement the talents of the other board members.

Identifying suitable candidates

¹ Exhibit 36

14.3.3.4. Identify suitable well qualified candidates who reflect the demographic diversity of South Africa from the Board Database.

14.3.3.5. The Board performance assessment and skills review provides criteria for each sector team to determine the suitability of candidates.

Candidate screening and vetting

14.3.3.6. Candidates should be screened through the CIPC or other databases to determine the number of Board seats the candidates hold as well as other reference, credit and background checks.

Selection and short-listing

14.3.3.7. From the identified candidates, selection and shortlist proposed suitable candidates by matching such candidate's competencies and skills with the relevant SOC Board's skills requirements and other relevant shareholder requirements.

Interviews

14.3.3.8. Ministry (and LGR) may interview shortlisted candidates to confirm their suitability for the specifically identified Board seat.

Obtain Minister's approval

14.3.3.9. Submit their shortlisted candidates as well as the recommended candidates for the relevant Board to Minister for his/her approval.

Cabinet approval

14.3.3.10. Once the Minister approves the recommended candidates, the submission is prepared for Cabinet endorsement.

Appointment

14.3.3.11. Following the Cabinet approval, the candidate is formally notified of his/her appointment, including the terms and conditions of the appointment.

14.3.3.12. A Board member may be appointed for a second term to ensure stability in Board dynamics and to recognise the significant intellectual investment in being a good director. Such re-appointment should be subject to the director's performance and his/her skills continuing to be relevant to the business.

14.3.4. We determined that Orateng Motsoai ("Motsoai") issued a **memorandum dated 22 September 2014 to Minister Brown** titled *"To obtain approval for the advertisement nomination of suitable candidates for inviting appointment to the boards of directors of state-owned companies within the portfolio of the Department of Public Enterprises"*.

14.3.5. The purpose of the memorandum was to brief Minister Brown on the board appointment methodology. The memorandum further sought to obtain Minister Brown's approval for the advertisement calling for nominations of suitable persons for possible appointment to the SOC boards.

14.3.6. According to the memorandum, interested persons were required to be persons who were suitable to serve on the SOC boards by virtue of amongst others, their qualifications and expertise, skills, experience and business acumen.

14.3.7. The memorandum further indicated that interested parties must be nominated and must submit an application form by means of a nomination form.

14.3.8. According to the memorandum the board appointment process would inter alia include the following:

- 14.3.8.1. Shortlisting process whereby the most appropriate candidates will be shortlisted;
- 14.3.8.2. Departmental security screening and vetting process;
- 14.3.8.3. Submission to the Minister for consideration and approval; and
- 14.3.8.4. Final selection once the minister is satisfied.

14.3.9. We determined that the memorandum was prepared and signed by Shelly Pather and Ruthnam on 23 September 2014 respectively. Minister Brown approved the memorandum on the same date.

14.3.10. In her written response, Minister Brown stated that “the administration of Boards was managed by the Legal and Governance Unit in DPE. They had procedures and manuals for the appointment of Boards. I inherited the procedure and simply adhered to it”.

14.3.11. Based on the memorandum, Minister Brown was familiar with the board appointment process. We however noted that there were various board appointments made during Minister Brown’s tenure as DPE minister that did not follow the formal process reflected above.

14.4.24. We determined that on 11 May 2015, Davids sent an email to Jumarie Botha (“Botha”) and Ruthnam and copied Annelize van Wyk and Mokholo with subject “3 x Boards – SA Express – Denel – Eskom”.²

14.5. THE INTRODUCTION OF INFOPORTAL1@ZOHOCOM TO ADVANCE STATE CAPTURE

14.5.1. A lot has been said and written by various individuals and media on the issues relating to the e-mail address infoportal1@zoho.com.

14.5.2. We provided an extensive narration of the infoportal1@zoho.com e-mail address and the identities of the individuals behind it in our report to National Treasury issued on 15 November 2018.

14.5.3. In the said report, we referred to various SOC executives and board members who sent or received emails from the infoportal1@zoho.com e-mail address.

14.5.4. During the current investigation, we determined that there were various DPE officials who received or sent emails to the infoportal1@zoho.com e-mail address.

14.5.5. During our review of the DPE emails, we obtained various email communication between infoportal1@zoho.com and Kim Davids (“Davids”) (anckimwc@gmail.com) in respect of various board appointments at SOCs and the sharing of Department confidential information.

² Exhibit 43

14.5.6. The various email communication suggests that infoportal1@zoho.com and Davids facilitated state capture by ensuring that certain individuals were appointed as board members/non-executive directors at different SOC's.

14.5.7. Davids was appointed at the DPE as the PA to Minister Brown.

14.5.8. We determined that in July 2016, Seleke converted Davids' contract of employment from fixed term to a permanent contract.

Request for the approval of the Denel board appointments

14.6.34. We determined that on 11 May 2015, Makobe issued a memorandum to Minister Brown requesting the Minister to approve an urgent submission of Cabinet Memoranda number 3, 4 and 5 of 2015 on the appointment of new members to the Boards of SAX, Denel and Eskom.³

RESPONSE ON THE WAR ROOM ASSESSMENT

14.7.9. We determined that on 16 July 2015,⁴ Davids forwarded an e-mail titled "Response on the war room assessment Assessment" from Kim.Davids@dpe.gov.za to anckimwc@gmail.com.

14.7.10. We determined that Davids forwarded the said e-mail, stating the following "Herewith draft letter. ...your views please. Thanks Kim Davids". We however noted that the recipient's e-mail address was not reflected thereon.

14.7.11. We determined that on 17 July 2015, infoportal1@zoho.com responded and sent an e-mail to Davids' email address anckimwc@gmail.com stating that "please remove the part about guidance from IMC...Please add a clause whereby its is stated that significant changes have now been made and that you need more time before presenting to the IMC so request the IMC be postponed for a quarter to allow the changes to take effect

This protects from unnecessary issues being raised in this forum now".

14.7.12. We noted that there was no attachment to the e-mail dated 17 July 2015 from infoportal1@zoho.com to Davids.

14.7.13. The document that was attached to the original email was a draft response letter in respect of the Electricity War Room from Minister Brown to Saul.

14.7.14. We determined that on the same day (i.e. 17 July 2015), Davids sent an email to Minister Brown stating that:

"Dear Mam

Herewith please find below in relation to draft ADG letter to war room.

Slamat/regards

Kim"

³ Exhibit 53

⁴ Exhibit 56

14.7.15. We determined that in December 2014, Cabinet announced that a war room had been set up to oversee the implementation of a five point plan to address the electricity challenges facing the country.

14.7.16. The war room comprised the Departments of Energy, Cooperative Governance and Traditional Affairs, Public Enterprises, National Treasury, Economic Development, Water and Sanitation and Eskom, as well as technical officials.

14.7.17. It is evident that Davids worked closely with infoportal1@zoho.com to amend Minister Brown's response on the war room assessment.

14.7.18. Davids could not have interacted with infoportal1@zoho.com without Minister Brown's instruction and/or knowledge.

14.7.19. Infoportal1@zoho.com was involved in the responses prepared for Minister Brown in respect of the war room.

14.7.20. We determined that on 19 August 2015, infoportal1@zoho.com sent an email titled "Q&A revised" to Davids on email address styled anckimwc@gmail.com stating "Amended".⁵ Attached to the email were questions and answers in respect of the state of SOCs.

14.7.21. We noted that the said questions and answers document was created by Colin Cruywagen on 19 August 2015 and last modified by Ashok on the same date. A possibility exists that the Ashok referred to above maybe Ashok Sharma who was appointed as the Eskom board member in 2011.

CONCLUSIONS RELATING TO THE ELECTRICITY WAR ROOM

14.7.22. Davids shared confidential information in respect of the Ministers responses to the war room assessment with infoportal1@zoho.com; and

14.7.23. Davids' sharing of confidential information relating to the war room with the Guptas or their associates may have compromised the operations of the electricity war room.

RECOMMENDATIONS RELATING TO THE ELECTRICITY WAR ROOM

14.7.24. Based on our findings, we recommend that Davids should be subpoenaed to the Zondo commission to explain why she was in contact with infoportal1@zoho.com in respect of the war room.

DPE Position regarding investigations commissioned by Eskom Board

14.7.25. We determined that on 28 August 2015, Davids sent an e-mail titled Eskom Memo from Kim.Davids@dpe.gov.za to anckimwc@gmail.com.⁶

14.7.26. Attached to the e-mail was a decision memorandum dated 14 August 2015 addressed to Minister Brown from Makololo.

14.7.27. The subject of the decision memorandum was DPE Position regarding the investigation commissioned by the Eskom Board into the Status of the Business and Challenges Experienced by Eskom.

⁵ Exhibit 57

⁶ Exhibit 58

14.7.28. The purpose of the memorandum was to provide the Minister with the Department's analysis and view of Eskom's Preliminary Report on the status of the Eskom Business and the challenges experienced by Eskom.

14.7.29. The decision memorandum was prepared by the following individuals:

14.7.29.1. Loice Mtetwa,

14.7.29.2. Orateng Motsoai;

14.7.29.3. Melanchton Makobe; and

14.7.29.4. Makgola Makololo.

14.7.30. We determined that the decision memorandum was signed by Mokholo in her capacity as Acting Director General.

14.7.31. We noted that Minister Brown and Gratitude Magwanishe had not signed in the space provided.

14.7.32. It is not clear why Davids forwarded the document to her private e-mail address.

14.7.33. A possibility exists that Davids may have forwarded the document to her private e-mail address in order to share it with infoportal1@zoho.com.

14.8. THE APPOINTMENT OF THE ESKOM BOARD

14.8.1. During our review of the DPE emails, we determined that infoportal1@zoho.com played a role in the composition of various Eskom board sub-committees.

14.8.2. We determined that on 6 March 2015, infoportal1@zoho.com sent an email titled: "Eskom Committee" to Davids on email address styled anckimwc@gmail.com proposing various Eskom sub-committees.

14.8.3. The following committees were proposed in the said email from infoportal1@zoho.com to Davids:

14.8.4. Audit & Risk

14.8.4.1. New Lady CA (Chair);

14.8.4.2. Viroshni Naidoo;

14.8.4.3. Nazia Carrim;

14.8.4.4. Romeo Khumalo; and

14.8.4.5. Norman Baloyi.

14.8.5. Tender & Procurement

14.8.5.1. Ben Ngubane (Chair);

14.8.5.2. Zethembe Xhosa [sic];

14.8.5.3. Nazia Carrim; and

14.8.5.4. Chwayita Mabude.

14.8.6. IFC

14.8.6.1. Mark Pamensky (Chair);

14.8.6.2. Pat Naidoo;

14.8.6.3. Zathembe Khoza;

14.8.6.4. Venette Klein; and

14.8.6.5. Zola Tsotsi.

14.8.7. People & Governance

14.8.7.1. Chwayita Mabude (Chair);

14.8.7.2. Ben Ngubane;

14.8.7.3. Chwayita Mabude;

14.8.7.4. Romeo Khumalo; and

14.8.7.5. Venette Klein.

14.8.8. Social & Ethics

14.8.8.1. Venete Klein (Chair);

14.8.8.2. Pat Naidoo;

14.8.8.3. Viroshni Naidoo;

14.8.8.4. Norman Baloyi; and

14.8.8.5. Zola Tsotsi.

14.8.9. Emergency Task Team and New Build

14.8.9.1. Zethembe Xhosa [sic] (Chair);

14.8.9.2. Ben Ngubane;

14.8.9.3. New Lady CA;

14.8.9.4. Viroshni Naidoo; and

14.8.9.5. Nazia Carrim.

14.8.10. During our consultation with Mokholo, she indicated that DPE would only be responsible for appointing the statutory committees which include the following:

14.8.10.1. Audit and Risk Committee;

14.8.10.2. Social and Ethics Committee; and

14.8.10.3. Remuneration committees.

14.8.11. Based on the review of the infoportal1@zoho.com email, infoportal1@zoho.com recommended names for two statutory committees namely the Audit and Risk committee and the Social and Ethics committee.

14.8.12. The above infoportal1@zoho.com email is an indication that the formation of Eskom board committees was facilitated by Davids and external individuals not in the employ of Eskom and DPE.

14.8.13. We were provided with a copy of an undated Eskom board resolution appointing board members to various committees.⁷ According to the draft resolution, the following board members were appointed to the various committees:

Audit and Risk Committee

- 14.8.13.1. C Mabude as member and Chairperson;
- 14.8.13.2. N Carrim;
- 14.8.13.3. R Khumalo; and
- 14.8.13.4. V Naidoo

Social, Ethics and Sustainability Committee

- 14.8.13.5. V Klein as a member and Chairperson;
- 14.8.13.6. P Naidoo; and
- 14.8.13.7. V Naidoo.

People and Governance Committee

- 14.8.13.8. V Klein as member and Chairperson;
- 14.8.13.9. R Khumalo;
- 14.8.13.10. B Ngubane; and
- 14.8.13.11. Z Khoza.

Board Tender Committee

- 14.8.13.12. N Carrim as member and Chairperson;
- 14.8.13.13. C Mabude;
- 14.8.13.14. Z Khoza; and
- 14.8.13.15. P Naidoo.

Investment and Finance Committee

- 14.8.13.16. M Pamensky as member and Chairperson;
- 14.8.13.17. Z Khoza;
- 14.8.13.18. V Klein; and

⁷ Exhibit 64

Second Draft report: Forensic investigation into allegations at Transnet and Eskom

14.8.13.19. C Mabude.

Recovery & Build Programme

14.8.13.20. P Naidoo;

14.8.13.21. V Naidoo;

14.8.13.22. N Carrim; and

14.8.13.23. B Ngubane.

14.8.14. According to the draft resolution, the Build Programme Review and the Eskom Emergency Task Team Committee had been merged into one committee.

14.8.15. Based on our review of the draft resolution and the infoportal1@zoho.com email dated 6 March 2015, we determined that at least 3 members recommended by infoportal1@zoho.com were appointed to various committees as reflected in the draft resolution.

14.8.16. Below is a summary of the individuals recommended by infoportal1@zoho.com and appointed to the various Eskom committees:

Audit and Risk Committee

Infoportal1@zoho.com proposed sub-committee	Actual Eskom sub-committee composition
New Lady CA (Chair)	
Viroshni Naidoo	V Naidoo
Nazia Carrim	N Carrim
Romeo Khumalo	R Khumalo
Norman Baloyi	
	C Mabude as member and Chairperson

Tender & Procurement

Infoportal1@zoho.com PROPOSED SUB-COMMITTEE	ACTUAL COMPOSITION	ESKOM	SUB-COMMITTEE
Ben Ngubane (Chair)			
Zathembe Xhosa [sic]	Z Khoza		
Nazia Carrim	N Carrim as member and Chairperson		
Chwayita Mabude	C Mabude		
	P Naidoo		

Investment and Finance Committee

Infoportal1@zoho.com PROPOSED SUB-COMMITTEE	ACTUAL COMPOSITION	ESKOM	SUB-COMMITTEE
Mark Pamensky (Chair)	M Pamensky as member and Chairperson		

Second Draft report: Forensic investigation into allegations at Transnet and Eskom

Pat Naidoo	
Zathembe Khoza	Z Khoza
Venette Klein	V Klein
Zola Tsotsi	
	C Mabude

Social, Ethics and Sustainability Committee

Infoportal1@zoho.com	ACTUAL ESKOM SUB-COMMITTEE COMPOSITION
PROPOSED SUB-COMMITTEE	
Venete Klein (Chair)	V Klein as a member and Chairperson
Pat Naidoo	P Naidoo
Viroshni Naidoo	V Naidoo
Norman Baloyi	
Zola Tsotsi	

Recovery & Build Programme

Infoportal1@zoho.com	ACTUAL ESKOM SUB-COMMITTEE COMPOSITION
PROPOSED SUB-COMMITTEE	
Zethembe Xhosa [sic] (Chair)	
Ben Ngubane	B Ngubane
New Lady CA	
Viroshni Naidoo	V Naidoo
Nazia Carrim	N Carrim
P Naidoo	

14.8.17. It would appear that the individuals proposed on the Eskom sub-committees by infoportal1@zoho.com were communicated to the Eskom board for implementation. A possibility exists that either Davids or Minister Brown communicated the proposed composition to the Eskom board for implementation.

14.8.18. As reflected above, Ngubane was recommended by infoportal1@zoho.com to be the Chairperson of the Board Tender Committee. According to a memorandum dated 9 April 2015 from Motsoai to Minister Brown, Ngubane was removed from the Board Tender Committee by virtue of his appointment as the interim Chairperson of the Eskom board.

14.8.19. The said memorandum to Minister Brown further indicated that Pamensky, Khumalo and P Naidoo had conflict of interest wherein they had current/potential/related business interest in companies that held contracts or had been awarded contracts by Eskom.

14.8.20. According the memorandum, the Eskom interim Chairperson, Ngubane indicated that an independent assessment would be conducted to determine the materiality of the contracts. We were not provided with the letter written by Ngubane.

14.8.21. We determined that the memorandum was approved by Minister Brown on 20 April 2015.

14.8.22. We further determined that Motsoai issued a memorandum dated 21 October 2014 to Minister Brown recommending the appointment of the Eskom Board.

14.8.23. According to the memorandum, the following were the proposed new appointments:

14.8.23.1. Ben Ngubane;

14.8.23.2. Chwayita Mabude;

14.8.23.3. Venete Klein;

14.8.23.4. Nazia Carrim;

14.8.23.5. Romeo Kumalo;

14.8.23.6. Mark Pamensky;

14.8.23.7. Zethembe Khoza;

14.8.23.8. Tshediso Matona; and

14.8.23.9. Tsholofelo Molefe.

14.8.24. We noted that Simphiwe Makhathini ("Makhathini") raised concerns in respect of the composition of the board by writing the following comments "I'm concerned about the skills of the proposed Board. It doesn't address the challenges Eskom is facing. I would recommend that with the vacancies, we seriously look at strengthening those areas".

14.8.25. We noted that despite the concerns raised by Makhathini the memorandum was recommended by Mokholo and approved by Minister Brown.

CONCLUSIONS ON ESKOM BOARD COMPOSITION

14.8.26. Based on the findings discussed above, we conclude that the composition of the Eskom board sub-committees was influenced by infoportal1@zoho.com; and

14.8.27. A possibility exists that the influence of the composition of the Eskom board through infoportal1@zoho.com may have been done to facilitate contracts to be awarded to the Gupta linked entities.

RECOMMENDATIONS ON ESKOM BOARD COMPOSITION

Based on the findings discussed above, we recommend that as follows:

14.8.28. Davids should be subpoenaed to the Zondo Commission to inter alia explain:

14.8.28.1. Why she communicated with infoportal1@zoho.com in respect of the Eskom board committees;

14.8.28.2. Her relationship with infoportal1@zoho.com;

- 14.8.28.3. Who she was in contact with when communicating with infoportal1@zoho.com;
- 14.8.28.4. Who instructed her communicate with infoportal1@zoho.com;
- 14.8.28.5. Who provided her with the email address infoportal1@zoho.com.
- 14.8.29. DPE and Eskom should investigate whether any of the abovementioned Eskom committees approved decisions that benefited Gupta linked entities (i.e. Tegeta decisions).
- 14.8.30. DCPI should subpoena the hosting service provider of infoportal1@zoho.com in order to obtain all emails linked to the said email address. The investigation of the said emails would be in the best interest of the country and State Capture commission to establish the extent of capture conducted by infoportal1@zoho.com.

14.9. APPOINTMENT OF GIOVANNI LEONARDI AT ESKOM

14.9.1. We determined that on 16 April 2015,⁸ Davids forwarded an email titled "CV for DPE database" from Kim.Davids@dpe.gov.za to anckimwc@gmail.com. Attached to the email was Giovanni Leonardi's CV.

14.9.2. We further determined that on the same day i.e. 16 April 2015, Davids sent an email to infoportal1@zoho.com stating "*Fyi below....send me please a answer for Mam to revert to this below.*

Much appreciated.

Kind regards

Kim Davids"

14.9.3. We noted that infoportal1@zoho.com responded to Davids email by stating that "Will do. Please give me till noon". Davids responded to the email by stating "Ok. Thanks very much. Kim Davids"

14.9.4. We determined that Giovanni Leonardi was appointed onto the Eskom board during Minister Browns tenure as DPE minister.

14.9.5. We determined that on 11 May 2015, Davids sent an email to Botha and Ruthnam and copied Annelize van Wyk (Special Advisor to Minister Brown) and Mokholo . The subject matter of the email was "3 x Boards – SA Express – Denel – Eskom".

14.9.6. In the email, Davids indicated that as discussed with Minister Brown and her direction, the following was the Eskom board nominations for the Cabinet memorandum:

14.9.7. Mariam Cassim; and

14.9.8. Leonardi Giovanni.

14.9.9. We determined that the "Leonardi" that was recommended to the Eskom board as per email dated 11 May 2015 was Giovanni, who's CV was sent to Davids by infoportal1@zoho.com on 16 April 2015.

⁸ Exhibit 65

14.9.10. We determined that a letter of appointment dated 20 May 2015 was signed by Minister Brown,⁹ appointing Giovanni as a Non-Executive Director to the Eskom Board.

14.9.11. According to the letter, Giovanni's appointment was effective from 25 May 2015 for a period of three years.

14.9.12. We noted that Giovanni did not sign the acceptance letter however, he did serve on the Eskom board.

14.9.13. We were not provided with supporting documents reflecting who nominated Giovanni to the Eskom board. The said information was requested on numerous occasions, however, it was not provided to us as at date of this report.

14.9.14. There is no evidence that Giovanni was subjected to a shortlisting, screening and vetting process as required by the Department.

14.9.15. We noted from Giovanni's CV and appointment letter that his address was reflected as Via Valòn 3, CH-6743 Bodio, Switzerland.

14.9.16. Giovanni served on the Eskom board until he resigned on 19 January 2018. Minister Brown accepted Giovanni's resignation on 20 January 2018.

14.9.17. We determined that Giovanni had served on the Eskom board for approximately 2 years and 7 months before he tendered his resignation.

14.9.18. It is evident that Giovanni's CV was sent to Davids to enable her to facilitate his appointment on the Eskom board.

14.9.19. The communication between Davids and infoportal1@zoho.com above is a clear indication that she was communicating on behalf of Minister Brown. As indicated above, Davids could not have acted or communicated with infoportal1@zoho.com without the knowledge of Minister Brown.

14.9.20. In her response to questions relating to Giovanni's appointment on the Eskom board, Minister Brown indicated that *"Like other names, Giovanni Leonardo's name came to me as part of a list in the normal course of the process. I had some doubts, but after looking at the CV, I thought international electrical expertise would be valuable"*.

14.9.21. Minister Brown further indicated that Giovanni was appointed in line with Department's procedures and manuals for the appointment of Boards. As indicated above, there is no evidence that Giovanni was subjected to a shortlisting, screening and vetting process as required by the Department.

14.9.22. Giovanni's appointment as an Eskom board member therefore did not follow the department's procedures as indicated by Minister Brown.

14.9.23. Giovanni's CV from infoportal1@zoho.com to Davids is another indication of the collaboration that was taking place in board appointments at SOCs.

CONCLUSIONS RELATING TO GIOVANNI'S APPOINTMENT TO THE ESKOM BOARD

Based on the findings discussed above, we conclude as follows:

⁹ Exhibit 67

14.9.24. infoportal1@zoho.com and Davids worked closely together to facilitate the appointment of Giovanni to the Eskom board;

14.9.25. A possibility exists that Giovanni was recommended and placed at Eskom to pursue certain agendas and mandates that would benefit entities linked to the Guptas; and

14.9.26. Giovanni was not subjected to a transparent recruitment process which included nominations, shortlisting, security screening, vetting and interviews.

RECOMMENDATIONS RELATING TO GIOVANNI'S APPOINTMENT OF THE ESKOM BOARD

Based on the conclusions discussed above, we recommend that DPE considers the following:

14.9.27. DCPI should subpoena the hosting service provider of infoportal1@zoho.com in order to obtain all emails linked to the said email address. The investigation of the said emails would be in the best interest of the country and State Capture commission to establish the extent of capture conducted by infoportal1@zoho.com.

14.9.28. Davids should be subpoenaed to the Zondo Commission to inter alia:

14.9.28.1. Explain her relationship with infoportal1@zoho.com

14.9.28.2. Who she was in contact with when communicating with infoportal1@zoho.com;

14.9.28.3. Who instructed her to communicate with infoportal1@zoho.com;

14.9.28.4. Who provided her with the email address infoportal1@zoho.com.

14.9.29. DPCI to investigate if Davids, Giovanni and any other role player received gratification in terms of the Prevention and Combating of Corrupt Activities Act.

14.9.30. Investigate whether Giovanni facilitated transactions that benefited Gupta linked entities.

14.11. APPOINTMENT OF BOARD MEMBERS AT SAFCOL

14.11.10. We determined on 6 July 2015 at 9:43, Botha sent an e-mail to Davids and copied Van Wyk. Botha indicated the following in the said emails:

14.11.10.1. *"Kim, sorry for bothering you as I know you are on leave.*

I see from the list of Safcol docs that Ms Nazia Carrim is on your New Board, she already sit on the Eskom Board. Please advise.

Thank you"

14.11.11. Davids responded to Botha's e-mail on the same day at 09:53 confirming that Nazia Carrim was on the Eskom board and further that she could be nominated for other boards as well.

14.11.12. It was reported in the media that Nazia Carrim is married to Essa's cousin, Muhammed Noor Hussein.

14.11.13. There is no evidence that the SAFCOL board was subjected to a nomination, shortlisting, screening and vetting process as required by the Department.

14.11.14. We obtained SAFCOL's 2016 integrated report and noted that the following individuals were appointed to the SAFCOL board on 18 August 2015:

14.12. APPOINTMENT OF BOARD MEMBERS AT ALEKOR

14.12.1. We determined that on 16 July 2015,¹⁰ Davids sent an email to infoportal1@zoho.com from her private e-mail address styled anckimwc@gmail.com. The title of the e-mail was "Trevern's CV". In the email, Davids stated the following:

"Dear Saleem Herewith cv for Alekor board as discussed".

14.12.2. We noted that Trevern Marais Haasbroek's CV and a motivation letter purportedly prepared by Trevern and dated 15 July 2015 were attached to the said email.

14.12.3. The e-mail above is an indication that Davids was communicating to a certain Saleem/Business Man.

14.12.4. We further determined that on 20 July 2015 Davids forwarded Haasbroek's CV from her private e-mail address (anckimwc@gmail.com) to her DPE e-mail address styled Kim.Davids@dpe.gov.za.

14.12.5. On 20 July 2015 at 10:57, Davids sent an e-mail to Botha and Ruthnam. In the said e-mail, Davids inter alia indicated the following:

"Herewith attached please find remainder of List of Board names and CV's"

14.12.6. We noted that Haasbroek was one of the board members on the list.

Appointment of Richard Seleke at DPE

17.47. We determined that on 21 June 2015,¹¹ blueberries.slk@gmail.com sent an email to infoportal1@zoho.com titled "Richard CV" stating the following:

"evening sir"

please find attached my CV and supporting documents.

Regards

Richard"

17.48. We determined that on the same date i.e. 21 June 2015,¹² infoportal1@zoho.com forwarded Richard Seleke's CV to Davids on email address anckimwc@gmail.com stating "Hi Madam

As per sir. This is the candidate for dg. Is it possible for him to meet madam on Tuesday?

¹⁰ Exhibit 76

¹¹ Exhibit 100

¹² Exhibit 101

Regards”.

17.49. Attached to the email was Richard Seleke’s CV and qualifications.

17.50. We determined that on 23 June 2015 at 4:44 PM,¹³ Davids forwarded Seleke’s CV from her personal e-mail address to her DPE e-mail address.

17.51. It should be noted that at the time that Seleke’s CV was sent to infoportal1@zoho.com, the position of DG had been advertised and cancelled at least two times.

17.52. During the course of our investigations into allegations at Transnet and Eskom on behalf National Treasury, we sent Seleke questions relating to his CV that was sent to infoportal1@zoho.com. Seleke however failed to respond to questions relating to his CV being sent to infoportal1@zoho.com. Seleke previously communicated with us using e-mail address blueberries.slk@gmail.com which was the same email address used to send his CV to infoportal1@zoho.com.

17.53. Media and #Guptaleaks searches reflect that Seleke’s CV was sent from the infoportal1@zoho.com e-mail address to Duduzane Zuma.

17.54. We determined from various e-mail communication between Seleke and DPE officials that Seleke used e-mail address styled blueberries.slk@gmailcom before and after his appointment as the DG of DPE.¹⁴

17.55. We can therefore conclude that blueberries.slk@gmailcom is Seleke’s e-mail address even though he denied that it was his.

Seleke’s appointment letter

17.87. We determined that Minister Brown signed Seleke’s appointment letter for the DPE Director General position **on 27 November 2015**.

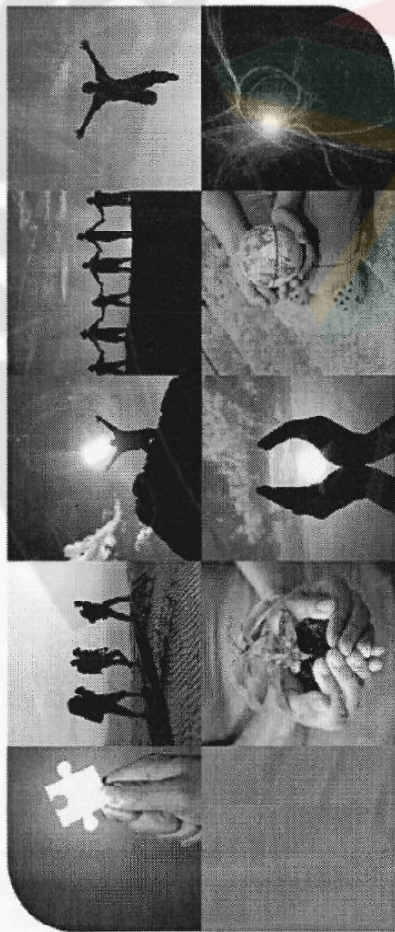
17.88. Based on our review of the email discussed above, the appointment of Seleke appears not to have been a transparent recruitment process in that a parallel process facilitated by infoportal1@zoho.com was taking place outside of DPE in identifying suitable candidates for the DG position.

¹³ Exhibit 102

¹⁴ Exhibit 103

Exhibit 36





BOARD DATABASE AND APPOINTMENT FRAMEWORK

U18



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Public Enterprises
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CONFIDENTIAL

Background and Overview

- For effective Shareholder oversight and Board management, a formal and structured process of recruitment and selection of candidates for appointment to Boards through a database of candidates for Boards.
- The intention is to introduce rigour and professionalism in the recruitment and selection process.
- This will help DPE identify and recruit quality board members able to provide strategic orientation and long-range planning to management and the State Owned Companies (SOC) and thus contribute to value creation for the Shareholder.
- The development of the Board database and appointment framework contributes towards DPE's continuous improvement of its oversight responsibilities over SOC.
- It must be noted that, as part of the SOC Reform Process, Cabinet is deliberating on the development of a Guide for the Appointment of Persons to Boards of State and State Controlled Institutions - DPE input has been instrumental in finalising the Guide.



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THE BOARD

- Boards are primarily responsible for providing oversight, advice & counsel to executive management & monitor such executive management.
- The Boards protect shareholder & shareholder value through providing its collective wisdom to help management move in new strategic directions.
- The Board must have the appropriate balance of skills & experience within its ranks to fulfill its mandate.
- The SOC must have a Board comprising majority of Non-Executive Directors (NEDs) & is led by a Chairperson who is independent.
- The Shareholder should have an ongoing process for identifying, developing or seeking skills for the Board that will optimally achieve the SOC mandate.

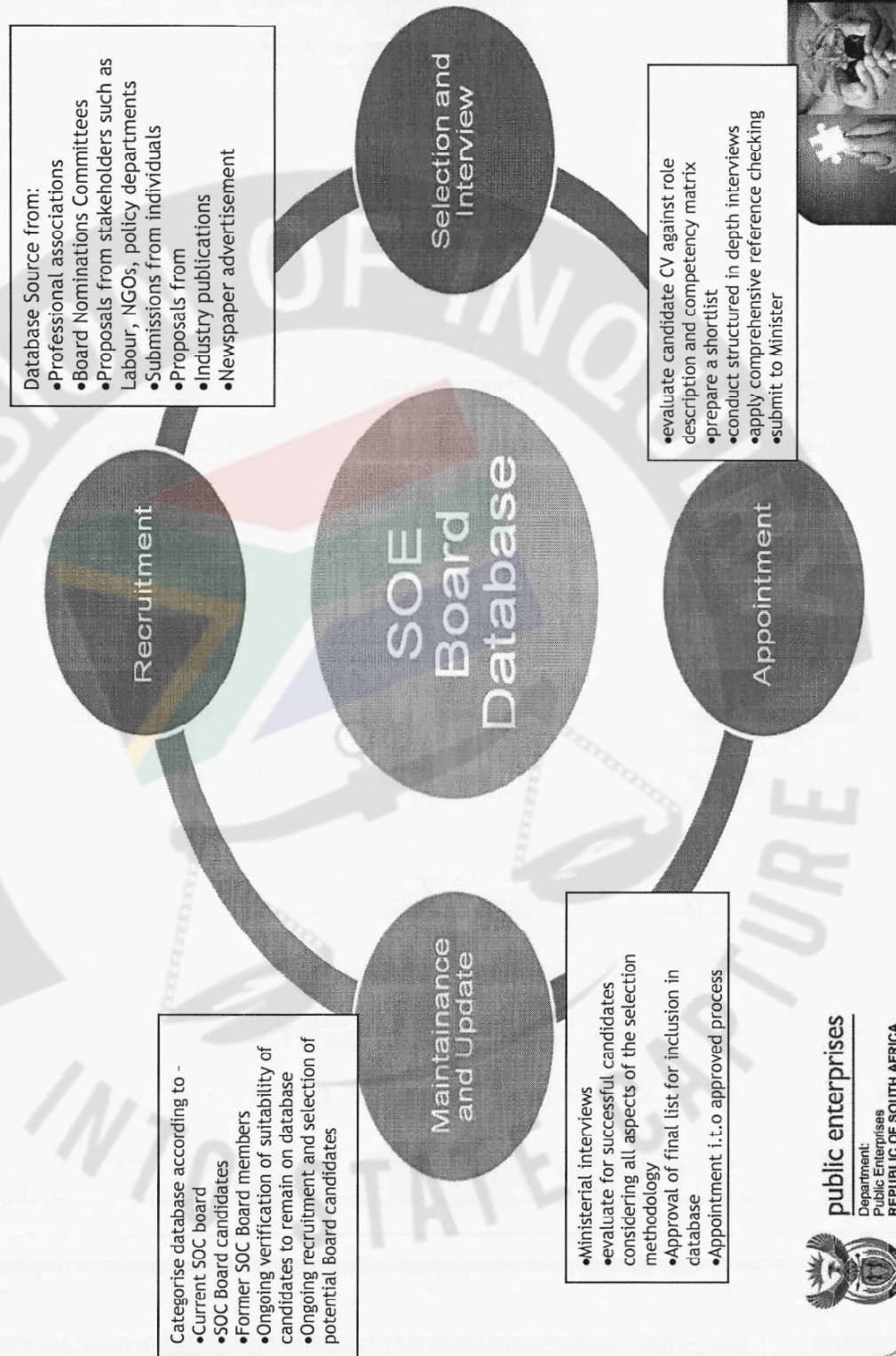


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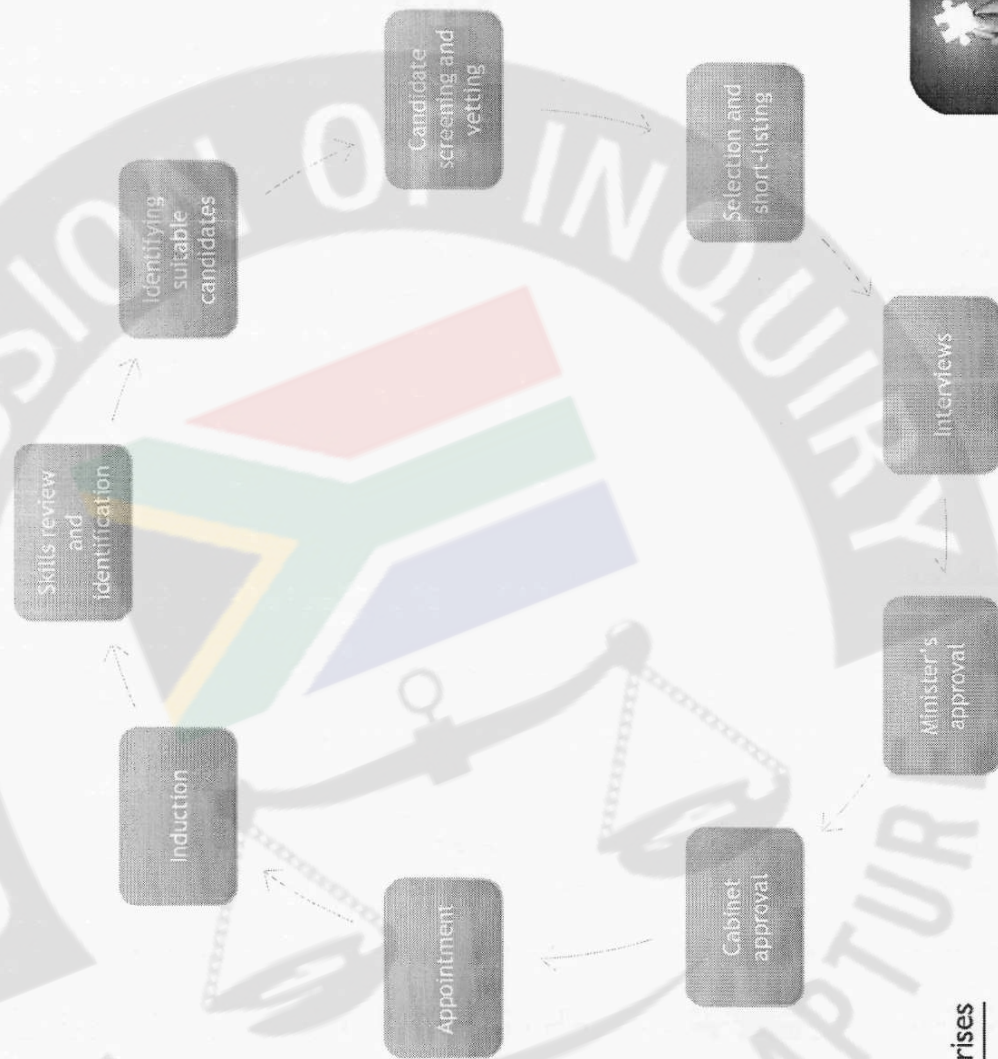


Board Appointment Process (1/3)



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Board appointment process (2/3)



Appointment Process (3/3)



Portfolio View of Board composition and vacancies

SOCs Score Board	KRA	SA Express		Eskom		Alexkor		Denel		SAFCOL		Transnet	
		2016/17	2017/18	2016/17	2017/18	2016/17	2017/18	2016/17	2017/18	2016/17	2017/18	2016/17	2017/18
Leadership	Chairperson	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	CEO	Acting	Acting	Yes	Acting	Yes	Acting	Yes	Acting	Yes	Acting	Yes	Yes
	CFO	Yes	Yes	Yes	Yes	Yes	Acting	No	Acting	Yes	Acting	Yes	Yes
	Number of Board Positions	12	12	15	15	10	10	16	16	12	12	14	14
	Number of Board vacancies	4	4	7	7	0	2	4	9	2	3	3	4
Legal and Governance	Number of EXCO Vacancies	0	0	1	1	0	2	4	2	4	1	1	0
	Exco Vacancy Position/Title	0	0	None	None	0	CEO/CFO	CEO	CEO/CFO	CEO	CEO	CEO	0
	Shareholder's Compact Signed	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Corporate Plan Submitted	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Annual Report submitted on time	No	P	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Normal Oversight													
Close Monitoring													
Urgent attention													

- The filling of Board vacancies is underway and needs to be fast-tracked
 - Eskom - 4 Interim NEDs on 23 June 2017 - Cabinet memo has been prepared and approved (July 2017)
- Only Transnet has confirmed CEO in the position
- Only SAX and Transnet have confirmed CFO in the position
- Alexkor CEO and CFO submission to Minister in process
- SAFCOL CEO submission to Minister in process
- Denel CEO and CFO submission to Minister in process - Cabinet Memo has been prepared and approved (July 2017)
- Proposed names for Eskom, Transnet and Denel are undergoing verification process.

ALEKKOR BOARD

Minimum of six (6) and maximum of ten (10) of Directors

Demographics	Africans	Whites	Indians	Coloureds	Total
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	M	F	M	F	M	F
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Total number of Board Members	2	3	2	0	1	0	0	8
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Vacancies

2
2 Acting EDs

Alexkor has submitted candidates for the appointment for CEO and CFO for Minister's consideration during July 2017.

Should Mr Bansi revert back to NED, the Board will have one vacancy.

Skills gap

Mining, Chartered Accounting, Environmental Specialist

Restricted

1

DENEL BOARD (Summary status of NEDs and EDs)

Minimum of three (3) and maximum of sixteen (16) of Directors

	Africans		Whites		Indians		Coloureds		TOTAL
Board members	M	F	M	F	M	F	M	F	
Total	5	3	0	0	0	0	0	0	8

Vacancies

7 NEDs

2 Acting EDs

The appointment of GCEO and GCFO was submitted to Cabinet Committee on ESEID for consideration on 26 July 2017 and withdrawn at the meeting. The Minister is in the process of consultation prior to resubmission at Cabinet. It is anticipated that the next submission date to Cabinet will be 20 September 2017.

Skills gap

CA, Defense Industry expertise, Project Management and Engineering

Restricted

2

ESKOM BOARD

Minimum of three (3) and maximum of fifteen (15) Directors

Demographics	Africans		Whites		Indians		Coloureds		Others	Total
	M	F	M	F	M	F	M	F		
Total number of Board members	3	2	0	0	3	0	0	0	1 Male Swiss National	9
Vacancies	6 NEDs 4 Interim NEDs appointed on 23 June 2017 – awaiting consultation with Cabinet 2 Acting EDs GCFO placed on suspension pending investigation Former GCE application is before the courts pending settlement agreement									
Skills gap	CA, engineering, Legal and regulatory Restricted									

SOUTH AFRICAN EXPRESS BOARD

Minimum of three (3) and maximum of fifteen (12) Directors

Demographics	Africans		Whites		Indians		Coloureds		Others	Total
	M	F	M	F	M	F	M	F		
Total number of Board members	3	3	1	0	0	0	1	0	1 Male Indian National	9

Vacancies

3
2 NEDs and 1 ED (Acting CEO: Mr Victor Xaba)

Skills gap

CA, economics and/or Business Management, turnaround strategist



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Restricted



SAFCOL BOARD

Minimum of six (6) and Maximum of twelve (12) Directors

	Africans		Whites		Indians		Coloureds		Total
	M	F	M	F	M	F	M	F	
Board members 7 NEDs & 2 EDs	4	3	1	0	0	1	0	0	9

Vacancies

3 NEDs

NED Acting as ED (Acting CEO): Mr Harvey Theron

The CFO was placed on suspension pending disciplinary hearing on 1 June 2017. Letter from Chairperson in August 2017 indicates that Ms. Pillay has tendered her resignation and it has been accepted by the Board, who would need to undertake a recruitment process promptly

Skills gap

Forestry, Environmental Management, financial accounting

Restricted

TRANSNET BOARD

Minimum of ten (10) and maximum of fourteen (14) Directors

	African		Whites		Indians		Coloureds		Total
	M	F	M	F	M	F	M	F	
Board members									
	3	2	2	0	1	0	0	1	9

Vacancies

5 NEDs

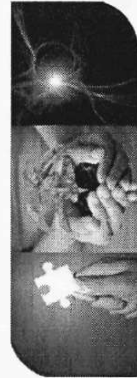
Skills gap

CA, Rail engineers, auditing



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Restricted



Challenges of the Board Appointment process (1/3)

- Acknowledgement is given to the fact that the process is two fold in that the administration of the database, verification process of nominees is dealt with by LGR;
- The process of final selection for verification and consultation is seen as political and once the final list is received the Department processes the decision memo and Cabinet memo for approval;
- However, DDGs have expressed discomfort that risk raised on nominees are not taken into account;
- The vacancies on the Boards have not been filled:
 - Minister is in the process of taking possible nominees to Cabinet for approval;
 - However, the process is taking longer than anticipated;
 - The process itself has challenges as the database is inadequate
 - Only one advert every two years;
 - Continuous additions to the database through out the year is acceptable;

Challenges of the Board Appointment process (2/3)

- Cont....
 - Allegations that names even if from the database are questioned when linked to the Guptas
 - The full circle of steps in the process are subject to approval, while some steps in the process such as setting up a panel to interview the nominees and verification of references are not done.
- All Board composition is above the minimum in terms of the MOI. Hence, the numbers of vacancies in itself is not an indication of a dysfunctional Board;
- However, the trend of inability to fill vacancies is concerning.



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Challenges of the Board Appointment process (3/3)

- EXECUTIVES:
- CEO recruitment process for Alexkor, SAFCOL and Denel are underway;
- CFO recruitment process for Denel is in its final stages of approval;
- CFO recruitment for Alexkor has been received and submission is being prepared; and
- CEO for SA Express became vacant from 1 April 2017 with Mr Victor Xaba being appointed to act in the position until the optimal group structure is in place.



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Way forward

- The full spectrum of the board appointment process must be implemented to ensure that skills match the required competencies for the Boards;
 - Establish a panel to interview candidates to make recommendations to Minister;
 - Consider DDG: LGR, relevant sector DDG (DDG: EE, DDG: ME, DDG: TE); Chief of Staff, CD: Governance,
 - Candidate reference check should be included in either service provider or panel duties;
 - Increase frequency of advertisement to annual as opposed to every two years;
 - Determine level of materiality of conflict of interest to appointment;
 - Panel to agree on combination or weighting of skills, expertise, awareness of duties/liabilities of directors and government policy;
- Combination of demographic representation of the country is ideal to be fair; and
- Only 1 third of rotation as per the MOI;



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Exhibit 43



Orcilla Ruthnam

From: Annelize Van Wyk
Sent: Monday, May 11, 2015 1:23 PM
To: Jumarie Botha; Kim Davids; Orcilla Ruthnam
Cc: Matsietsi Mokholo
Subject: Re: 3 x Boards- SA Express- DENEL- ESKOM

Noted.

Not from my Samsung Galaxy smartphone

----- Original message -----

From: Jumarie Botha
Date: 11/05/2015 13:22 (GMT+02:00)
To: Kim Davids, Orcilla Ruthnam
Cc: Annelize Van Wyk, Matsietsi Mokholo
Subject: RE: 3 x Boards- SA Express- DENEL- ESKOM

Dear Kim

Noted, and thank you for this information.

Regards

Jumarie Botha
Administrative Secretary
Head: Cabinet Services
Office of the Minister

+27 (0)12 431 1146 | +27 (0) 21 4696756 | +27 (0)83 675 1732 | jumarie.botha@dpe.gov.za
1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 431 1000



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Please consider the environment before printing this email.

Click on the following link to view directions to DP&E <http://www.dpe.gov.za/home.asp?id=1053>

From: Kim Davids
Sent: 11 May 2015 01:19 PM
To: Jumarie Botha; Oricia Ruthnam
Cc: Annelize Van Wyk; Matsietsi Mokholo
Subject: 3 x Boards- SA Express- DENEL- ESKOM
Importance: High

Hi All,

As discussed with Minister and as per her direction herewith please find the SA Xpress Board nominations for CM.

SA Xpress Board

	Current and Proposed Chair
1. Mr George Mothema -	New
2. Mr Trevor Abrahams-	Current
3. Mr Ezrom Mabyana-	Current
4. Ms Boni Dibate	New
5. Mr Phetulo Ramosebudi	New
6. Mr Rajest Naithani	New
7. Ms Judith Nomvula Nkabinde	New
8. Ms Given Refilwe Sibiya	New
9. Ms Mamoroke Lehobye	New

Composition of SA XPRESS BOARD as follows in SKILLS:

- Aviation	-3
- Corporate Governance	-5

- Finance, Risk & Compliance -3
- Management -6
- Board Experience -5
- Advisory/Structuring -2
- Legal Services -1
- Leadership -5
- Public Sector -6

DENEL Board for CM

- | | |
|--------------------------------|---------------------|
| 1. Mr Daniel Mantsha | New- Proposed Chair |
| 2. Mr Thamsanqa Msomi | New |
| 3. Mr Johannes Motseki | Current |
| 4. Mr Tauyame Mahumapelo | New |
| 5. Ms Silence Ntshaveni | New |
| 6. Ms Pinkie Mahlangu | New |
| 7. Ms Mpho Kgomongoe | New |
| 8. General Vusi Nkabinde (rtd) | New |
| 9. Ms Refiloe Mokoena | New |
| 10. Ms Nonyameko Mandindi | New |

Composition of DENEL BOARD as follows irt SKILLS:

- Defence & Security -3
- Corporate Governance -6
- Finance, Risk and Compliance -3
- Management -7
- Board Experience -3
- Advisory/Structuring -6
- Legal Services -4
- Leadership -7
- Public Sector -7

Eskom Additional Board Members x 2

1. Mrs Miriam Cassim - New
2. Mr Giovanni Leonardi

Composition x 2 Members as follows in Skills

- | | |
|-------------------------------|----|
| 1. Energy & Technical | -1 |
| 2. Corporate Governance | -2 |
| 3. Finance, Risk & Compliance | -1 |
| 4. Management | -2 |
| 5. Board Experience | -2 |
| 6. Advisory/Structuring | -1 |
| 7. Leadership | -2 |

Please ensure the changes are effective accordingly and please note the additional summary of Skills as per the board nominations for ease of reference.

Ms Kim Davids

Executive Personal Assistant: Office of Minister L Brown

+27 (0)12 431 1098 | +27 (0)12 431 1039 | Kim.Davids@dpe.gov.za | +27 (0)72 700 8067
1090 Arcadia Street | InfoTech Building | Hatfield | Pretoria | Switchboard: +27 12 431 1000

+27 (0)21 469 6762 | +27 (0)21 465 6762 | 120 Plain Street | 16th Floor | Cape Town |



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Click on the following link to view DPE website & email disclaimer <http://www.dpe.gov.za/home.asp?id=10>
Click on the following link to view directions to DPE <http://www.dpe.gov.za/home.asp?id=1053>

Exhibit 56



Daniel Maruatle

From: Kimberly Davids <anckimwc@gmail.com>
Sent: Friday, 17 July 2015 15:47
To: Kim.Davids@dpe.gov.za
Subject: Fwd: Re: Fwd: Response on the war room assessment Assessment

----- Forwarded message -----

From: "Business Man" <infoportal1@zoho.com>
Date: 17 Jul 2015 15:46
Subject: Re: Fwd: Response on the war room assessment Assessment
To: "Kimberly Davids" <anckimwc@gmail.com>
Cc:

please remove the part about guidance from IMC...

==ase add a clause whereby its is stated that significant changes have now been made and that you need more time before presenting to the IMC so request the IMC be postponed for a quarter to allow the changes to take effect

This protects from unnecessary issues being raised in this forum now

---- On Thu, 16 Jul 2015 20:46:30 +0400 **Kimberly Davids**<anckimwc@gmail.com> wrote ----

Herewith draft letter. ...your views please. Thanks

Kim Davids

----- Forwarded message -----

From: "Kim Davids" <Kim.Davids@dpe.gov.za>
Date: 16 Jul 2015 6:42 PM
Subject: Fwd: Response on the war room assessment Assessment
To: "anckimwc@gmail.com" <anckimwc@gmail.com>
Cc:

Kim Davids
Personal Assistant to
Minister L Brown
Ministry of Public Enterprises

----- Original message -----

From: Matsietsi Mokholo
Date: 16/07/2015 17:39 (GMT+02:00)
To: Lynne.brown5@me.com
Cc: Lynne Brown , Annelize Van Wyk , Makgola Makololo
Subject: Response on the war room assessment Assessment

Dear Minister,

Please find attached a draft response letter to the war room for your consideration.

Regards,
ADG



Exhibit 57



Daniel Maruatle

From: Kimberly Davids <anckimwc@gmail.com>
Sent: Wednesday, 19 August 2015 16:19
To: Kim.Davids@dpe.gov.za
Subject: Fwd: Q&A revised
Attachments: Q&A revised.docx

Kim Davids

----- Forwarded message -----

From: "Business Man" <infoportal1@zoho.com>
Date: 19 Aug 2015 3:59 PM
Subject: Fwd: Q&A revised
From: "Kim Minni" <anckimwc@gmail.com>
Hi

Amended



QUESTION AND ANSWERS

Q: SOCS have recently been in the news for all the wrong reasons. Give us your view on how to change this pattern. How are the SOCS in your portfolio performing?

A: I agree. Recent publicity and media coverage of the SOCs have not been entirely positive and the SOCs are under pressure to perform. There is no argument to the fact that SOCs are critical in driving Government's plans to revitalize the economy, create jobs and train people - not only for the SOCs but to ensure continued pipeline of critical skills required by the country.

I am happy to report that all 6 SOCs in my portfolio, Transnet, Denel, Alexkor, Safcol, SAX and Eskom, have reported profits for the year under review. These profits are not yet at the level I require but they are an indication that these entities are making significant improvements and are on a positive growth path.

Denel and Transnet have had major successes. Transnet's revenue increased by 8%, to R61, 2 billion in 2014/15, while Denel's operating profit increased by 50%. Denel's achievement is remarkable especially if we take into account the precarious position it was in a few years ago. This is the fifth successive year that Denel has reported a profit.

SAX is on track to strengthen its solvency position. The company will report an operating profit at its AGM next month. I must add that the austerity measures we have introduced are beginning to have a positive effect. These measures include the closure of loss-making routes and savings of R140million. I anticipate that these austerity steps will lead to an overall saving of about R240million by the end of the 2015/16 financial year. Despite its challenges, the airline continues to be a leader in transformation through the development of young pilots and technicians to protect South Africa's youth across all racial divides.

Q: SOC reform process makes provision for a robust Shareholder Model. Is it sitting on your desk? Can you give us an idea what you are looking at?

A: Yes, the Shareholder Management Model is taking shape and I am excited with what is being proposed. The reform process by its nature is evolutionary and therefore we have adopted a position where the concept paper that we are working on must be comprehensive. Hence it was necessary that my Department consults widely on the nature of the reforms and the model that will ultimately culminate in the over-arching legislation.

Q: Cost overruns at Medupi, Kusile and National Multi-Purpose Pipeline are of concern. They are all in your portfolio. What are you doing to ensure this is stopped?

A: Interventions have been made and I will ask the Eskom and Transnet CEO's to provide further details

Q: How critical are SOC's contribution to the GDP, skills training and job creation

A: The six SOCs within the DPE's portfolio employ 107 335 people (Eskom – 41 787; Transnet – 55 506; Denel – 6 931; SAFCOL – 1 716; SAX – 1 095 and Alexkor – 300) These SOCs contribute significantly to the GDP. If the revenue approach is used to estimate the contribution, this is estimated at just over 10 percent of the GDP.

In the 2014/15 financial year, the SOCs collectively enrolled 5 286 new trainees in various scarce and critical skills.

This represented 790 artisans, 616 technician, 387 engineers and 11 Cadet Pilots. 3 320 trainees were enrolled in various sector specific critical skills programmes.

Eskom collaborated with its supplier network to train 1 916 matriculates in artisan trade. 541 graduates were placed in experiential programmes.

One area that we are also paying attention to is Transnet's locomotives acquisition programme. The contractual arrangement with the suppliers is that of the 1064 locomotives, only 40 will be imported, while the rest will be built and assembled across various parts of South Africa including Koedoespoort and Durban. This is to ensure that we create local beneficiation out of this contract, and advance this sector of our economy.

In addition Eskom and Transnet's capital expenditure programmes continue in strengthening the investment levels by public entities alongside other SOCs such as ACSA and SANRAL. This is despite the subdued economic climate where even investment by the private sector is constrained.

Q: What progress is being done to stabilise the grid and minimize the impact of load shedding

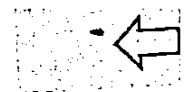
A: I have been briefed by the Board on this and will ask the Eskom CEO to provide us with a more detailed answer

Q: The Denton's report is done, what is the feedback on the report?

A: The report was handed over to Eskom and the Board is still studying it. The Board will then share their recommendations with me and the Department. Only then will I be able to express a view on the contents and the Board's recommendations

Exhibit 58



**Sibongile Mbeje**

From: Kim Davids <Kim.Davids@dpe.gov.za>
Sent: Friday, 28 August 2015 09:08
To: anckimwc@gmail.com
Subject: Eskom Memo
Attachments: Eskom Memo.pdf

Morning, as discussed

Ms Kim Davids

Executive Personal Assistant to
Minister: Lynne Brown
Ministry of Public Enterprises

Mobile: +27 72 700 8067 | Tel: +27 (0)12 431 1098 | Fax: +27 (0)12 431 1039 | Kim.Davids@dpe.gov.za
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120 Plein Street | 16th Floor | Parliament | Cape Town | Switchboard: +27 (21) 469 6760



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DECISION MEMORANDUM

TO : MS. LYNNE BROWN, MP

MINISTER

FROM : MS. MAKGOLA MAKOLOLO

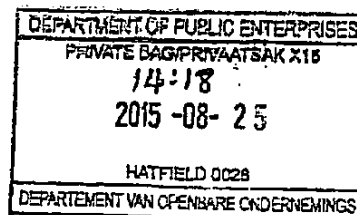
ADDG: ENERGY ENTERPRISE

FILE REF : 15/1/R

IDMS REF : 182780

SUBJECT : DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY
THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND
CHALLENGES EXPERIENCED BY ESKOM

DATE : 14 AUGUST 2015



1. PURPOSE

- 1.1. This memorandum serves to provide the Minister with the Department's analysis and view of Eskom's Preliminary Report ("Report") on the status of the Eskom business and the challenges experienced by Eskom. Recommendations on the way forward are also posited for the Minister's attention.
- 1.2. A letter to the Eskom Chairperson has also been prepared for Minister's signature (Annexure "A").

2. SUMMARY

2.1. Key Report Findings

Poor Plant Performance

- (a) Lack of maintenance, deferral of outages and quality of maintenance undertaken

are the primary cause of an increase in plant outages and unreliability.

Lefapha la Dikgwebo tsa Puso • Lefapha la Dikgwebo tsá Mmusó • UMnyango wezinkampani zikaHulumeni • Muhasho wa Mabindu a Muvhuso • Departement van Openbare Ondernemings • Kgoro ya Dikgwebo tsá Setshaba • Ndzwululo ya Mabhindzu ya Mfumo • LiTiko leTemabhtzinisi aHulumende • ISebe lezaMashishini oMbuso

- Confidential -

19 AUG 2015
04185

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

- (b) The cost of maintenance contracts with Original Equipment Manufacturers (OEMs) was viewed to be much higher than industry norms.

Delays and Cost Overruns on New Build Programme

- (c) The findings of the Report are aligned to the Department's knowledge and the independent review commissioned by the Department on the build programme in 2013.
- (d) Final reporting from Exco to the Board on the timelines for the build projects including the associated confidence level for risks materialising was sanitised given that some departments had previously requested extensions to these timelines before the Board was briefed.

Primary Energy Costs

- (e) Eskom Coal price increases are largely due to (i) greater volumes from short- to medium term contracts and the logistics costs associated (ii) escalations in long term contracts, (iii) increased cost of mining, (iv) BEE requirements for coal supply and (v) global demand for steam coal.
- (f) A fair process might not have been followed in the appointment of short-term diesel supplier.
- (g) Primary Energy Division (PED) hardly ever solicits advice from Legal Services.

Finance

- (h) Eskom's financial outlook may not improve as per the latest "going concern" model if performance does not improve from previous years.
- (i) The identified causes of the financial challenges include, among others (i) reduced plant performance which warranted high reliance on expensive peaking plants, (ii) Eskom's weak approach to its cost base, exacerbated after the MYPD3 decision, (iii) new build cost escalations.

Legal

- (j) Notwithstanding the fact that Eskom procurement processes comply with applicable legislation, there appears to be high levels of misalignment between Eskom policies and industry practice.
- (k) Anomalies in the procurement of coal contracts as some of these contracts were awarded without following appropriate tender processes and some contracts were awarded without Eskom having concluded coal supply agreements with suppliers.

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

- (l) Further, procurement of diesel was found to be a problem due to the fact that (i) prices paid to some non-contracted suppliers were exorbitant, (ii) prices were not negotiated since sourcing occurred under an "emergency situation".
- (m) Security risks to the Eskom's National Key Point sites have been identified. Responses to security issues are a knee-jerk reaction and takes place after the breaches have occurred.
- 2.2. According to the Report, the organisational structure of Eskom has not positioned the entity strategically and appropriately to respond to the business challenges effectively. More detail in this regard is required to comprehensively qualify this finding. The Report further alludes to widespread silo mentality within Eskom, which comes out in disjointed planning assumptions and procurement inefficiencies.
- 2.3. As identified in the Report, poor procurement and contracting practices predominantly contribute to the widespread cost overruns and overall inefficient operations. It is very disappointing to note of the identified rampant inefficiencies that are still embedded within the business especially considering that the Department approved Eskom's "Back to Basics" PFMA application in 2012 aimed at streamlining operations and improving efficiencies across the organisation.
- 2.4. The Report sheds light on issues that the Department may not have been privy to such as the ability of the Internal Audit, and Audit Risk Committees to carry out their mandates as well as the effectiveness of procurement processes and contract management. However, in many cases, the Department has been aware of the issues and expected that the Report would take the findings a step further in allocating responsibility and accountability to specific individuals. This could very well have been informed by the preliminary nature of the findings.
- 2.5. Based on the Report, it appears that the Board in some instances was not fit or firm to carry out its fiduciary duty. This is seen in the Board's comprehension of the financial position the company and the extent of the risks in the generation plant and build programme. Whether this comprehension or lack thereof speaks to its capabilities or its inclination to lean on Shareholder bailout requires further probing.
- 2.6. It is the team's view that further probing or investigations be undertaken to take the findings forward and the Eskom Board should be informed accordingly. The Energy Enterprise (EE) unit had already planned on carrying out a project to unpack Eskom's

Handwritten note:
 How can you say this? This Board has been there for quite

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cost structure during this financial year. This will include a deep dive into the primary energy costs (coal and diesel contracts) among other initiatives.

3. ANALYSIS AND FINDINGS

3.1. POOR PERFORMANCE OF THE GENERATING PLANT

3.1.1. Report Findings

(a) State of the Generation fleet

The Report findings on the state of Eskom's Generation plant are that (i) the average age of fleet is over 30 years (as is 70% of fleet in Europe); (ii) Eskom's plants were run at high utilisation levels from the mid-90s with plant availability target of 90% being the order of the day (90:7:3 strategy); (ii) low levels of maintenance than ideal were implemented as there was significant underinvestment vs best practice. These are also shared by the Department.

(b) Underlying causes and Impact of Strategies

- i. Lack of maintenance, deferral of outages and quality of maintenance undertaken are the primary cause of an increase in plant outages and unreliability.
- ii. Various initiatives leading to the Generation Sustainability Strategy (80:10:10 Strategy) have been embarked upon to improve plant performance and restore integrity of plant. UCLF level still unfavourable as the required levels of maintenance are still not being effected due to lack of adequate outage space.

(c) Pricing of Maintenance contracts

- i. The cost of maintenance contracts with OEMs were viewed to be much higher than industry norms and are characterised by cost overruns and are not performance based.

3.1.2. DPE Concerns

- (a) The Department shares the same understanding of the causes of the poor plant performance. However, given that the average age of the Eskom fleet in itself is neither peculiar nor unique when compared to global trends, how Eskom utilised and maintained its plant over the years (especially under the 90:7:3 strategy) is the major driver of the higher than ideal unplanned outages and a significant deviation away from best practice.

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

- (b) The evolution of Eskom's approach to generation plant maintenance is a major contributor to the state of the plant. This evolution was informed by various factors, most of which are underpinned by poor forecasting and a deviation from prudent operator model. Protecting the asset base should always be the top priority especially considering the Regulator has historically provided Eskom with capex for the required maintenance of which Eskom systematically underutilised.
- (c) Whilst it is important for the Shareholder to have an understanding of the status of the operations and the effectiveness of Eskom's response or lack thereof, it is also equally important to take stock of the role the Shareholder played in the evolution of Eskom's approach to generation plant maintenance – the "keep the lights on" (KTLO) era.
- (d) To the Department's knowledge, Eskom's 80:10:10 Strategy was implemented in August 2013 and not 2014 as detailed in the Report. The benefit realisation phase was pegged at 18 months (reached in 2014) with sustainability reached 72 months thereafter. Instead, December 2014 was characterised by high outages and prolonged load shedding. The assertion in the Report that the 80:10:10 Strategy has been successful cannot be supported. Based on Eskom's own forecast, if they had continued on a 6% maintenance strategy (i.e. 6% PCLF), UCLF would exceed 15% in 2014/15. However the same UCLF was recorded whilst Eskom was implementing a 10% maintenance strategy (i.e. higher planned maintenance levels of 10%). Furthermore, in April 2015 alone, the UCLF recorded was over 17%, with the year to date (three months to June 2015) level peaking at 16.5%.
- (e) The Department however supports the Report's recommendation for the 80:10:10 Strategy to be consistently reviewed especially considering that adequate space for maintenance is not available and the levels of philosophy based maintenance are not yet in effect.
- (f) Technical reports to the Board submitted by the Exco may have compromised the Board's ability to resolve challenges due to the complexity and because recommendations were unclear. What is important to the Shareholder is to ensure that the capacity of Board is enhanced so as to support the core function of the business (the strengthening of the Board in this regard has since been effected)

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

and for Exco to ensure clear and sanitised reporting to the Board to empower decision making.

- (g) It is disconcerting to note that maintenance contracts are overpriced, have suffered consistent cost overruns and are not performance based given the materiality of this area on overall business sustainability. There is lack of due diligence exercised by Management and Board in this manner which must be addressed.

3.1.3. Concluding Remarks

- (a) The practice of deviating away from prudent operator principles must be systematically rooted out of Eskom's planning. The Board's fiduciary duty in protecting the company asset base must always be upheld in as far maintenance strategies are developed, implemented and funded, regardless of external pressures and influences.
- (b) The Department is cognisant of the scope of the investigation and the fact that it was commissioned by and for the Board. That being said, a number of issues raised in the Report require further probing to benefit the requirements of the Shareholder. For example:
- i. The Report suggests that the Board was consistently kept abreast of the state of the fleet (and the progress on the build programme). That being said, it appears that the Board has not always informed the Shareholder formally and in a timely manner when risks to the generation plant (and build programme) materialised.
 - ii. It is stated that the VGB report on Eskom Outage Movement which was issued in September 2012, raised serious concerns with the postponement of outages and highlighted the risk to the plant availability from such practice. It is important to note that this was before Eskom submitted its MYPD3 application to NERSA. At this point, the Department would have expected that given the significance and materiality of this risk that the maintenance assumptions (and plant availability levels) in the MYPD3 application would need to be revised and the Department informed accordingly and timeously. It cannot be overemphasised how the operational philosophy has been a departure point with NERSA since then and the impact this has going forward.
 - iii. Furthermore, Eskom provided aspirational EAF values (80%) to DOE in the review of the IRP2010 which in itself compromised the planning of new

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

supply options and extent of demand side reduction required to avert or reduce the level of load shedding. The aspirational timelines for the build programme further exacerbated the situation.

- iv. The Report suggests that the energy challenges will last much longer than the two to three year period that Eskom has been communicating. Eskom must provide the confidence level associated to this pronouncement and revise projections to the Shareholder if necessary.

- (c) A deep dive into the organisational structure of Eskom and silo mentality of its divisional activities is required. The Report states that outage execution, a core function of the Generation business, was hampered by the organisational structure and new outage process of 2011/12. More detail on this is required as the Department's assertion has always been that the organisation is not streamlined to carry out its mandate and that there is no cohesion between and within various divisions.

- (d) The Report sheds light on the controls and systems in place for compliance and their effectiveness. Given that the level of irregular expenditure (which for the 2014/15 was around R700 million) remains unacceptable it warrants that the Internal Audit and Audit and Risk Committees be empowered to carry out their mandates effectively so as to deter such behaviour. The Shareholder expects that the Board will implement the recommendation made in this regard.

- (e) It is clear that without a deep dive into "red flag" areas such as the coal and diesel procurement (i.e. analysis of existing contracts in detail); those responsible for mismanaging funds will not be held to account and the behaviour will not be arrested. Until such time that Eskom's inefficiencies are addressed, it will be difficult to have a discussion on the cost-reflectiveness of the tariff.

- (f) Further probing is required into whether it was ineffective management of the revised outage execution plan of 2011/12 that contributed to the high levels of UCLF or the plan itself. The materiality of this planning on the rest of the business is significant.

3.2. DELAYS AND COST OVERRUNS OF THE NEW BUILD

3.2.1. Report Findings

- (a) The findings of the Report are aligned to the Department's knowledge and the independent review commissioned by the Department on the build

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

programme in 2013 with reference to the status, causes of the delays, current status and lessons learnt.

3.2.2. DPE Concerns

- (b) Reporting from Exco to the Board on the timelines for the build including the associated confidence level for risks materialising was insufficient and sanitised - extensions to the timelines reported to Board were being requested in other parts of the business but these were not considered.
- (c) Of notable mention is that reporting to the Board on the timelines for the new build was based on optimistic timeframes and the impact of the risks was not pronounced accordingly. That being said, it is also clear from Board meeting minutes that the Board in turn did not inform the Shareholder (formally) in a timely manner.

3.2.3. Concluding Remarks

- (a) Exco's reporting appears to have compromised the Board's effectiveness in responding to the risks and subsequently delayed the flow of critical timelines to the Shareholder. The most significant casualty in this instance is the impact that optimistic timelines on the build have had on DOE's planning and NERSA's tariff determination.
- (b) Eskom consistent reporting of unrealistic and optimistic timeframes has cost both Eskom (i.e. liquidity position, maintenance programme, reputation) and the country at large (i.e. reduced economic growth, load shedding, reputation) greatly.

3.3. PRIMARY ENERGY COSTS

3.3.1. Report Findings

- (a) Due to lack of investment in the cost plus mines and the historical increase in demand, cost plus coal contracts fell below contracted levels leading to an increasing reliance on short to medium term contracts to make up the balance. Eskom's coal supply mix is made up of 38% cost plus, 37% short-to medium term and 25% fixed price.
- (b) Eskom Coal price increases largely due to (i) greater volumes from short-to medium term contracts and the logistics costs associated, (ii) escalations

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

in long term contracts, (iii) increased cost of mining, (iv) BEE requirements for coal supply and (v) global demand for steam coal.

- (c) More findings are reported and discussed under Section 3.5 (Legal).

3.3.2. DPE Concerns and Concluding Remarks

- (a) The Department notes the factors contributing to the coal price increases; however, the contribution of each factor was not addressed in detail. Further probing should be made on this so as to equip the discussions around investment in coal mines, the Department's emerging miner's policy and road to rail migration programme going forward.
- (b) Whilst the Department is not advocating for a "witch hunt" per se, it is important that actionable evidence be obtained through the final phase of the Report or a further forensic investigation commissioned by the Shareholder. The Department has been of the view that there are significant irregularities in the coal and diesel procurement that must be pronounced. The Report does not take this assertion further. Without knowing how the Board will internalise the recommendations of the Report (once finalised), it is difficult to conclude at this stage that the findings of the Report will direct the right behaviour within the business, especially as it relates to transparency.
- (c) It is important that the Department requests an action plan on primary energy procurement from the Board. In parallel, through the EE unit's project, an independent expert (s) will be appointed to review Eskom's cost structure, including assessing the cost drivers for efficiencies. This will include a deep dive into the coal and diesel contracts.

3.4. FINANCE

3.4.1. Report Findings and Recommendations

- (a) The Report presents assumptions that underpin Eskom's cash flow position, which in some instances differ from the Corporate Plan.
- (b) Eskom's financial outlook may not improve as per the latest "going concern" model if performance does not improve from previous years.

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

- (c) The identified causes of the financial challenges include, among others (i) reduced plant performance which warranted high reliance on expensive peaking plants, (ii) Eskom's weak approach to its cost base, exacerbated after the MYPD3 decision, (iii) new build cost escalations.
- (d) The Report concluded that Exco's reports to the Board were credible and factually correct; however, the executives were unresponsive in carrying out their duties, a general lack of commitment and discipline.

3.4.2. DPE Concerns

- (a) The Department especially is concerned with the lack of resolve in addressing Eskom's cost structure. An independent review of Eskom's cost base will be commissioned by the Department in this financial year – the terms of reference for which have been developed.
- (b) The Department has been of the view that the Business Productivity Programme (BPP) is not effective. The Report shares this view and qualifies the reasons for the low impact of the programme across the business.
- (c) The culture within Eskom of looking externally for their challenges to be addressed must be arrested. This behaviour was also observed at Board level especially as it related to the financial challenges the company faced. A paradigm shift is required across the business, top-down approach.

3.4.3. Concluding Remarks

- (a) The Report states that the decision to procure additional diesel from ad hoc suppliers contributed to the chronology of Eskom's financial problems. It is important to highlight that the Department approved Eskom's Generation Maintenance Strategy in 2011 which was aimed at keeping the lights on and conducting maintenance. The various strategies in support of this were submitted to the Department and included the need for additional purchases to run peaking plants. This necessitated the procurement from ad hoc suppliers, which the Department has since learned (from the Report) was characterised by lack of transparency and due diligence. Although this level of detail (i.e. contracts) was not requested by the Department at the time, it was the Board's fiduciary duty to ensure that the procurement process was fair and cost effective. It may be necessary for the Department to review or strengthen its PFMA application process.

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- (b) It is very disconcerting to note that Internal Audit is operating on an incomplete mandate which disempowers its function and has in fact contributed directly to the financial challenges the company faces. This is a finding against the Board which must be taken seriously.
- (c) The lack of commitment, discipline and due diligence, in general, to effect cost efficiency is suggested at the highest level of accountability within Eskom. Further probing from the Shareholder preferably, which extends to the previous and current Board and Exco is necessary to hold individuals to account. In the absence of a specific "example" being held to account, the behaviour may not be rooted out.
- (d) The Report fails to make any linkages to the regulatory framework which is very odd and of concern.

3.5. LEGAL

3.5.1. Integrity of Procurement Processes

Report Findings

3.5.1.1. Notwithstanding the fact that Eskom procurement processes comply with applicable legislation, there appears to be high levels of misalignment between Eskom policies and industry practice, particularly on using the same teams for scoping and designing commercial strategies, whilst also evaluating bids.

3.5.1.2. Anomalies in the procurement of coal contracts as some of these contracts were awarded (i) without following appropriate tender processes, (ii) some contracts were awarded without Eskom having concluded coal supply agreements with suppliers, (iii) Primary Energy Division (PED) which is responsible for coal sourcing seems to ignore policies, does not elevate matters to the Board for decisions and does not even consult with Eskom Legal Department whenever contracts are amended, (iv) although negotiations with coal suppliers is done by a team, the award of contracts is done by one person.

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

3.5.1.3. Further, procurement of diesel was found to be a problem due to the fact that (i) prices paid to some non-contracted suppliers were exorbitant, (ii) prices were not negotiated since sourcing occurred under an "emergency situation", (iii) there is no proper implementation and management of Conflict of Interest policy which results in employees benefitting from tenders through indirect relationship with suppliers, and tender processes are sometimes influenced by senior employees.

3.5.1.4. **Delegation of Authority:** Over the years there have been changes to the organisational structure of the company and it has not been aligned to the Delegation of Authority (DOA). This is particularly noticeable in PED position of General Manager which has been replaced by a position of Senior General Manager with no decision making power.

3.5.1.5. Eskom Supply Chain Management processes are generally inadequate and it appears different Units are working in silos, and this causes inefficiencies and possible manipulation of the system. Further, flaws and weaknesses in contracts have been identified e.g. modifications in the T-Systems contract which exposes Eskom to enormous risks. Notwithstanding the fact that the Department approved Eskom's "Back to Basics" PFMA application aimed at streamlining operations and improving efficiencies across the organisation, it is disappointing to note the rampant inefficiencies that are still embedded within the business.

3.5.1.6. **Governance:** There is a clear Delegation of Authority Framework that was approved by the Executive Committee (Exco) in 2013. Further Governance Review was also conducted and presented for Exco approval in August 2013. Despite these clear Frameworks the report found that there were instances where Exco colluded with the Board to bypass governance processes.

3.5.1.7. Instances of refusal to implement Board decisions, abuse of confidentiality documents and leaking of documents by executives to the media and Board members were also found.

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DPE Concerns and Concluding Remarks

- 3.5.1.8. The report makes certain recommendations particularly that the principle of substance over form be considered in procurement matters, and further that procurement processes pertaining to coal and diesel be subject to close scrutiny. However, it is the view of the Department that where non-compliances are pointed out to the company and no decisive action is taken, this places a huge risk to the company. It is further disconcerting that the Board Tender Committee can approve contracts that have not been sanctioned by the Legal Department. This does not auger well as it raises the Board's apparent lack of fiduciary duty towards the company, and accentuates a finding that the Board sometimes does not read packs and is consequently not adequately prepared for meetings.
- 3.5.1.9. It is concerning that one person can be responsible for the awarding of contracts. This is unacceptable as it erodes the constitutional requirement of transparency in procurement processes.
- 3.5.1.10. Further, a key position such as Senior General Manager in PED not to have some decision making powers and yet this is where coal and diesel procurement takes place is concerning.
- 3.5.1.11. Further, it is unacceptable that the position of Senior Manager Contracts in PED that has been vacant for the past five years has been abolished and there seems to be no equivalent position established to oversee the management of coal contracts.
- 3.5.1.12. The exorbitant prices of coal that Eskom pays is indicative of the flaws in Coal sourcing strategies and these need to be revisited and refined. PED cannot be left to procure coal and diesel without proper checks and balances. This has been a cause for concern for the Department for years and Eskom needs to do a complete overhaul of its coal procurement. There must be consequences management and follow ups on audit findings.
- 3.5.1.13. The fact that the PPPFA exemptions have lapsed, and procurement by SOC are looked at on a case by case basis, does not give Eskom the right or licence to flout legislation as reported. This is viewed in a

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serious light and further investigations on this matter must be conducted as it also raises a concern of possible non-compliance with the PFMA.

3.5.1.14. Collusion between Exco and the Board to bypass governance processes and leakage of information to the media is extremely disturbing as it is indicative of governance collapse and weak internal controls. The Department needs to task a forensic investigation into this finding as there could be more information that could be uncovered.

3.5.2. Contract Management

Report Findings

3.5.2.1. Contract Management Framework is in place however, contract management and project support office was only established only September 2014.

3.5.2.2. Poor contracting strategies. Although NEC and FIDIC contracting strategies are used in the Build Programme; these are sometimes not amended to fit purposes in order to adequately protect the interests of Eskom. For example; at Medupi Eskom Execution Partner Parsons Brinkerhoff (PB) did not align any of its processes and systems with the Eskom contract management framework.

3.5.2.3. Lack of technical capacity and experience by project teams in managing and implementing the Build Programme contributed to the delays at Medupi.

3.5.2.4. Inconsistent treatment of contractors, which was evidenced at Medupi with Hitachi and Alstom in respect of boiler control system and boiler tube welding.

DPE Concerns and Concluding Remarks

3.5.2.5. Eskom should not have contracted only PB for a turnkey project of this magnitude; it should have spread the risk across various service providers.

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3.5.2.6. Modification of existing contracts proved to be ineffective as it opened loopholes for manipulation of procurement processes and systems and non-competitive pricing.

3.5.2.7. Eskom trained and developed employees on NEC and FDIC contract and project management quite late into the Build Programme. Equally, it is concerning that Eskom established a Contract Management and project support office only in 2014 when the Build Programme started in 2008. Someone needs to be held accountable for lack of judgement and ill-timed decisions.

3.5.2.8. Consequent management must be implemented where it is found that projects teams have been negligent in project implementation.

3.5.3. Security Failures and Accountability

Report Findings

3.5.3.1. Security risks to the Eskom's National Key Point sites have been identified. Responses to security issues are a knee-jerk reaction and takes place after the breaches have occurred.

3.5.3.2. Group Security, Information Technology and Forensic Departments seem to be working in silos.

3.5.3.3. Compliance with internal policies is poor and not monitored.

3.5.3.4. There are high levels of information leaks with regards to tender documents, Board meetings discussions, and prevalence of bugging devices.

DPE Concerns and Concluding Remarks

3.5.3.5. The report is recommending that security standards and technology must be upgraded. It is concerning that after DPE had approved the PFMA on national security refurbishment project in 2013, nothing or little seems to have been done.

3.5.3.6. Compliance with internal policies seems to be a problem and this cuts across all areas of the business that have been reported on. A

DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM

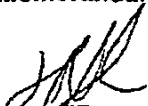
recommendation that Group Compliance must report directly to the Board is welcomed as this will elevate the seriousness of this issue.


4. RECOMMENDATIONS

- 4.1. A common theme across the report is related to the quantum and impact of primary energy costs (coal and diesel in particular); the weak procurement processes and the ripple effect across the business, as evident in the poor operational and financial performance. Actionable recommendations in this regard are required. In parallel, the Department is commissioning an independent assessment in Eskom's cost structure which will include the assessment of primary energy procurement practices and processes and identify areas for improved cost controls
- 4.2. Taking into consideration all the highlighted damning findings, it is the Department's assertion that the exoneration of the suspended executives by Eskom was premature as it was based on preliminary findings and recommendations which may compromise any further probing for completeness. The Board should be apprised of this position.
- 4.3. It is important to highlight that the brief provided to Denton included Minister's specification for a "deep dive" investigation to be undertaken. From the Report, it does not appear that this has been done, which could be because of the preliminary nature of the findings. For completeness, further probing from the Shareholder should be carried out. Chief among these findings is that on a number of issues, the Board was fully apprised by the Exco but lacked interpretation of the issues, or urgency in responding to the issues. The Department's observation is that the quality and timing of information communicated to the Shareholder is inadequate. This warrants that the scope of the investigation be extended to include assessing the Board's capabilities, and integrity in executing their fiduciary duties to the company.
- 4.4. It is recommended that a Communication Plan (on the Report findings) for various stakeholders must be discussed and developed between Ministry and the Department.
- 4.5. Minister is recommended to write to the Board, requesting the Board to submit an action plan which clearly outlines specific consequent management on issues that have been raised in the Report for its consideration. Minister is requested to sign the attached letter (Annexure "A") to the Chairperson of Eskom, if in agreement with the content thereof.


DPE POSITION REGARDING THE INVESTIGATION COMMISSIONED BY THE ESKOM BOARD INTO THE STATUS OF THE BUSINESS AND CHALLENGES EXPERIENCED BY ESKOM


Memorandum prepared by:



LOICE MTETWA
 DIRECTOR: ENERGY
 DATE: 14/08/2015


ORATENG MOTSOAI
 CHIEF DIRECTOR: LGR
 DATE: 14/08/2015

REVIEWED AND SUPPORTED:


MELANCHTON MAKOBE
 ACTING DDG: LGR
 DATE: 17/08/2015


MAKGOLA MAKOLOLO
 ACTING DDG: ENERGY
 DATE: 17/08/2015

<p> MS. MATSIETSI MOKHOLO ACTING DIRECTOR-GENERAL DATE: 24/08/2015</p>	<p>RECOMMENDED / NOT RECOMMENDED / COMMENTS</p> <p>1) PARAGRAPH F ON PAGE 5 IS NOT CLEAR - THE BOARD HAS BEEN STRENGTHENED ^{Paragraph F on page 5 has been strengthened}</p> <p>2) PLS SEE EDITS ON PAGES 2, 6, 7 ^{25/8/15}</p> <p>3) THE ISSUES RAISED IN PARAGRAPHS C & D ON PAGE 7 WERE PART OF THE DEPT'S BRIEF ^{25/8/15}</p>
<p>MS. LYNNE BROWN, MP MINISTER DATE:</p>	<p>APPROVED / NOT APPROVED / COMMENTS</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MR. GRATITUDE MAGWANISHE, MP DEPUTY MINISTER DATE:</p>	<p>NOTED / COMMENTS</p> <p>_____</p> <p>_____</p> <p>_____</p>



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Dr Ben Ngubane
Acting Chairperson
Eskom Holdings SOC Ltd
P O Box 1091
Johannesburg
2000

Fax: 011 800 5803
Tel: 011 800 5991

Dear Dr Ngubane

Comments on the Draft Preliminary Report of the Investigation Commissioned by the Eskom Board into the Status of the Eskom Business and Challenges Experienced by Eskom

The above matter has reference.

The Department has studied the Preliminary Report ("Report") of the investigation instituted by the Board and has noted the key findings and recommendations arising therefrom. The Department acknowledges that the Report was prepared at the midpoint of the investigation and posits preliminary findings and recommendations. However, the Board does not provide its views and Action Plan (if any) on the many recommendations that were cited in the Report, and is therefore requested to provide same.

Salient Recommendations

- (a) A common theme across the Report is related to the quantum and impact of primary energy costs (coal and diesel in particular); the weak procurement processes and the ripple effect across the business, as evident in the poor operational and financial performance. Actionable recommendations in this regard are required. Therefore, further probing or investigations must be undertaken to take the Report findings forward;

- (b) In studying the Report, it appears that the Board in some instances was not fit or firm to carry out its fiduciary duty. This is observed in inter alia; the Board's lack of comprehension of the financial position of the company and the extent of the risks in the generation plant and build programme.
- (c) Based on the Report findings and the fact that the investigation had not been completed at the time the Report was drafted, it is the view of the Department that the exoneration of suspended employees may have been premature.

I have attached comprehensive comments on the findings of the Report for ease of reference for your consideration and response.

I look forward to hearing from you.

Yours sincerely

MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE:

Exhibit 64





ESKOM HOLDINGS SOC LTD
(Registration No. 2002/015527/30)
("The Company")

WHEREAS the sole Shareholder has consented to the passing and approval of the ordinary resolutions set out below in terms of the provisions of the Companies Act, 71 of 2008 ("the Companies Act") and in terms of the Company's Memorandum of Incorporation ("MOI"):

ORDINARY RESOLUTION 1: APPOINTMENT OF MEMBERS OF THE AUDIT AND RISK COMMITTEE:

It is hereby RESOLVED that the following non-executive directors are approved to serve on the Audit and Risk Committee:

- C Mabude appointed as member and Chairperson of the Audit and Risk Committee;
- N Carrim appointed as member of the Audit and Risk Committee;
- R Kumalo appointed as member of the Audit and Risk Committee;
- V Naidoo appointed as member of the Audit and Risk Committee.

ORDINARY RESOLUTION 2: APPOINTMENT OF MEMBERS OF THE SOCIAL, ETHICS AND SUSTAINABILITY COMMITTEE:

It is hereby RESOLVED that the following non-executive directors are approved to serve on the Social, Ethics and Sustainability Committee:

- V Klein appointed as member and Chairperson of the Social, Ethics and Sustainability Committee;
 - P Naidoo appointed as member of the Social, Ethics and Sustainability Committee;
 - V Naidoo appointed as member of the Social, Ethics and Sustainability Committee.
-

ORDINARY RESOLUTION 3: NOTING OF APPOINTMENT OF NON-EXECUTIVE DIRECTORS TO BOARD COMMITTEES

It is hereby NOTED that the following Non-Executive Directors have been appointed to the People and Governance Committee, the Board Tender Committee, the Investment & Finance Committee and the Recovery & Build Programme Committee, respectively:

1. People and Governance Committee:

- V Klein appointed as a member and Chairperson of the People and Governance Committee;
- R Kumalo appointed as a member of the People and Governance Committee;
- B Ngubane appointed as a member of the People and Governance Committee;
- Z Khoza appointed as a member of the People and Governance Committee;

2. Board Tender Committee:

- N Carrim appointed as a member and Chairperson of the Board Tender Committee;
- C Mabude appointed as a member of the Board Tender Committee;
- Z Khoza appointed as a member of the Board Tender Committee;
- P Naidoo appointed as a member of the Board Tender Committee.

3. Investment and Finance Committee:

- M Pamensky appointed as a member and Chairperson of the Investment and Finance Committee;
- Z Khoza appointed as a member of the Investment and Finance Committee;
- V Klein appointed as a member of the Investment and Finance Committee;
- C Mabude appointed as a member of Investment and Finance Committee.

4. Recovery & Build Programme Committee:

- P Naidoo appointed as a member and Chairperson of the Recovery & Build Programme Committee;
- V Naidoo appointed as a member of the Recovery & Build Programme Committee;
- N Carrim appointed as a member of the Recovery & Build Programme Committee;
- B Ngubane appointed as a member of the Recovery & Build Programme Committee.

ORDINARY RESOLUTION NO.4: NOTING OF THE MERGING OF THE BUILD PROGRAMME REVIEW COMMITTEE AND THE ESKOM EMERGENCY TASK TEAM COMMITTEE

It is hereby NOTED that the Build Programme Review Committee and the Eskom Emergency Task Team Committee have been merged into one committee, to be known henceforth as the Recovery and Build Programme Review Committee.

SHAREHOLDER

SIGNATURE

DATE

Ms. L Brown, MP
(Representative of the
Government of the
Republic of South Africa)

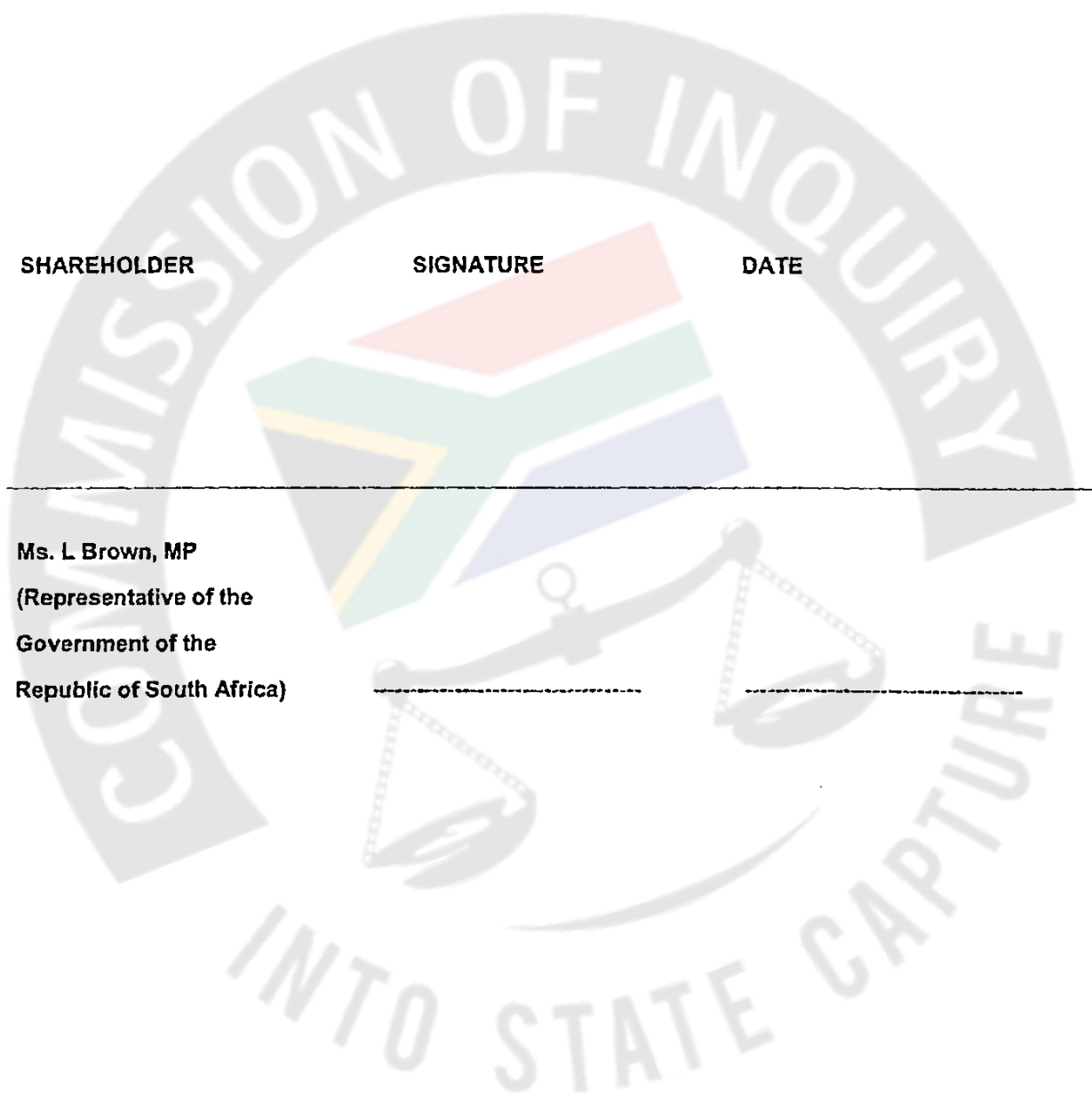


Exhibit 76



Daniel Maruatle

From: Kimberly Davids <anckimwc@gmail.com>
Sent: Thursday, 23 July 2015 14:51
To: Kim.Davids@dpe.gov.za
Subject: Fwd: Trevern's CV
Attachments: CV Trevern 1.docx; CV Trevern 1.pdf

----- Forwarded message -----

From: "Kimberly Davids" <anckimwc@gmail.com>
Date: 20 Jul 2015 15:21
Subject: Fwd: Trevern's CV
To: <Kim.Davids@dpe.gov.za>
Cc:

Kim Davids

----- Forwarded message -----

From: "Kimberly Davids" <anckimwc@gmail.com>
Date: 16 Jul 2015 10:03 AM
Subject: Fwd: Trevern's CV
To: "Business Man" <infoportal1@zoho.com>
Cc:

Dear Saleem

Herewith cv for Alexkor board as discussed

15 July, 2015

To Whom It May Concern

I am currently: Chairman SWT Holdings Pty LTD
Managing Director TG Mintster Consulting Pty LTD
Director on SWT Holdings and subsidiaries

My specialities lie in: Won the best BBBEE Company in SA BBQ Awards 2013 in the main category,
Turnaround specialist with exceptional management skills.

I will benefit your organization through: Years of experience, bright personality, industry
connections, and 15 years' experience holding Directorship with various big corporations.

Please do not hesitate to contact me should you have any questions or comments in this regard.

Yours Sincerely

Trevern Marais Haasbroek

CURRICULUM VITAE**Trevern Marais Haasbroek****PERSONAL INFORMATION**

Surname	:	Haasbroek
First Names	:	Trevern Marais
Nationality	:	South African
ID Number	:	630905 5124 084
Contact Number	:	083 300 9990/ 084 800 9990
Email	:	Trevern@tgmintster.com
Drivers Licence	:	EB 0 vehicle restriction
Availability	:	Immediately

EDUCATION HISTORY

Qualification : Electronic Engineer Diploma (T3)
CPUT

Qualification : International Capital Markets Qualification
SECURITIES INSTITUTE LONDON
RPE All Five modules
SECURITIES INSTITUTE LONDON
Registered Securities Trader
Johannesburg Stock Exchange
Registered Safex Trader
SAFEX
First Level Regulatory Examination:
Representatives
Financial Services Board
First Level Regulatory Examination:
Key Individuals Categories 1
Financial Services Board
Investment Practice and General
Investment Advice as part of JSE
Membership
University of the Witwatersrand
Johannesburg
Various Courses with minor Institutions

Matric : Pass
Oude Molen Technical High School
Pinelands

Language Proficiency : English (high proficiency: speak, read and write)

Afrikaans (high proficiency: speak, read and Write)

Short Story

:

Loss my right leg in an industrial accident in 1976. Started cycling with one leg and achieved many goals. Matriculated in 1982. Studied at CPUT. At this stage started off as entrepreneur while studying. Also started a sporting career in wave ski surfing. Was the first amputee to achieve Western Province Team Colours in able body sport. This was in 1988. Moved on and started racing inflatable motor boats. Achieve 3 times provincial team colours in able body sport as amputee. All of these achieves was first in the history of South Africa. During all of I excelled in the business world. This was extremely challenging to earn respect with business leaders as a disable individual. The accolades stream in from all over the world.

EMPLOYMENT HISTORY:**Year**

:

1983 with a Telkom bursary till 1988

Responsibilities

:

Technical Engineer

- Part of the team to install MNET as channel via microwave broadcasting over South Africa

- Project coordinator for the first digital telecom channels in South Africa
- 1987 ran the control room in shifts to manage communication networks of Telkom.

Responsibilities

:

Owner of BP Service station

- 1988 – 1991
- Was the first white member to join NAFCOC.

Year

:

1991 started a very successful transport and logistics company, and sold it in 1997 after the bomb explosion in the V&A Waterfront. Same time investing in shares on the JSE. I became the biggest client of De Witt Morgan in Cape Town. They ask to open offices for them in Cape Town.

I am also one of the founder members of Solid Waste Technologies with Edgar Adams. We were the first company to introduce Green Energy in South Africa. Our company was publicly launched by the then Minister of Minerals and Energy Phumzile Ngcuka on national TV. This company is the leader in South Africa in Medical Waste treatment. I have been a director since inception 1999.

Responsibilities : **2000 De Witt Morgan Stock brokers JSE till 2009**

- Communicate with private clients and advise on investments.
- Was appointed as Director with in one year due to performances.
- When I join they were 48 out of 48 with turnover and value. In 2007 they were consistently in the top 10 under my leadership. This was achieved by widening there scope and client base from private clients to
- I was the first limited company other than multi nationals with DMA into our market with ITG in Europe and London.
- Attended all international conferences and was part of discussion panels at these events on risk and investment opportunities in South Africa and Africa.
- Was preferred service provider to PIC, Sanlam, Old Mutual, Coronation, Stanlib, Metropolitan, etc.
- Started Unit Trust on behalf of the company. Served on the investment board.

References

:

Johan Van Der Merwe
CEO Sanlam Investment Management
Loen Smit
Senior Management PIC

Year

:

2009 Dolberg Spencerfin
One of the founder members and Director

Role and Responsibilities

- Structure of business model and creating investment vehicles
- Affiliation with all institutions and platforms
- Entrusted with Unit Trust from past credentials with Metropolitan
- Served on the investment committee with fellow Directors and Nedbank
- Resigned and sold over 2014/2015

Year

:

2015 Still the Chairman and Director of SWT Holdings. Assisting various start-up companies giving advice, structures and funding options. Responsible for a deal between Stryker USA, a NASDAQ listed entity and SWT that is revolutionary in the medical industry. SWT has signed an exclusive agreement for SUD's (single used devices) with Stryker and redistribution in Sub Sahara.

In 2009 I was responsible for a USA based company Ganeden that manufacture a very specific probiotic. This probiotic is today the basis for feeding the male nutritional people with an inexpensive meal. The rights was passed on with out cost to provide a low cost meal with all the advantages of a protein diet. I was also approach with USA White House authority to supply SA with crude when sanctions was placed on IRAN.

Exhibit 77



Exhibit 100



Daniel Maruatle

From: Kimberly Davids <anckimwc@gmail.com>
Sent: Tuesday, 23 June 2015 16:45
To: Kim.Davids@dpe.gov.za
Subject: Fwd:Richard C.V
Attachments: mogokare CV.doc, qualifications.pdf

Kim Davids

----- Forwarded message -----

From: "Business Man" <infoportal1@zoho.com>
Date: 21 Jun 2015 8:34 PM
Subject: Fwd:Richard C.V
To: <anckimwc@gmail.com>

Hi Madam

As per sir. This is the candidate for dg. Is it possible for him to meet madam on Tuesday?

Regards

===== Forwarded Message =====

From : blueberries.slk@gmail.com
To : infoportal1@zoho.com
Date : Sun, 21 Jun 2015 22:32:34 +0400
Subject : Richard C.V

===== Forward Message =====

evening sir'

please find attached my C.V and supporting documents.

regards

Richard