



EXHIBIT U 15

**DANIEL LESEJA
MAROKANE**



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

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01



**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]

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.

[Signature]
COMMISSIONER OF OATHS

TUMISANG REGINALD KGABOESELE
Commissioner of Oaths
Attorney
THOMSON WILKS ATTORNEYS
23 Impala Road, Chislehurst, Sandton
Tel: 011 784 8984

Dan Marokane

Email address: dan.marokane@gmail.com

18 March 2015

To: Eskom Holdings SOC Ltd

Att: Mr Zola Tsotsi
(Chairman of the Board)
Email address: zola.tsotsi@eskom.co.za

Att: People & Governance Committee of the Board
C/o Company Secretary
Email address: malesela.phukubye@eskom.co.za

Dear Mr Tsotsi

1. I refer to your letter dated 12 March 2015 in which the reference reads "*notice of suspension as Executive; Group Capital*" which letter was (1) signed by Mr Zola Tsotsi, the Chairman of Eskom Holdings SOC Limited and (2) handed to me for my signature on 12 March 2015 at 08h45. I shall henceforth refer to this letter as "*the suspension letter*".
2. At the time you handed same to me (*at approximately 08h45 on the morning of 12 March 2015*) I did not have sufficient opportunity to read and evaluate same, although I did notice that paragraph 5 of the letter which read as follows :-

"5 I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly",

was factually incorrect. I pointed this out to you and you agreed to delete the whole of the paragraph and drew a line through same. You and I then initialled that amendment.
3. At the same time certain words appearing in paragraph 6 were also deleted; for the record those words are the following :-

"... and after having considered your representations, ...",
4. Now that I have had an opportunity of (1) studying the letter closely, (2) considering the somewhat limited information made available to me at the time the letter was presented to me and (3) considering the media reports relating to my and other of my colleagues' suspensions, it is clear that the letter was prepared prior to our meeting with no contemplation of any influence from engagement with me. For context purposes it bears mention that whilst on leave the previous day I was telephoned at 21h00 on 11 March 2015 with the request that I meet the Board later that evening which proved difficult and we scheduled a meeting at 08h00 the following morning.

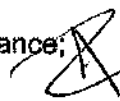

5. Since then the media (*including very importantly the printed media*) has reported extensively on my suspension and the simultaneous suspension of three of my colleagues namely :-

- a. Tshediso Matona (*Eskom's Chief Executive*);
- b. Tsholofelo Molefe (*Eskom's Finance Executive*);
- c. Matshela Koko (*Eskom's Commercial and Technology Executive*),

who I shall henceforth refer to the above-named as "*the suspended executives*".

6. Whilst I refer hereunder to the suspended executives as a group and for ease of reference, I must make it clear that I do not speak on their behalf. It is simply a matter of convenience in the context of this letter to refer to the four of us together where the context requires same.
7. The explanation that Eskom has tendered to the outside world in respect of the suspension of the suspended executives is that – in summary – whilst there is no evidence or suggestion of any wrongdoing by the suspended executives, it was considered necessary by the Board to essentially remove them from the Eskom environment so that the inquiry that the Eskom Board had resolved on 11 March 2015 to establish could take place with unfettered access to Eskom. In the suspension letter it refers to the "importance of it being free of any influence from leadership in the organisation" – from which I conclude that the "leadership" is intended to refer to the suspended executives.
8. Pursuant to that determination the Board considered it necessary to remove the suspended executives from the environment so that – at least as asserted by Eskom – the inquiry could take place with unfettered access to Eskom. You, Mr Chairman, are quoted in the press as saying "*there is nothing sinister happening. This is a fact finding inquiry ... which will last for three months.*" You are also quoted as saying that "*to ensure that this process is as transparent and uninhibited as possible ... the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this inquiry.*"
9. That inquiry is to establish and enquire into the state of Eskom's business focusing on (1) generation capacity supply, (2) the delays in the new build programme and (3) the current cash flow / liquidity situation so that the Board can have a benchmark of where the business is at.
10. That is the background to my suspension but when one has regard to the suspension letter which (1) was prepared on 11 March 2015 in anticipation of it being delivered to me at or shortly after 21h00 that evening and (2) against the background of the Board's decision as referred to above and Eskom's explanation to the outside world, also referred to above, the letter, besides being entirely incompatible with the (*purported*) rationale / logic / motivation for my suspension, also has a tone, structure and content that is, sadly, as best I can make out and based on representations made by you to me and Eskom to the outside world, more indicative of the traditional or type of suspension letter handed to an employee (*irrespective as to the seniority or status of that employee*) against whom there is (1) at very least the suspicion of wrongdoing and (2) a pending or contemplated disciplinary hearing.

11. The letter furthermore contains a huge number of factual assertions in the suspension letter which are objectively speaking inaccurate. So for example :-
- a. we did not discuss the matters referred to in paragraph 1; I was simply told of the Board's decision and was not given an opportunity to engage in any form of discussion that could have a bearing on the decision;
 - b. I was not afforded an opportunity as alleged in paragraph 2;
 - c. the advices referred to in paragraph 3 were presented to me as a *fait accompli*;
 - d. the concerns referred to in paragraph 4 were also presented to me as Board's decision;
 - e. paragraphs 5 and 6 are also factually incorrect although I only picked up paragraph 5 and part of paragraph 6 during the short meeting on Thursday, 12 March 2015.
12. The majority of the content of the suspension letter is most inappropriate if the suspension was for the purpose as publically disclosed by Eskom.
13. On the contrary the suspension letter makes no effort whatsoever to be a true and fair reflection of the publically stated purpose of my suspension but rather is indicative of a circumstance in which an employee (*in this instance myself*) is suspended pending an inquiry into alleged wrongdoing. However, whatever Eskom's motive may be, I have been suspended and subjected to an unfair labour practice and I reserve my rights.
14. Both the publically stated reason for my (*and indeed all the suspended executives*) suspension and that stated in paragraph 1 of the suspension letter implies that there will be an attempt by me to unlawfully interfere with the inquiry's business. There can be no other rational or objective explanation – however illogical that reasoning may be. In this regard no explanation has been tendered to me as to what it is I might do – or not do – that would improperly or unlawfully influence the inquiry.
15. I would remind you that I was appointed to the role of Group Executive – Group Capital from 1 November 2014 after holding the acting position for a period of a year. I was asked to act in that position after the departure of the then responsible executive, Paul O'Flaherty in August 2013 which followed the announcement that the target date of December 2013 for bringing the first unit of Medupi Power Station online was not going to be met due to slow project execution.
16. Within a period of a month I reverted to the Board Committee that oversees Mega Projects and clearly articulated three areas that needed to be resolved in order to get the projects including Medupi, back on track. These areas were:-
- a. the resolution of the boiler welding defects;
 - b. the resolution of the control and instrumentation system non-compliance;
and

- c. the creation of a stable environment for a productive labour force.

17. I developed a plan to address the three challenges above as follows :-

- a. by increasing the collaboration with the contractors to identify mutually solved technical challenges in a proactive manner. Both welding, control and instrumentation challenges were resolved through joint problem solving teams beyond the normal contractual arrangements;
- b. by further cascading the implementation of new organised labour / contractors to create site stability and mechanisms for early discontentment identification and resolution. The sites have now been stable for one of the longest duration intervals;
- c. by improving transparency on projects – I made Medupi achieve its first integrated project schedule since the project was started in 2007. The schedule integrated all risks to create transparency. The Kusile schedule which was already in existence was boosted with realistic integration of risk;
- d. by using the integrated project schedules to develop a new estimate of costs to completion for the project so that the business can understand what the cost increases will be and what the main drivers of these escalations were.

18. Having taken all the above to the Board and secured their support, I proceeded to develop mitigation plans to ensure the containment of cost increases by focusing on improvement of productivity at sites, integrated planning with contractors and finding solutions to commercial disputes that had been tabled.

19. I ensured that we lift the standard of project execution across the business by making all projects learn from challenges encountered in other projects.

20. I set up the appropriate organisational structures to support these initiatives and created a central contract management unit to standardise our approach to contractors.

21. I implemented performance management to include lower levels to ensure that everyone is doing what is required and prioritise where necessary.

22. All of the above elements were identified as crucial by a number of independent reviews conducted by external parties which reviews were done on behalf of the Board. During my tenure as Group Capital Executive I created meaningful and tangible progress in the execution of various projects which saw, in particular, the delivery of the first unit of Medupi - achieved one week prior to my suspension.

23. It is for *inter alia* the above reasons that I am of the opinion that I will add valuable insight in assisting the inquiry to establish and identify where Eskom is with regard to various project delays and cost overruns. After all, I was specifically engaged to resolve these problems which were pre-existing and pre-dated my appointment and were obviously not of my making.

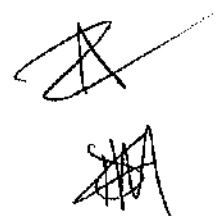
24. Paragraph 9 of the suspension letter provides *inter alia* that I am not to approach "any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining your prior permission."

25. This is so widely worded - would you please re-visit paragraph 9 and deal more constructively therewith rather than leave the matter with its current vague and generalised terminology. .
26. If the Board has an absolutely genuine desire to (1) get to the heart of all of Eskom's problems, (2) understand how those problems came about, (3) and how they were over time handled (*and mishandled*) and (4) what Eskom needs to do in order to overcome its challenges, I am willing to co-operate with the independent investigation on the basis that I will be allowed to advance and share my genuinely held open and frank views without fear of retribution or any other adverse consequence to me, my professional integrity, my reputation in the marketplace and importantly my career in Eskom and my anticipated and indeed hoped for career path within Eskom.

Yours faithfully



Dan Marokane



02





Mr Daniel L Marokane
 Group Executive: Group Capital
 Eskom Holdings SOC LTD
 P.O. Box 1091
 Johannesburg
 2000

Date:

12 11 March 2015

Enquiries:

Dear Mr Marokane

NOTICE OF SUSPENSION AS GROUP EXECUTIVE: GROUP CAPITAL

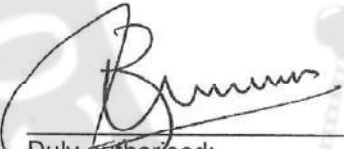
1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence-free requirement of the enquiry.
4. These concerns have been discussed with you.
5. I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly.
6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.

Head Office
 Megawatt Park Maxwell Drive Sunninghill Sandton
 PO Box 1091 Johannesburg 2000 SA
 Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za


Eskom Holdings SOC Ltd Reg. No 2002/015527/30


7. In order for the investigation to proceed as expeditiously as possible, it would not be appropriate for you to remain at work whilst such investigation is in place. You will be advised of the outcome of the enquiry as soon as possible.
8. At that time the subcommittee will consider the enquiry report before considering the matter further.
9. You are instructed to remain in telephonic contact with me during the period of your suspension. We expect you to be contactable in the event that it is necessary for you to attend at the company premises during normal working hours for the purposes of assisting with such investigation. You are further directed not in any manner to approach any member of the company staff, its clients or any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining my prior written permission. You are also directed not to attend at the company's premises during the period of your suspension.
10. The company will regard any contravention of the above instructions in a serious light and further disciplinary steps may be instituted against you in respect of such contravention. You are in addition requested to hand over all work tools issued to you including but not limited to access cards, cell phone, laptop and the like. You are not to make use of the company's information technology hardware and software such as intranet and internet facilities during your suspension.
11. You are requested to surrender your company access card, office keys, laptop and any other company property, documents, computer disks and the like in your possession, with immediate effect.
12. Should you feel uncertain about any aspect of the contents of this letter, you are requested to contact me telephonically.

Yours faithfully


Duly authorised:
For and on behalf of the Board
ZOLA TSOTSI

I acknowledge receipt of this notification:

Signature:  Date: 12/3/15 Time: 08h45
Mr Daniel L Marokane

Signature:  Date: 12/03/15 Time: 08h45
Mr Zola Tsotsi

SETTLEMENT AGREEMENT

between

ESKOM HOLDINGS SOC LIMITED
REGISTRATION NO: 2002/015527/30

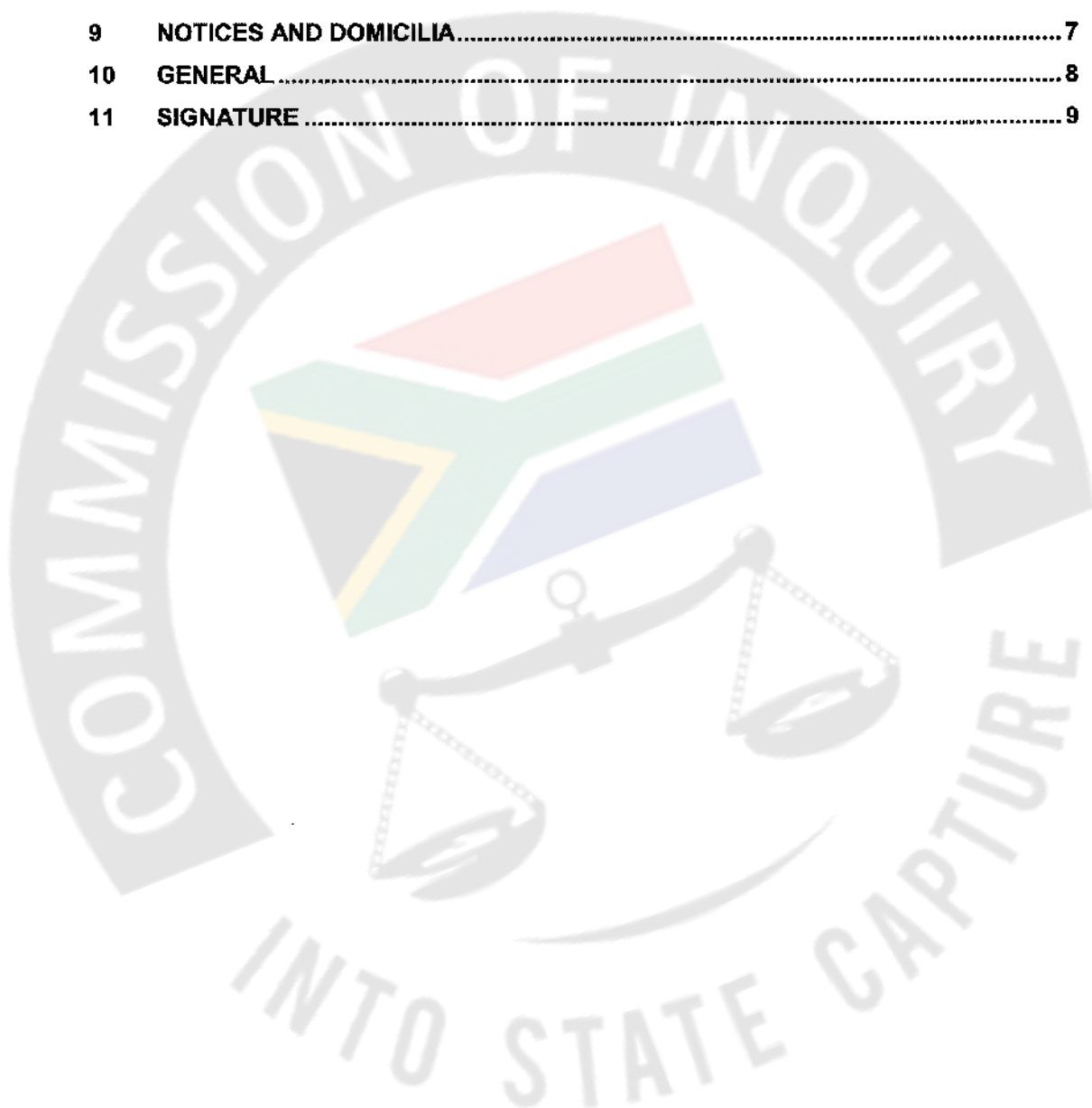
and

MR DANIEL LESEJA MAROKANE
IDENTITY NO: 7106175369089

By
[Signature]

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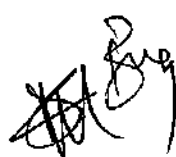
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[Handwritten signature]

WHEREBY THE PARTIES AGREE AS FOLLOWS:**1 INTERPRETATION**

- 1.1 The headings to the clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 1.2 This Agreement having been negotiated between the Parties, the rule of construction that a contract (this Agreement) shall be interpreted against the party responsible for the drafting or preparation of this Agreement shall not apply nor shall this Agreement be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement by, *inter alia*, having structured, drafted or introduced any one or other or all the provisions / terms herein contained.
- 1.3 Unless inconsistent with the contents, the expression set forth below shall bear the following meanings:
- 1.3.1 "Agreement" means this agreement;
- 1.3.2 "Eskom" means Eskom Holdings SOC Limited, a company incorporated in terms of the Company laws of the Republic of South Africa, with registration number 2002/015527/30, with its principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg;
- 1.3.3 "Mr DL Marokane" means Mr Daniel Leseja Marokane, an adult male employee with identity number 7106175369089;
- 1.3.4 "the Parties (Party)" means Eskom and Mr DL Marokane, who are parties to this Agreement;
- 1.3.5 "the Signature Date" means the last day of signature of this Agreement by either of the Parties.



1.3.6 "the Termination Date" means 31 May 2015.

2 RECORDAL

2.1 Mr DL Marokane is employed by Eskom as Group Executive: Group Capital in terms of a written contract of employment ("the Employment Contract").

2.2 The Parties have mutually agreed to terminate the Employment Contract and the Employee's employment with Eskom subject to the terms and conditions recorded in this Agreement.

3 TERMS AND CONDITIONS

3.1 By mutual agreement Mr DL Marokane's employment will terminate on the Termination Date.

3.2 Eskom agrees that Mr DL Marokane will not be required to serve the requisite notice period and both Parties waive the notice period.

3.3 The Parties have agreed on the arrangements herein to give effect to the mutual settlement in full and final discharge and in settlement of all and any claims either party has or may have against the other including any monies owing to the Employee, whether arising in terms of statute, delict, contract or otherwise, except as provided for in this agreement. The terms of these arrangements are set out in further detail in clause 4 below.

3.4 Mr DL Marokane agrees that on or before the termination of his employment, by mutual arrangement, Mr DL Marokane will attend on the Eskom Medical Centre for the exit medical assessment to be conducted and will be subject to Eskom's normal exit management processes in this regard.

3.5 The records of Eskom shall record the termination of employment as resignation with his last working day being the Termination Date. Eskom will at all times provide a favourable reference regarding Mr DL Marokane's



employment with Eskom as per the reference letter attached hereto marked annexure "A".

- 3.6 Eskom shall give Mr DL Marokane a certificate of service by no later than 15 June 2015. The certificate shall be in accordance with section 42 of the Basic Conditions of Employment Act, No. 75 of 1997.

4 PAYMENT AND BENEFITS

- 4.1 Mr DL Marokane will receive his normal monthly cost to company (inclusive of all benefits) salary payments up to the Termination Date.
- 4.2 Mr DL Marokane will receive all and any leave pay that is outstanding as at Termination Date which amount will be paid together with the salary payment to which there is reference in clause 4.1 above.
- 4.3 Subject to clause 4.5 below, Eskom will pay, without admitting any obligation to do so, Mr DL Marokane a total separation payment of R6 237 634.33 (six million, two hundred and thirty-seven thousand, six hundred and thirty-four rand and thirty-three cents) ("the Separation Payment"). The payments referred to in paragraphs 4.1 and 4.2 above as well as the Separation Payment and amount referred to in clause 4.4 below, is paid in full and final settlement of any benefits, bonuses, notice pay, outstanding leave pay or any other amount owed or that may become owing to Mr DL Marokane.
- 4.4 As Mr DL Marokane was in the employment of Eskom in 2014, he qualifies for participation in Grant 10 of the LTI. The formula for calculating Mr DL Marokane's award is his pensionable earnings (which is R2 456 284.68 – two million four hundred and fifty six thousand two hundred and eighty four rand sixty eight cents) times the multiplier (where the multiplier remains to be determined by the People & Governance Committee ("P&G")). Once the multiplier has been determined by the P&G, Mr DL Marokane's award will be calculated and will be paid pro-rata for 12 (twelve) months. The amount will then be paid by Eskom to Mr DL Marokane in addition to the Separation



Payment within 5 (five) days of a tax directive being obtained from the South African Revenue Services ("SARS").

4.5 Eskom will apply for an income tax directive from SARS as regards the income tax to be deducted from the amount stipulated in clause 4.3 and 4.4 above. This tax directive to be obtained within 14 (fourteen) days of the Signature Date and as soon as the multiplier is determined as per clause 4.4 above.

4.6 The amount stated in clause 4.3 and 4.4 above less such amount that Eskom is required to deduct in respect of tax will be paid electronically into Mr DL Marokane's banking account within 5 (five) days of receipt of the tax directive from SARS.

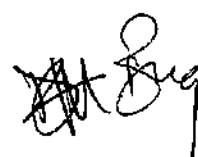
5 FULL AND FINAL SETTLEMENT

5.1 Each and all the payments made and agreed to herein are in full and final settlement of all and any claims of any nature whatsoever that both Parties may have and/or may have had against each other whether arising from contract, delict, statute or otherwise and the Parties accordingly waive any claims or rights they may have in this regard.

5.2 Without derogating from the generality of the foregoing, it is specifically recorded that the payment of these amounts is made without any admission of liability by either Mr DL Marokane or Eskom, whether arising out of contract, delict, the common law, statute, or otherwise and neither Party shall have any other claim against the other for, among others:

5.2.1 breach of the Employment Contract or any employment legislation, including but not limited to the Labour Relations Act, 1995 as amended, the Basic Conditions of Employment Act, 1997 as amended and the Employment Equity Act, 1998 as amended; and

5.2.2 any alleged unfair dismissal, any alleged automatically unfair dismissal, any alleged unfair labour practice, any alleged unfair discrimination or



any other claim; and

5.2.3 any other causa not set out in this Agreement.

5.3 All surviving clauses of Mr DL Marokane's Employment Contract that are not extinguished by this Agreement will continue for the period specified therein.

6 CONFIDENTIALITY


6.1 Other than the fact of Mr DL Marokane's resignation and as provided for in annexure "B" referred to hereunder, the Parties agree that the terms and conditions of this Agreement and the circumstances surrounding it shall be kept strictly confidential and will not be disclosed to any third party, body or association, in the absence of the written permission of the other, save where the disclosure of this information is required by the operation of law and/or in order to enforce the provisions of this Agreement.

6.2 Eskom by agreement will issue the statement attached hereto marked annexure "B" without change or deviation within 5 (five) days of Signature Date.

7 STATEMENTS

7.1 Mr DL Marokane shall not make any written or oral statements injurious to, or of a disparaging nature about Eskom or any of Eskom's employees and Eskom shall likewise not make any written or oral statements injurious to, or of a disparaging nature about, Mr DL Marokane.

7.1.1 In particular, Eskom undertakes to make available to Mr DL Marokane in writing any outcome or finding that is in anyway adverse to him or finds any wrongdoing by Mr DL Marokane, and will not publish same to any third party outside of Eskom and/or its advisors until such findings are referred to Mr DL Marokane to enable him to respond or comment on the findings before same are finalised. Eskom undertakes to give proper



consideration to his comments.

- 7.1.2 In addition, Eskom agrees and undertakes that any response and/or comments furnished by Mr DL Marokane will be published together with the report.

8 BREACH BY THE PARTIES

8.1 Mora notice

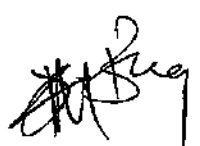
Save as may be provided to the contrary in this Agreement, should any Party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then the other Party/ies ("the aggrieved party/ies") shall be obliged to give the defaulting party 10 (Ten) days written notice to remedy the breach where the aggrieved party wishes to make an election or to take any steps consequent upon such breach.

8.2 Consequences of failure to remedy breach

If the defaulting party fails to timeously remedy the breach, the aggrieved party/ies shall be entitled to make such election, take such steps and institute such proceedings (subject, however, to mediation and arbitration where and if applicable) as are permitted at law.

8.3 Remedies not exclusive of other remedies

- 8.3.1 Save as provided for in clause 8.4 below, no remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy available at law, in equity, by statute or otherwise, and each and every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise.
- 8.3.2 The election of any Party to pursue one or more such remedy shall not constitute a waiver by such Party of the right to pursue any other available remedy.



8.4 **Overriding provision**

Notwithstanding any matter referred to above (and the preceding clause in particular), no party may cancel this Agreement.

9 **EMPLOYMENT OPPORTUNITIES GOING FORWARD**

Eskom agrees that nothing herein contained will prevent or prohibit Mr DL Marokane from doing business with, being associated and/or employed, whether directly or indirectly by any competitor of Eskom or previously owned business unit and/or component of Eskom.

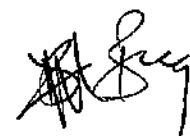
10 **NON-VARIATION**

10.1 No variation, novation, modification or waiver of any of the provisions of this Agreement or consent to any departure therefrom shall in any manner be of any force or effect unless confirmed in writing and signed by the Parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

10.2 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred on such Party in terms of this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this Agreement.

11 **NOTICES AND DOMICILIA**

11.1 Each Party chooses the address set out opposite its name below as its address to which all notices, legal processes and other communications must be delivered for the purposes of this Agreement:



Eskom

Megawatt Park,
Maxwell Drive, Sunninghill
Johannesburg
2001

P.O Box 1091
Johannesburg
2001

Marked for the attention of Mr. A I Minnaar

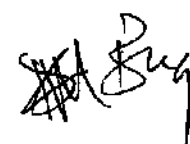
Mr DL Marokane

care of Brian Kahn Inc.
2 Burnside Island, Umlilo House
410 Jan Smuts Avenue
Craighall park
Email address: brian@briankahn.co.za

- 11.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and delivered by hand.
- 11.3 Any Party may by written notice to the other Party change its chosen address to any physical address, provided that the change shall become effective on the 14th day after the receipt of the notice by the addressee.

12 GENERAL

- 12.1 Apart from any provisions of the Employment Contract which by their nature shall survive its termination, this Agreement constitutes the whole agreement between the Parties and any representation not contained herein shall be of no force and effect between the Parties.



- 12.2 All the terms set out in this Agreement are material.
- 12.3 Each and every provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this agreement. If any of the provisions of this agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this agreement shall be and remain of full force and effect.
- 12.4 This Agreement may be executed in any number of counterparts by the Parties on separate counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

13 LEGAL ADVICE

- 13.1 Each of the Parties agrees and acknowledges that :-
- 13.1.1 this Agreement correctly sets forth the terms of the transactions agreed to by the Parties;
- 13.1.2 such Party agrees to this Agreement under their own volition and desire and not as a result of any undue influence, overreaching, oppression, duress or bad faith on the part of the other party;
- 13.1.3 it has been represented in the negotiation and in the preparation of this Agreement by professional advisors of its own choice or had the opportunity to meet and confer with, and to review this Agreement with, independent legal advisors of its own choice;
- 13.1.4 it has read this Agreement carefully and has either had the agreement explained to it by its legal advisors or has chosen to waive the



opportunity to have this Agreement explained by such legal advisors;

13.1.5 it is fully aware of the contents of this Agreement and of its legal consequences and effects.

14 SIGNATURE

Signed on behalf of the Parties, each signatory hereto warranting that he/she has due authority to do so.

SIGNED at SUNNINGHILL on 28TH MAY 2015.

For and on behalf of
ESKOM HOLDINGS SOC LIMITED

Baldwin Sipho Ngubane
Signature

BALDWIN SIPHO NGUBANE
Name of Signatory

Chairperson of Board (Acting)
Designation of Signatory

SIGNED at BRAIGHALL on 28th MAY 2015.

For and on behalf of
Mr DL Marokane

DL Marokane
Signature

DANIEL LBETA MAROKANE
Name of Signatory

DL



To whom it may concern

Date:
28 May 2015

LETTER OF RECOMMENDATION - MR D L MAROKANE

Mr Daniel (Dan) Leseja Marokane, Group Executive -Group Capital, resigned from Eskom and his last day was on the 31st May 2015. Dan had been with Eskom since January 2010, and during this period, he served in the following executive positions:

Jan 2010 – Aug 2010	: Divisional Executive (Primary Energy)
Sept 2010-Jan 2012	: Chief Commercial Officer
Feb 2012 – 9 July 2013	: Group Executive (Technology & Commercial)
July 2013 – Nov 2014	: Acting Group Executive (Group Capital)
Dec 2014 – May 2015	: Group Executive (Group Capital)

Whilst serving in the above executive positions, Dan also served in a number of EXCO committees and on boards of Eskom subsidiaries, notably as the chairman of the Eskom Enterprises board.

The Eskom Board of Directors and the Executive Committee (EXCO) thank Dan for his loyal service and contribution to Eskom and wish him well with his future career. Based on his performance during his tenure in the organisation, we recommend him.


Dr B S Ngubane
ACTING CHAIRMAN

Eskom and its Group Executive for Group Capital, Mr Dan Marokane, have mutually agreed to part ways on an amicable basis. It is expressly noted that no misconduct or wrongdoing is alleged by Eskom against Mr Dan Marokane. Mr Marokane believes that the agreement to separate is in the best interests of both parties: to allow the Board to pursue its plans for the company under the current leadership and for him to seek new career challenges.

With the separation, the enquiry initiated by the Board into the state of affairs at Eskom will continue as planned, and Mr Marokane's suspension falls away. The separation is also by no means in anticipation of the outcomes of the enquiry, the latter whose objective is to enable the organisation to deal with its challenges.

Mr Marokane joined Eskom in January 2010, and held executive leadership roles in Primary Energy, Eskom Enterprises, Group Commercial and Technology and lately Group Capital where he drove for the attainment of the first synchronisation of Medupi unit 6. Eskom thanks Mr Dan Marokane for his contribution during his term in the organisation and wishes him well in his future endeavours.

END

The logo of the Commission of Inquiry into State Capture is a large, faint watermark in the background. It features a circular design with the text "COMMISSION OF INQUIRY" at the top and "INTO STATE CAPTURE" at the bottom. In the center is a stylized South African flag and a pair of scales of justice.

03



STATEMENT OF ANTON MINNAAR

INTRODUCTION

1. The purpose of this statement is to address my involvement in the suspension process of Mr D Marokane, Ms T Molefe, Mr M Koko and Mr T Matona.
2. It bears emphasis upfront that I have no decision making authority concerning the appointment and termination of employment of the executives that the Executive Support Department ("ESD") renders services to.
3. My duties as the ESD Manager, which will be expanded upon below in, purely relate to rendering advice to the Board and its sub-committees concerning decisions that it/ they intend/s to take and administering decisions that have been taken by it/them.

MY PERSONAL PARTICULARS

4. I am an adult male, employed by Eskom as the Executive Support Manager. I have been employed by Eskom for the past 29 years and have risen through the ranks to the position that I currently occupy.
5. In February 1990, I commenced employment at Eskom in the Recruitment Department.
6. After 6 months, I was transferred to the Industrial Engineering Department, which later becomes the Consulting Services Department, where I spent the next 10 years.



7. In 2002, the Consulting Services Department was closed and I was transferred to the ESD and I have been there ever since.
8. I became the Head of the ESD initially in an acting capacity in 2002 and during about 2003, I was appointed in a permanent capacity. I attach a copy of my job description and the ESD's business outputs marked "**AM1**".

THE ESD

9. The ESD provides an independent, confidential, ethical and professional one stop service to the Chairman, Eskom Board, People & Governance Committee of the Board ("*P&GC*"), CEO, Executive Committee ("*EXCO*") and F-Band executives¹, which enables them to focus on leading the organization in line with its strategic intent.
10. The ESD reports directly to the office of the CEO of Eskom and I have a dotted reporting line to the Chairman of the Board relating to Board issues.
11. The duties of the ESD include the following key activities:
 - 11.1. Board remuneration and benefits;
 - 11.2. All F-Band HR related matters;
 - 11.3. Executive F-Band remuneration and benefits;

¹ The most senior employees at Eskom, earning the highest salaries in the organization at Patterson Grading Band F.



- 11.4. Executive (F-Band) calculation of variable remuneration Short Term Incentives ("STI") and Long Term Incentives ("LTI");
 - 11.5. Management of some Executive and Consulting contracts for the Chairman / CEO;
 - 11.6. Lending support to the P&GC (In-Committee);
 - 11.7. Executive movements (F-Band only);
 - 11.8. Exit and separation arrangements for all F-Band executives;
 - 11.9. Executive (F-Band) succession management support;
 - 11.10. Executive Health services; and
 - 11.11. Ad-hoc support.
12. The business outputs of the ESD are elaborated upon in annexure "AM1" referred to above.

EXECUTIVE SUSPENSIONS

13. On 12 March 2015 a MEDIA STATEMENT and internal communication document was send out to the organisation with the heading "Independent Enquiry Eskom 12 March 2015". I become aware of the suspensions through the communication which is attached marked **AM2**.



14. On the same day, 13 March 2015, a media statement from the DPE was relieced by the minister of public enterprises regarding the decision by the board marked **AM3**.
15. On the same day, 13 March 2015, a message from the chairman was send out to all employees marked **AM4**.
16. I was not involved in this process leading up to the suspensions of the mentioned individuals.
17. The individuals received "NOTICE OF SUSPENSION" letters which were signed between 11 and 12 March 2015. I later (cannot recall the date) received copies of these letters for their files. A copy of Mr Koko's letter is attached marked **AM5**.
18. On their suspension I was mindfull that the suspended individuals may call me to get personal information.
19. I had a discussion on 13 March 2015 with the Chairman of the Board Mr. Z Tsotsi on the above issue and requested approval that I may provide information to the suspended individuals if contacted.
20. I drafted a letter, attached marked **AM6**, on the same day, 13 March 2018, seeking approval to provide the following information to the suspended individuals should they contact me i.e.:
 - 20.1. Contract of employment.



- 20.2. Pension Fund calculations.
- 20.3. Information regarding salaries and benefits and
- 20.4. Long Term Incentive (*LTI*) grant certificates.
21. On 13 March 2015, I received a request from the company secretary, Mr M Phukubje, that Mr Marokane request a copy of his employment contract attached marked **AM7**.
22. I was later requested by the Chairperson of the People and Governance committee of the Board (*Ms V Klein*) to provide information on remuneration packages and the calculation of possible separation scenarios based on years service.
23. The final settlement calculation was based on a Board resolution marked **AM8**.
24. Settlement agreements were finalised around 15 May 2015. I do not know who drafted these agreements. Attached settlement agreement of Mr Marokane marked **AM9**.
25. My only involvement to the suspension of the individuals was related to the calculation of the settlement payment as resolved by the Board.
26. On 30 March 2015, Mr Z Khoza requested me to draft a letter to the Acting Director General Ms M Mokholo providing her with a suspension fact sheet. I informed Adv. N Tsholanku from Eskom legal and Mr Jerry Kaapu from Bowman Gilfillan drafted the fact sheet hereto attached marked **AM10**.



27. To my knowledge, Denton's was involved with some type of investigation which involved the individuals referred to.
28. Mr Jerry Kaapu from Bowman's Gilfillan was also involved in this process.

FURTHER SUBMISSIONS

29. Due to my limited involvement in this matter I propose that Mr Kaapu be contacted who I believe will be able to shed more light on this issue.
30. Mr Z Tsotsi, then chairman of Eskom also provided a lot of information on this matter at the parliamentary inquiry. It would also be advisable to contact him.

ANSWERS TO THE QUESTIONS POSED

31. Having received questions from Ms Tshego Mahlangu-Yiwombe, attached hereto marked **AM11**, I respond thereto as detailed below.

31.1. Q: *Who informed you of the suspensions?*

31.2. A: There was an internal communication send out to the organisation on 12 March 2015. I was made aware of this through the communication which is attached marked **AM2**.

31.3. Q: *What date?*

31.4. A: I received the communication on 12 March 2015 through the internal communication e-mail attached marked **AM2**.



31.5. Q: *Who actually took the cards and laptop.*

31.6. A: It was taken by our department.

31.7. Q: *What date?*

31.8. A: Around 1 March 2015. See emails around this issue marked **AM12**.

31.9. Q: *Detail the correspondence that occurred during this time.*

31.10. A: This happened more than 4 years ago and I unfortunately cannot recall detail correspondence as some of it was verbal.

31.11. Q: *The process followed in this instance, was it normal?*

31.12. A: The only formal process is compliance to the IR policy applicable to all employees. I was not part of this process and cannot comment.

31.13. Q: *Detail the normal course to follow when suspending an executive (F-band). What does the policy state if any?*

31.14. A: Policy attached marked **AM13 and AM14**.

31.15. Q: *Did Executive Support issue acting letters for those who will be acting in those 4 positions?*

31.16. A: No. I do not know who did the acting letters. I however requested the letters through Advocate N Tsholanku from Eskom Legal. We received it I unfortunately cannot recall when, attached marked **AM15**.



31.17. Q: *Who were the 4 acting individuals.*

31.18. A: The following individuals acted:

31.18.1. Mr Z Khoza as interim Chief Executive.

31.18.2. Ms N Veleti as acting Finance Director.

31.18.3. Mr A Masango as As acting Group Executive Group capital
and

31.18.4. Mr E Mabelane as acting Group Executive Commercial and
technology.

These acting appointments were communicated through the same
internal communication marked **AM2**.

31.19. Q: *How long were they acting?*

31.20. A: herewith information we have on the acting periods:

31.20.1. Ms Veleti to end July 2015.

31.20.2. Mr Z Khoza was in the position up to around 20 April 2015.

31.20.3. Mr Masango was appointed in the same position on 1
November 2015.



31.20.4. Mr Mabelane was appointed Acting chief procurement officer on 28 September 2015 and appointed on 1 June 2016.

31.21. Q: *Was this according to policy normal?*

31.22. A: Appointing individuals to act is part of a normal process in Eskom.

31.23. Q: *Why were you not involved in the whole suspension process?*

31.24. A: It is the discretion of the Chief Executive and/or the Chairman to involve me or not.

31.25. Q: *Who from HR were involved?*

31.26. A: I do not know. Executive support were only involved with the calculation of the separation amount as determined by the Board.

31.27. Q: *What was the basis of the calculation?*

31.28. A: The basis of the calculation was the individuals annual guaranteed remuneration.

31.29. Q: *Who determined the criteria?*

31.30. A: It was derermined by the Board.



CONCLUSION


32. As can be seen from the information provided above, my only involvement regarding this issue was related to the separation calculations as per the agreed resolution.


**ANTON MINNAAR**.....
 SIGNATURE OF DECLARANT
 I certify that the deponent has acknowledged that he/she knows
 and understands the content of this declaration which
 was sworn to affirmed before me and the deponent's signature /
 thumbprint/mark was placed thereon in my presence.


**JOHANNES MEYERS WENTZEL**.....
 JUSTICE OF THE PEACE / COMMISSIONER OF OATHS

Designation (rank).....**Officer**.....Ex Officio Republic of South Africa
 Business address
 SECURITY, MAXWELL DRIVE, SANDTON
 Date.....**2019-07-03**.....Place.....**Eskom
 megawatt Park.**

"AM1"

	JOB PROFILE / DESCRIPTION		KC-30 REV.4
DIVISION: Office of the Group Chief Executive		BU / DIVISION	
DEPARTMENT Executive Support		SECTION	
JOB TITLE Executive Support Manager			
JOB MISSION / PURPOSE To strategically lead the provision of executive support services to Eskom F band Executives and Board. Executive Support is an administrative function. (All services rendered by this position are done on an ethical and highly confidential basis due to the sensitivity relating to Executive Remuneration.)			
KEY PERFORMANCE AREAS Directs and formulates the organisation's long term direction regarding F band Remuneration and benefits. Supports Board remuneration and benefits. Administration of all F-band HR related matters Administration of Executive (F-band) performance management calculations for payments related to bonus payments. Administration of the Long Term Incentive Scheme (LTIS) for F-Bands and calculations of related payments. Support to Board Remuneration In-Committee Pro-actively engages all relevant stakeholders for Executive Remuneration Management of the Department. Annual report disclosure on executive emoluments. Support to parliamentarian questions related to the area			
KEY RECEIVERS Officials at the Department of Public Enterprises Chairman Group Chief Executive F-Bands Executive Support staff Advisory support department, e.g. Legal, IR, PFMA & Risk Service Providers Business Planning Teams Corporate Secretariat			

FUNCTIONAL OUTPUTS / ACTIVITIES	%
<p>1. Directs and formulates the organisation's long term direction regarding Human Resources Support to all F-Bands executives Board members.</p> <ul style="list-style-type: none"> • Formulating and managing the enforcement of policies and procedures for Executive Remuneration • Sets specific performance objectives, and develops strategies to achieve the objective • Continuously researching the market for new products and effective ways to improve the remuneration of F-Band Managers • Ensuring an efficient pay, benefits and administration service to all Eskom F band executives and Board members <p>2. Accepts responsibility for F-Band performance bonus and annual increase process</p> <ul style="list-style-type: none"> • Administration of F band compacts. (Review of performance against targets as defined by Corporate strategy and approved by Exco / Board) • Sourcing information to facilitate F band salary reviews • Advising the Chief Executive and Board on F band salary structures • Presenting F band remuneration information at relevant forums • Supports the implementation of the King Report on executive remuneration by providing all information on salaries, benefits, bonuses for inclusion in the Eskom Financial statement <p>3. Responsible for the Management and implementation of the Long Term Incentive Scheme (LTIS) for E and F-Bands by:</p> <ul style="list-style-type: none"> • Establishing annual non financial vesting conditions for a 3 year period. • Managing research to interpret and understand how to formulate these • Directing the integration of processes, activities and time frames to ensure optimization and cross-functional integration • Finalising/Negotiating the proposed targets for presentation to various Executive Management Committees • Presenting reports on a monthly basis regarding progress against yearly targets • Investigating and reporting misalignment of preferred outcomes and actual targets and performance • Auditing the correct application • Liaising with Divisional Executives regarding special contracts relating to the Eskom Performance Index for E and F Band Managers <p>4. Support to Board People and Governance in-Committee</p> <ul style="list-style-type: none"> • Co-ordinating agenda items including supporting documentation for in-committee portion with secretariat • Reviewing in-committee minutes of meetings • Liaising with Secretariat regarding all in-Committee items related to the function <p>5. Pro-actively engages all relevant stakeholders for Executive Remuneration by:</p> <ul style="list-style-type: none"> • Networking with internal and external stakeholders to ensure Eskom position on Executive Remuneration are aligned and accepted • Responding to Government on all Executive Remuneration queries • Formulating presentations for Eskom Top Management • Liaising with Corporate Secretariat regarding salaries of Board members • Sourcing, consulting and negotiating with external service providers regarding services required 	

D

PL

6. Manages the resources (people & money) in the Department by: <ul style="list-style-type: none"> • Accepting accountability for financial plans and budgets for the Department and managing performance against the budget • Participating in and contributing to strategy sessions, review meetings and other forums • Ensuring that staff are appropriately allocated and trained to do the work • Managing the outputs of subordinates • Ensuring good corporate governance by adhering to Public Finance Management Act and King Report 	
MINIMUM QUALIFICATION REQUIREMENTS Post Bachelor's degree in Management Science	RELATED EXPERIENCE YEARS Extensive experience at Management/Consultant level in a Executive Remuneration environment

SKILLS / COMPETENCIES REQUIRED (INCLUDING INTERNAL TRAINING)

Presentation and negotiation skills
 Good understanding of Eskom business
 Understanding of Eskom Policies and Procedures
 Project Management
 Business Management
 Industrial Psychology
 General management skills
 Analytical skills
 Communication skills
 Sapiential knowledge
 Ability to deal with top management
 Ability to deal with highly confidential matters

BUSINESS OUTPUTS

The Executive Support Department provides an Independent, confidential, ethical and professional one stop service to the Chairman, Eskom Board, P&G Committee of the Board, Chief Executive, EXCO and F-band executives.

1.1. Executive Support Mandate

Its duties comprise the following key activities:

- Board remuneration and benefits.
- All F-band HR related matters.
- Executive (F-band) remuneration and benefits.
- Executive (F-band) performance management calculations
- Management of Consulting contracts for Chairman / CE.
- Support to P&G Committee (In-committee).
- Executive movements (F-band only).
- Exit and separation arrangement for all F-Bands
- Executive (F-band) succession management support.
- Executive Health services.
- Consultative / Advisory and ad-hoc support.

1.2. Key Deliverables

The key deliverables of Executive Support are:

BOARD AND F-BAND ADMINISTRATION

Performance Measure/Indicator (KPI)

Appointments / Promotions

Exits (Resignation / Separation packages / Retirement packages / Death in service)

Payroll

Medical

Leave

All pay queries

Fleet management

All other related payments (Cell phones, Tax services, professional fees)

Update of all models (Salary / Car / Cell / Group life)

All payments (STI / LTI / ad hoc)

BOARD AND F-BAND REMUNERATION AND BENEFITS MANAGEMENT**Performance Measure/Indicator (KPI)****Remuneration - Fix pay**

Benchmark Studies

Recommendations (Board, P&G and DPE)

Effective Implementation (Exco)

Remuneration - Variable pay LTI and STI schemes

Benchmark Studies

Recommendations (Board, P&G and DPE)

Effective Implementation (Exco)

Board Remuneration

Benchmark Studies

Recommendations (Board, P&G and DPE)

Effective Implementation (Board)

Other

Annual report - disclosure

Parliamentarian queries

Interaction with DPE on SOE remuneration

F BAND PERFORMANCE MANAGEMENT (LTI AND STI)**Performance Measure/Indicator (KPI)**

Compacts/Performance Evaluation Calculation

Management of LTI/STI

Assistance to Chairman with CE compacting and presentation to P&G

Report back to P&G/Board

Disclosure

SUPPORT TO CE/CHAIRMAN**Performance Measure/Indicator (KPI)**

Assisting on all F-band Contracts

Retention Contracts

Consulting contracts for CE and Chairman

SUPPORT TO P&G COMMITTEE**Performance Measure/Indicator (KPI)**

P&G Committee/Board Assistance (In-committee)

P&G in Committee Support

EXECUTIVE HEALTH SERVICES (F BAND AND BOARD)**Performance Measure/Indicator (KPI)**

Dedicated biogenetical services to Board and F Bands

OTHER SUPPORT**Performance Measure/Indicator (KPI)**

Support to Exco on talent review (HoneyComb update)

Structures for Chief Executive / Board as and when requested.

Dear Guardians

MEDIA STATEMENT - Independent Enquiry Eskom 12 March 2015

The Eskom Board has today resolved to commission an independent enquiry on the current status of the business and its challenges. The Board, in its quest to address the current challenges faced by Eskom, has deemed it prudent to seek an independent view on the status of, among other things:

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Cash flow challenges

"To ensure that this process is as transparent and uninhibited as possible," said Eskom Chairman, Mr Zola Tsotsi, "the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this enquiry".

The executives who have been asked to step down while the enquiry is underway are Ms Tsholofelo Molefe (Finance Director), Mr Dan Marokane (Group Capital) and Mr Matshela Koko (Commercial and Technology). One of the current non-executive Board members, Mr Zethembe Khoza, has been asked to assume the position of interim Chief Executive. Mr Khoza will be supported by Ms Nonkululeko Veleli (Finance), Mr Abram Masango (Group Capital) and Mr Edwin Mabelane (Commercial and Technology).

"All these senior executives have been with the organization a long time," added Mr Tsotsi, "and we are confident that they will maintain business continuity during this period".

The Board also resolved that the independent enquiry be conducted by external parties, who will be selected within the next week. They will be given unfettered rights of access to all information deemed necessary for this probe to be successful.

The Board has emphasized that this process is a critical step towards ensuring that the situation facing Eskom improves as expeditiously as possible. "To that end, we would like to assure our customers and employees that this was done in the best interest of all our stakeholders, and we hope to come out of this with a better grasp of all the challenges facing the business, and most importantly, with solutions", added Mr Tsotsi.

CORPORATE AFFAIRS



Eskom



Powering your world



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Suite 301, Infotech Building 1090 Acadia Street Hatfield, 0083 Private Bag X15 Hatfield 0028
Tel: (012) 431 1000 Fax: 086 501 2624 / 086 501 0629

To: All Media

Date: 12 March 2015

For Immediate release

Statement by the Minister of Public Enterprises, Minister Lynne Brown, regarding the decision by Eskom Board

I addressed the Eskom Board yesterday, sharing my concerns, fears and frustration about the state of affairs at the State-Owned Company.

As shareholder Representative, I am concerned about the instability at power plants; the financial liquidity of the utility; the lack of credible information; the unreliable supply of electricity and its dire impact on our economy; progress with the build programme; overruns at Medupi and Kusile; delays of the investigation into incidents at Majuba and Duvha; and the issue of coal and diesel pricing.

I welcome the Board's decision to launch a comprehensive and holistic audit into the matters as highlighted.

In my view it should be deeper than a mere fact finding exercise and it should be deep-dive into the company to tell us what is wrong and how it should be fixed.

Since the start of load shedding, I have been inundated with complaints from the public and business about the reliability of the grid and its impact on the economy and the lives of ordinary men and women..

I have been assured that the audit investigation would not take longer than three months and that it is not directed at any particular individual or group but that it merely seeks to ensure that the current challenges faced by the utility are addressed.

For all media enquiries contact Colin Cruywagen on 082 377 9916 or
colin.cruywagen@dpe.gov.za

Issued by Ministry of Public Enterprises

12 March 2015



Anton Minnaar

From: Chairman
Sent: 13 March 2015 03:56 PM
Subject: [All employees] - Introduction of new interim Chief Executive and three acting Group Executives

Importance: High



Chairman's message



Dear Guardians

Introduction of new interim Chief Executive and three acting Group Executives

In the past 48 hours, the Board made a resolution to conduct an independent enquiry into the current status of the business. The Board felt that areas that need particular attention are the poor performance of generation plant, the delays in bringing the new generation plant on-stream, the escalating and high costs of primary energy and the cash flow challenges.

To ensure a process that has the integrity of independence, it was necessary to ask certain executives to step aside for the duration of the enquiry. It is important that Guardians appreciate that this process is not an investigation, but an independent enquiry. As you are aware, the executives that have been asked to step aside include the Chief Executive, Mr Tshediso Matona, Finance Director (Ms Tsholofelo Molefe), Group Executive for Group Capital (Mr Dan Marokane) and Group Executive for Group Commercial and Technology (Mr Matshela Koko).

To ensure business stability and continuity, the Board resolved to appoint Mr Zethembe Khoza as the interim Chief Executive. Mr Khoza was appointed onto the Eskom Board as a non-executive director in December 2014 and later appointed as the Chairman of the People and Governance Committee of the Board. He has strong experience in telecommunications, specialist knowledge in the financial sector with a specific focus on capital investments and experience in other areas of the private sector. Mr Khoza will be supported by the Exco members Ms Ayanda Noah, Ms Elsie Pule, Mr Mongezi Ntsokolo, Mr Thava Govender and Dr Steve Lennon. The Exco will be joined by Mr Abram Masango, Mr Edwin Mabelane and Ms Nonkululeko Veleti as acting Group Executives for Group Capital, Group Commercial and Technology and Finance respectively. All three executives have served the business in various roles and bring many years of experience to the respective portfolios.



Zethembe Khoza
Interim Chief Executive



Nonkululeko Veleti
Finance Director - Acting



Abram Masango
GE (Acting) Group Capital



Edwin Mabelane
*GE (Acting) Group
Commercial & Technology*



Mr Matshela Koko
Group Executive: Commercial & Technology
Eskom Holdings SOC LTD
P.O. Box 1091
Johannesburg
2000

Date:
11 March 2015

Enquiries:

Dear Mr Koko

NOTICE OF SUSPENSION AS GROUP EXECUTIVE: COMMERCIAL & TECHNOLOGY

1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence-free requirement of the enquiry.
4. These concerns have been discussed with you.
5. I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly.
6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.

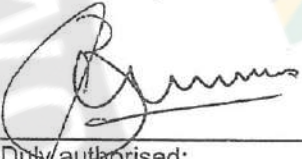
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Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za

Eskom Holdings SOC Ltd Reg. No 2002/015527/30

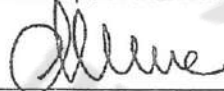
mmk

7. In order for the investigation to proceed as expeditiously as possible, it would not be appropriate for you to remain at work whilst such investigation is in place. You will be advised of the outcome of the enquiry as soon as possible.
8. At that time the subcommittee will consider the enquiry report before considering the matter further.
9. You are instructed to remain in telephonic contact with me during the period of your suspension. We expect you to be contactable in the event that it is necessary for you to attend at the company premises during normal working hours for the purposes of assisting with such investigation. You are further directed not in any manner to approach any member of the company staff, its clients or any third party with whom the company presently has or has had dealings in the past (including the media) without obtaining my prior written permission. You are also directed not to attend at the company's premises during the period of your suspension.
10. The company will regard any contravention of the above instructions in a serious light and further disciplinary steps may be instituted against you in respect of such contravention. You are in addition requested to hand over all work tools issued to you including but not limited to access cards, cell phone, laptop and the like. You are not to make use of the company's information technology hardware and software such as intranet and internet facilities during your suspension.
11. You are requested to surrender your company access card, office keys, laptop and any other company property, documents, computer disks and the like in your possession, with immediate effect.
12. Should you feel uncertain about any aspect of the contents of this letter, you are requested to contact me telephonically.

Yours faithfully


 Duly authorised:
 For and on behalf of the Board
 ZOLA TSOTSI

I acknowledge receipt of this notification:

Signature:  Date: 11/3/15 Time: 19h45
 Mr Koko

Signature:  Date: 11/03/15 Time: 20h40
 Mr Zola Tsotsi

In the event that the employee refuses to sign:

Declaration of witness: I confirm that I have witnessed that this letter has been handed and explained to the above named employee.

Signed _____ Position _____ Date _____





Date:

13 March 2015

Enquiries:

Dear Mr Chairman

PROVISION OF PERSONAL INFORMATION

Further to our discussion on 13 March 2015, I wish to confirm that the following personal information will be available at the request of the four incumbents:

- Contract of employment
- Pension fund calculations
- Information regarding salary and benefits
- LTI Grand certificates

With kind regards
Anton

APPROVE


ZA Tsotsi
CHAIRMAN

Anton Minnaar

From: Malesela Phukubje
Sent: 13 March 2015 02:40 PM
To: Anton Minnaar
Cc: Elsie Pule; khozazw@telkomsa.net; Zethembe Khoza; Leo Dlamini
Subject: COPY OF CONTRACT OF EMPLOYMENT

Dear Mr. Minnaar,

Mr. Marokane has called and requested a copy of his employment contract.

Kind regards,

Malesela Phukubje | Company Secretary
Office of the Company Secretary | Office of the Chairman | Third Floor T36
Maxwell Drive Megawatt Park | Tel : +27 11 800 8542 | Cell : +27 84 200 0087 | Fax : +27 86 652 3139 |
eFax: 0866523139
E-mail : phukubm@eskom.co.za
Secretariat website: http://sivmas045.eskom.co.za/corporate_secretariat/



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REMEMBER YOUR POWER 49m

COMMISSION OF INQUIRY
INTO STATE CAPTURE

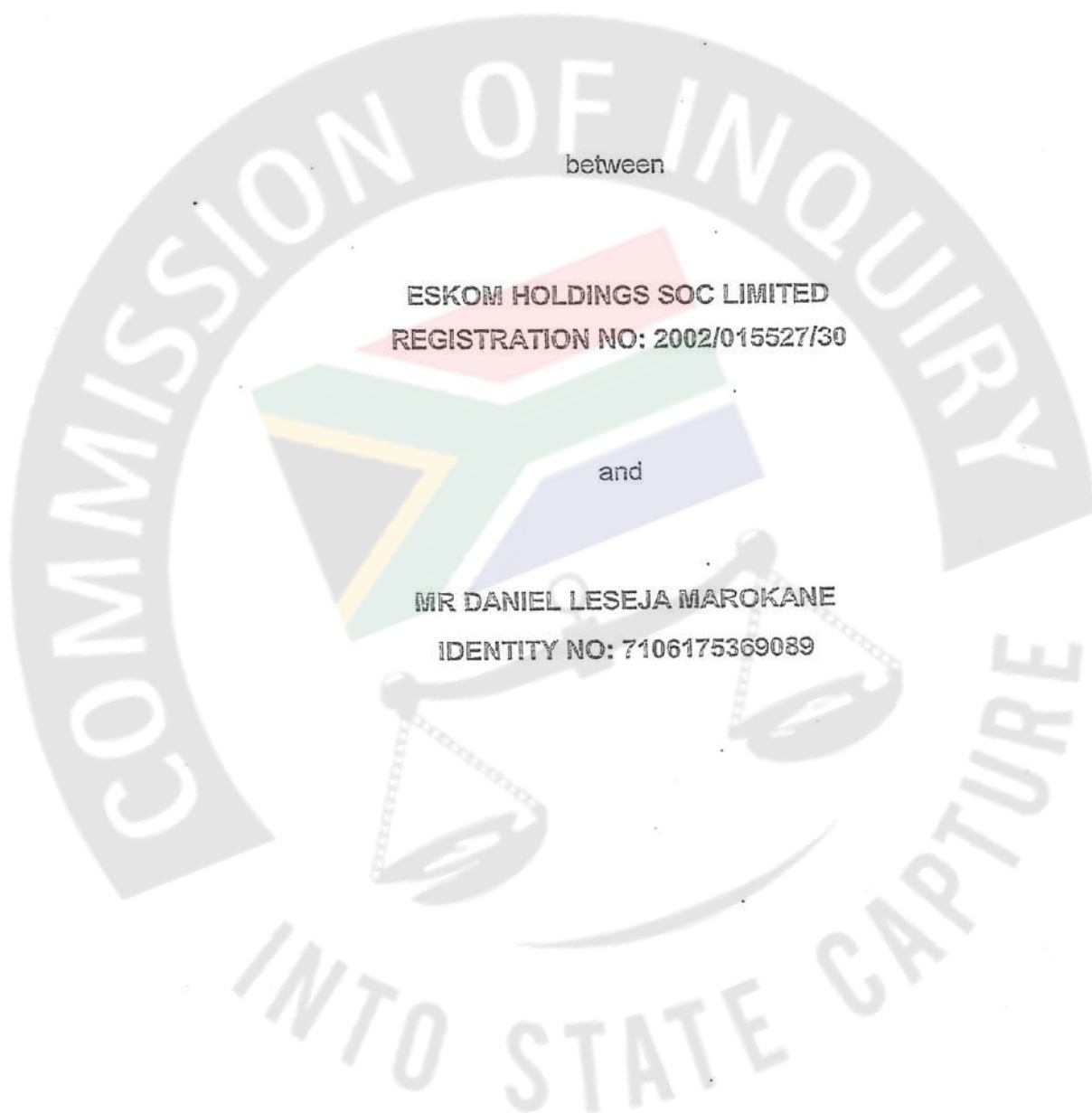
SETTLEMENT AGREEMENT

between

ESKOM HOLDINGS SOC LIMITED
REGISTRATION NO: 2002/015527/30

and

MR DANIEL LESEJA MAROKANE
IDENTITY NO: 7106175369089



[Handwritten signature]

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2

WHEREBY THE PARTIES AGREE AS FOLLOWS:**1 INTERPRETATION**

- 1.1 The headings to the clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 1.2 This Agreement having been negotiated between the Parties, the rule of construction that a contract (this Agreement) shall be interpreted against the party responsible for the drafting or preparation of this Agreement shall not apply nor shall this Agreement be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this Agreement by, *inter alia*, having structured, drafted or introduced any one or other or all the provisions / terms herein contained.
- 1.3 Unless inconsistent with the contents, the expression set forth below shall bear the following meanings:
- 1.3.1 "Agreement" means this agreement;
- 1.3.2 "Eskom" means Eskom Holdings SOC Limited, a company incorporated in terms of the Company laws of the Republic of South Africa, with registration number 2002/015527/30, with its principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg;
- 1.3.3 "Mr DL Marokane" means Mr Daniel Leseja Marokane, an adult male employee with identity number 7106175369089;
- 1.3.4 "the Parties (Party)" means Eskom and Mr DL Marokane, who are parties to this Agreement;
- 1.3.5 "the Signature Date" means the last day of signature of this Agreement by either of the Parties.



1.3.6 "the Termination Date" means 31 May 2015.

2 RECORDAL

2.1 Mr DL Marokane is employed by Eskom as Group Executive: Group Capital in terms of a written contract of employment ("the Employment Contract").

2.2 The Parties have mutually agreed to terminate the Employment Contract and the Employee's employment with Eskom subject to the terms and conditions recorded in this Agreement.

3 TERMS AND CONDITIONS

3.1 By mutual agreement Mr DL Marokane's employment will terminate on the Termination Date.

3.2 Eskom agrees that Mr DL Marokane will not be required to serve the requisite notice period and both Parties waive the notice period.

3.3 The Parties have agreed on the arrangements herein to give effect to the mutual settlement in full and final discharge and in settlement of all and any claims either party has or may have against the other including any monies owing to the Employee, whether arising in terms of statute, delict, contract or otherwise, except as provided for in this agreement. The terms of these arrangements are set out in further detail in clause 4 below.

3.4 Mr DL Marokane agrees that on or before the termination of his employment, by mutual arrangement, Mr DL Marokane will attend on the Eskom Medical Centre for the exit medical assessment to be conducted and will be subject to Eskom's normal exit management processes in this regard.

3.5 The records of Eskom shall record the termination of employment as resignation with his last working day being the Termination Date. Eskom will at all times provide a favourable reference regarding Mr DL Marokane's



employment with Eskom as per the reference letter attached hereto marked annexure "A".

- 3.6 Eskom shall give Mr DL Marokane a certificate of service by no later than 15 June 2015. The certificate shall be in accordance with section 42 of the Basic Conditions of Employment Act, No. 75 of 1997.

4 PAYMENT AND BENEFITS

- 4.1 Mr DL Marokane will receive his normal monthly cost to company (inclusive of all benefits) salary payments up to the Termination Date.

- 4.2 Mr DL Marokane will receive all and any leave pay that is outstanding as at Termination Date which amount will be paid together with the salary payment to which there is reference in clause 4.1 above.

- 4.3 Subject to clause 4.5 below, Eskom will pay, without admitting any obligation to do so, Mr DL Marokane a total separation payment of R6 237 634.33 (six million, two hundred and thirty-seven thousand, six hundred and thirty-four rand and thirty-three cents) ("the Separation Payment"). The payments referred to in paragraphs 4.1 and 4.2 above as well as the Separation Payment and amount referred to in clause 4.4 below, is paid in full and final settlement of any benefits, bonuses, notice pay, outstanding leave pay or any other amount owed or that may become owing to Mr DL Marokane.

- 4.4 As Mr DL Marokane was in the employment of Eskom in 2014, he qualifies for participation in Grant 10 of the LTI. The formula for calculating Mr DL Marokane's award is his pensionable earnings (which is R2 456 284.68 – two million four hundred and fifty six thousand two hundred and eighty four rand sixty eight cents) times the multiplier (where the multiplier remains to be determined by the People & Governance Committee ("P&G")). Once the multiplier has been determined by the P&G, Mr DL Marokane's award will be calculated and will be paid pro-rata for 12 (twelve) months. The amount will then be paid by Eskom to Mr DL Marokane in addition to the Separation

Payment within 5 (five) days of a tax directive being obtained from the South African Revenue Services ("SARS").

4.5 Eskom will apply for an income tax directive from SARS as regards the income tax to be deducted from the amount stipulated in clause 4.3 and 4.4 above. This tax directive to be obtained within 14 (fourteen) days of the Signature Date and as soon as the multiplier is determined as per clause 4.4 above.

4.6 The amount stated in clause 4.3 and 4.4 above less such amount that Eskom is required to deduct in respect of tax will be paid electronically into Mr DL Marokane's banking account within 5 (five) days of receipt of the tax directive from SARS.

5 FULL AND FINAL SETTLEMENT

5.1 Each and all the payments made and agreed to herein are in full and final settlement of all and any claims of any nature whatsoever that both Parties may have and/or may have had against each other whether arising from contract, delict, statute or otherwise and the Parties accordingly waive any claims or rights they may have in this regard.

5.2 Without derogating from the generality of the foregoing, it is specifically recorded that the payment of these amounts is made without any admission of liability by either Mr DL Marokane or Eskom, whether arising out of contract, delict, the common law, statute, or otherwise and neither Party shall have any other claim against the other for, among others:

5.2.1 breach of the Employment Contract or any employment legislation, including but not limited to the Labour Relations Act, 1995 as amended, the Basic Conditions of Employment Act, 1997 as amended and the Employment Equity Act, 1998 as amended; and

5.2.2 any alleged unfair dismissal, any alleged automatically unfair dismissal, any alleged unfair labour practice, any alleged unfair discrimination or



any other claim; and

5.2.3 any other causa not set out in this Agreement.

5.3 All surviving clauses of Mr DL Marokane's Employment Contract that are not extinguished by this Agreement will continue for the period specified therein.

6 CONFIDENTIALITY

6.1 Other than the fact of Mr DL Marokane's resignation and as provided for in annexure "B" referred to hereunder, the Parties agree that the terms and conditions of this Agreement and the circumstances surrounding it shall be kept strictly confidential and will not be disclosed to any third party, body or association, in the absence of the written permission of the other, save where the disclosure of this information is required by the operation of law and/or in order to enforce the provisions of this Agreement.

6.2 Eskom by agreement will issue the statement attached hereto marked annexure "B" without change or deviation within 5 (five) days of Signature Date.

7 STATEMENTS

7.1 Mr DL Marokane shall not make any written or oral statements injurious to, or of a disparaging nature about Eskom or any of Eskom's employees and Eskom shall likewise not make any written or oral statements injurious to, or of a disparaging nature about, Mr DL Marokane.

7.1.1 In particular, Eskom undertakes to make available to Mr DL Marokane in writing any outcome or finding that is in anyway adverse to him or finds any wrongdoing by Mr DL Marokane, and will not publish same to any third party outside of Eskom and/or its advisors until such findings are referred to Mr DL Marokane to enable him to respond or comment on the findings before same are finalised. Eskom undertakes to give proper



consideration to his comments.

- 7.1.2 In addition, Eskom agrees and undertakes that any response and/or comments furnished by Mr DL Marokane will be published together with the report.

8 BREACH BY THE PARTIES

8.1 Mora notice

Save as may be provided to the contrary in this Agreement, should any Party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then the other Party/ies ("the aggrieved party/ies") shall be obliged to give the defaulting party 10 (Ten) days written notice to remedy the breach where the aggrieved party wishes to make an election or to take any steps consequent upon such breach.

8.2 Consequences of failure to remedy breach

If the defaulting party fails to timeously remedy the breach, the aggrieved party/ies shall be entitled to make such election, take such steps and institute such proceedings (subject, however, to mediation and arbitration where and if applicable) as are permitted at law.

8.3 Remedies not exclusive of other remedies

- 8.3.1 Save as provided for in clause 8.4 below, no remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy available at law, in equity, by statute or otherwise, and each and every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise.

- 8.3.2 The election of any Party to pursue one or more such remedy shall not constitute a waiver by such Party of the right to pursue any other available remedy.

8.4 Overriding provision

Notwithstanding any matter referred to above (and the preceding clause in particular), no party may cancel this Agreement.

9 EMPLOYMENT OPPORTUNITIES GOING FORWARD

Eskom agrees that nothing herein contained will prevent or prohibit Mr DL Marokane from doing business with, being associated and/or employed, whether directly or indirectly by any competitor of Eskom or previously owned business unit and/or component of Eskom.

10 NON-VARIATION

10.1 No variation, novation, modification or waiver of any of the provisions of this Agreement or consent to any departure therefrom shall in any manner be of any force or effect unless confirmed in writing and signed by the Parties and such variation, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose and to the extent for which it was made or given.

10.2 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred on such Party in terms of this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such power or right preclude any other or further exercises thereof or the exercise of any power or right under this Agreement.

11 NOTICES AND DOMICILIA

11.1 Each Party chooses the address set out opposite its name below as its address to which all notices, legal processes and other communications must be delivered for the purposes of this Agreement:

Eskom

Megawatt Park,
Maxwell Drive, Sunninghill
Johannesburg
2001

P.O Box 1091
Johannesburg
2001

Marked for the attention of Mr. A I Minnaar

Mr DL Marokane

care of Brian Kahn Inc.
2 Burnside Island, Umlilo House
410 Jan Smuts Avenue
Craighall park
Email address: brian@briankahn.co.za

11.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and delivered by hand.

11.3 Any Party may by written notice to the other Party change its chosen address to any physical address, provided that the change shall become effective on the 14th day after the receipt of the notice by the addressee.

12 GENERAL

12.1 Apart from any provisions of the Employment Contract which by their nature shall survive its termination, this Agreement constitutes the whole agreement between the Parties and any representation not contained herein shall be of no force and effect between the Parties.

- 12.2 All the terms set out in this Agreement are material.
- 12.3 Each and every provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this agreement. If any of the provisions of this agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this agreement shall be and remain of full force and effect.
- 12.4 This Agreement may be executed in any number of counterparts by the Parties on separate counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

13 LEGAL ADVICE

- 13.1 Each of the Parties agrees and acknowledges that :-
- 13.1.1 this Agreement correctly sets forth the terms of the transactions agreed to by the Parties;
- 13.1.2 such Party agrees to this Agreement under their own volition and desire and not as a result of any undue influence, overreaching, oppression, duress or bad faith on the part of the other party;
- 13.1.3 it has been represented in the negotiation and in the preparation of this Agreement by professional advisors of its own choice or had the opportunity to meet and confer with, and to review this Agreement with, independent legal advisors of its own choice;
- 13.1.4 it has read this Agreement carefully and has either had the agreement explained to it by its legal advisors or has chosen to waive the

opportunity to have this Agreement explained by such legal advisors;

- 13.1.5 it is fully aware of the contents of this Agreement and of its legal consequences and effects.

14 SIGNATURE

Signed on behalf of the Parties, each signatory hereto warranting that he/she has due authority to do so.

SIGNED at SUNNINGDALE on 28TH MAY 2015.

For and on behalf of
ESKOM HOLDINGS SOC LIMITED

Baldwin Sipho Ngubane
Signature

BALDWIN SIPHO NGUBANE
Name of Signatory

Chairperson of Board (Acting)
Designation of Signatory

SIGNED at DRAIGHALL on 28th MAY 2015.

For and on behalf of
Mr DL Marokane

Daniel Llesha Marokane
Signature

DANIEL LLESHA MAROKANE
Name of Signatory

Anton Minnaar

From: Neo Tsholanku
Sent: 30 March 2015 02:58 PM
To: Anton Minnaar
Subject: Re: Fact issue

Thanks Anton.

Kind regards

Sent from my iPad

On 30 Mar 2015, at 2:38 PM, Anton Minnaar <MinnaaAi@eskom.co.za> wrote:

Dear Neo

As discussed I have picked up the issue with the CE (on your advice) and he agreed that the external lawyers can provide us with the "Fact" sheet as requested by DPE.
I have spoken to Jerry and he will put "something together".
I hope you find this in order.

With kind regards
Anton



Anton Minnaar

From: Rehna Rutheepaul <r.rutheepaul@bowman.co.za>
Sent: 31 March 2015 08:58 AM
To: Anton Minnaar
Cc: Neo Tsholanku; tsholanku@gmail.com; Jerry Kaapu
Subject: Fact Sheet
Attachments: Fact Sheet 31032015.pdf

Dear Sir,

Please find hereto a fact sheet as requested.

Kind Regards

Rehna Rutheepaul

Secretary to Jerry Kaapu and Henry Ngcobo

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

165 West Street, Sandton, Johannesburg
P O Box 785812, Sandton, 2146
South Africa

t +27 11 669 9000 | d +27 11 669 9511

f +27 11 669 9001

e r.rutheepaul@bowman.co.za

www.bowman.co.za

Follow Bowman Gilfillan on Twitter



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1 AM 7



Ms M Mokholo
Acting Director-General
Department of Public Enterprises
Infotech Building
1090 Arcadia Street
Hatfield
Pretoria 0001

Date:
31 March 2015

Enquiries:
Mr A I Minnaar
Tel +27 11 800 3088

Dear Matsietsi

SUSPENSION FACT SHEET

As requested, attached is the fact sheet relating to the recent suspension of four Eskom executives.

Yours sincerely

Z W Khoza
INTERIM CHIEF EXECUTIVE
ESKOM



M e m o r a n d u m

BG Bowman Gilfillan

Member of Bowman Gilfillan Africa Group

To: Anton Minnaar / Eskom Holdings (SOC) Limited
From: Jerry Kaapu & Luway Mongie
Our Reference: Jerry Kaapu/ 6146667
Date: 30 March 2015
Re: Timeline of events regarding the suspension of four Eskom executives

"CONFIDENTIAL AND PRIVILEGED"

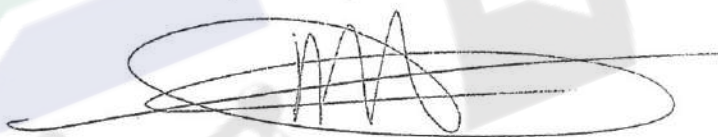
1. In December 2014, Cabinet of the Republic of South Africa ("Cabinet") announced that a War Room had been set up with immediate effect to oversee the implementation of a five point plan addressing the electricity challenges facing the Republic of South Africa. Cabinet was concerned about the disruptive effect the prevailing power outages were having on the daily lives of all South Africans and its impact on households and businesses across the country.
2. At a meeting held on 11 March 2015, the Board of Eskom in-committee ("the Board") resolved that an investigation should be conducted relating to the affairs of Eskom. The Board was seriously concerned that it should determine the true state of affairs of Eskom in order for it to make informed decisions in tackling the problems that are facing it. The Board mandated the Audit and Risk Committee ("ARC") to handle the logistics of the investigation on condition that the investigation is conducted by an independent entity, which entity should not have an existing relationship with Eskom. It is intended that the investigation will be conducted and completed within the next 3 months.
3. During this meeting, the Board formed a *prima facie* view that it may not be in the best interests of Eskom to institute the investigation process while certain Executives are present at work as the continued presence of these Executives might jeopardize and/or interfere with the investigation. The Board therefore decided that these Executives may need to be suspended, pending the outcome of the investigation. The People and Governance Committee ("PGC") was therefore tasked with the responsibility of considering the contemplated suspensions of these Executives and to take the necessary measures therewith.
4. On the same day, the PGC then convened a meeting to discuss the contemplated suspensions of these Executives and invited three of the Executives, i.e. Mr Matona, Ms Molefe and Mr Koko, one at a time, to discuss the Board's intention to suspend them. The fourth Executive identified, Mr Marokane, was on leave at the time and only attended the meeting with the PGC on 12 March 2015. During these meetings with the PGC, each Executive was given the rationale for the contemplated

suspensions and also given an opportunity to make representations to the PGC as to why they should not be suspended pending the investigation. The PGC considered and deliberated on the submissions made by the Executives, on a case-by-case basis, and in each instance decided to suspend them on full pay and benefits, pending the outcome of the investigation. The suspensions were effected on the same day that the representations were made (i.e. 11 and 12 March 2015).

5. On 20 March 2015, one of the Executives, Mr Matona, lodged a dispute to the CCMA alleging an unfair labour practice in that his suspension had been implemented without an unfair reason and without a hearing. On the same day, Mr Matona also filed an urgent application at the Labour Court wherein he alleged that pending the outcome of the unfair labour practice dispute referred to the CCMA, Eskom should be interdicted and restrained from giving effect to his suspension and that his suspension should be set aside and uplifted until such outcome has been delivered.
6. In an urgent application, it is necessary that the applicant (in this case Mr Matona) establish certain grounds in order for the application to succeed. Those grounds are briefly as follows:
 - 6.1 The applicant has to show a *prima facie* right to the relief sought;
 - 6.2 An apprehension of irreparable harm to the applicant if the relief sought is not granted;
 - 6.3 The balance of convenience should favour the applicant and the granting of the relief sought;
 - 6.4 The applicant should have no satisfactory alternative relief available.
7. In its judgment, the Labour Court held that the Board seemingly had good reasons to take the action that it took and to suspend Mr Matona because if the allegations made against Mr Matona are proved to be correct, they are of a serious nature. However, the Court was of the view that Mr Matona had shown a *prima facie* right to the relief sought as, based on the evidence and arguments presented in court, the CCMA could possibly find that the suspension was unfair. The court held that the Board was not frank with Mr Matona in respect of the real reasons for the suspension and seemingly the Board had already made its decision in respect of Mr Matona's suspension before the pre-suspension hearings were conducted. The Court stressed that this was its *prima facie* view on the matter but that the CCMA would have to make a determination on the matter based on all of the evidence that will be presented at arbitration. The court recognised that there was a dispute of fact in respect of what had happened, how and when what had happened and the sequence thereof and that these disputes of fact would have to be resolved at the CCMA.
8. However, with regard to the further requirements of urgency that Mr Matona was required to establish, the Court held that the matter was not urgent as he failed to prove that he would suffer

irreparable harm if the suspension is not lifted. Further, Mr Matona did not present any evidence to show that the CCMA would not deal with the matter expeditiously. Lastly, the Court found that the balance of convenience did not favour Mr Matona. Therefore, the Court decided in favour of Eskom and ordered that the matter be struck off the roll with no order as to costs. The effect of this order is the same as when the application is dismissed. In the circumstances, the suspension remains and Mr Matona can challenge it at the CCMA.

9. Mr Matona's unfair labour practice dispute has subsequently been set down before the CCMA on 13 April 2015. The matter is currently set down for conciliation-arbitration proceedings and he seeks reinstatement and compensation as an outcome. This process requires that the dispute first be conciliated and if the parties cannot conciliate the matter, the matter proceeds immediately to arbitration.
10. Eskom is entitled to object to the process of conciliation-arbitration which would result in only the conciliation process being held on 13 April 2015. If the matter cannot be conciliated, Mr Matona can then refer it to arbitration. Arbitration would then be set down for a later date.
11. To date, none of the other three executives have referred any disputes to the CCMA or the Labour Court regarding their suspensions.



Jerry Kaapu/ Luway Mongie
Bowman Gilfillan Inc.

Anton I Minnaar

General Manager – Executive Support

THE DEPARTMENT EXECUTIVE SUPPORT

I am head of the department, Executive Support, for the past 16 years. This department reports directly to the Chief Executive and I have a dotted reporting line to the Chairman related to board issues.

The Executive Department provides a confidential, ethical and professional support service to the Chairman, Eskom Board, People and Governance Committee of the Board, Chief Executive, EXCO and F-Band executives.

The exclusive function of the Executive Support Department is to provide an administrative support service to:

- The Eskom Board
- The Chief Executive
- The executive committee (EXCO) and other F band executives

1) Who requested it?
2) Who drove the process?

The department's duties comprise the following key activities:

- Board remuneration and benefits
- All F-Band HR related matters
- Executive (F-Band) remuneration and benefits
- Executive (F-Band) calculation of variable remuneration (STI and LTI)
- Management of some Executive and Consulting contracts for Chairman / GCE
- Support to People and Governance Committee (In-Committee)
- Executive movements (F-band only)
- Exit and separation arrangements for all F-Bands
- Executive (F-Band) succession management support
- Executive Health services
- Ad-hoc support

* What were the basis of the calculations?
* Who determined the criteria?
* How were these communicated to you?

My engagement with the suspension of Mr. T Matona, Mr. D Marokane, Mr. M Koko and Ms. T Molefe as follows:

- My only involvement was related to the calculation of the settlement payment as resolved by the Board. — how did you go about doing the calculations?
- I was instructed by Ms V Klein Chairperson of the P&GC of the Board to provide information on remuneration packages. — when did she request this & how did you provide this info back to her?
- To my knowledge Denton's was involved with some type of investigation. — was this the inquiry initiated by the Board?
- Mr Jerry Kaapu from Bowman's Gilfillan was also involved I think in the drafting of the agreements. — How do you know this fact?
- (Your best starting point would be secretariat and Mr Kaapu)

* Why were you not involved in the whole suspension process?

* Who from HR was involved?

* Who drove the process?

* Include process followed (including emails sent)

when collecting it properly (cards, etc.)

After the report what was communicated to you/what?

How long was this inquiry?

who informed you?
when were you informed of the suspensions?

When? How? Location?

7) Who informed you of the suspension?

8) Date?

9) Who actually test the cards & laptops?

10) Date?

11) Detail the ~~exam~~ correspondences that occurred during this time.

* The process followed (in this instance) was it normal?

If so, how?

If not, how also?

- Detail the normal course to follow when suspending an executive (F-band)?

- What does the policy state, if any?

* Did HR issue acting letters, for those who will be acting in those 4 positions (internal)?

- Who were the 4 acting individuals?

- Acting letters?

- How long were they acting?

* Process followed here.

- Was this in accordance to Policy (Normal)?



Anton Minnaar

From: Elsie Pule
Sent: 18 March 2015 09:12 AM
To: Anton Minnaar
Cc: Venete Klein; Sean Maritz
Subject: FW: Urgent feedback pls

Importance: High

Anton

As discussed please confirm whether the laptop has been collected from the CE.

From: Venete Klein
Sent: Saturday, March 14, 2015 9:28 AM
To: Elsie Pule
Subject: Urgent feedback pls
Importance: High

Hi Elsie,

I see from the collections of the cards, laptops etc that we did not collect from the CE, what was the reason for that?

Warm regards

Venete Klein
CDSA
Eskom Board Member

Anton Minnaar

From: Nazmeera Rickert <admin@kleininc.co.za>
Sent: 18 March 2015 09:37 AM
To: Anton Minnaar
Subject: Directions to Ms Klein's office

Good morning Anton,

The directions to our offices:

517 Mendelssohn street
Contantia Park
Pretoria East

When you get the gate ring the bell, and we will open for you.
You can park anywhere, there will be parking open.

Warm regards,

Nazmeera Rickert

Executive Assistant

Cell: 073 625 9774

Office: 012 993 5863

Office: 012 993 5856

Fax: 086 636 2072

admin@kleininc.co.za

P.O. Box 92040, Mooikloof, 0081

Address: 517 Mendelssohn Street, Constantia Park, 0181

Kleininc
Management Consultants

Anton Minnaar

From: Elsie Pule
Sent: 18 March 2015 09:44 AM
To: Freddy Ndou
Cc: Edwin Mabelane; Zethembe Khoza; Anton Minnaar
Subject: new mandate for CIO

Freddy

We had a mandate from P&G to settle with the above at a maximum of 12 months.. Last week we followed up and Matshele indicated through sms

" 12 month salary plus LTI 8 in the event that the board decide to pay it out to all F bands. He will resign at the end of the financial year"

We do not have the mandate for the long term incentive as we need to go back to P&G for mandate, however I am made to believe there was a discussion with Tshediso.

Are you aware of any discussions?



- this
CIO group who
got suspended
Sal Lahar.

Anton Minnaar

From: Venete Klein
Sent: 18 March 2015 03:31 PM
To: Elsie Pule
Cc: Anton Minnaar; Venete Klein; Sean Maritz
Subject: Re: Urgent feedback pls

Anton,
Given the significance of this matter I would like your confirmation ASAP.
regards

Sent from my iPhone

On 18 Mar 2015, at 9:11, "Elsie Pule" <PuleEM@eskom.co.za> wrote:

Anton

As discussed please confirm whether the laptop has been collected from the CE.

From: Venete Klein
Sent: Saturday, March 14, 2015 9:28 AM
To: Elsie Pule
Subject: Urgent feedback pls
Importance: High

Hi Elsie,

I see from the collections of the cards, laptops etc that we did not collect from the CE, what was the reason for that?

Warm regards

Venete Klein
CDSA
Eskom Board Member

Anton Minnaar

From: Elsie Pule
Sent: 18 March 2015 04:44 PM
To: Venete Klein
Cc: Anton Minnaar; Sean Maritz
Subject: RE: Urgent feedback pls

Venete

It is done, it was collected today.

From: Venete Klein
Sent: Wednesday, March 18, 2015 3:31 PM
To: Elsie Pule
Cc: Anton Minnaar; Venete Klein; Sean Maritz
Subject: Re: Urgent feedback pls

Anton,
Given the significance of this matter I would like your confirmation ASAP.
regards

Sent from my iPhone

On 18 Mar 2015, at 9:11, "Elsie Pule" <PuleEM@eskom.co.za> wrote:

Anton

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Sent: Saturday, March 14, 2015 9:28 AM
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Importance: High

Hi Elsie,

I see from the collections of the cards, laptops etc that we did not collect from the CE, what was the reason for that?

Warm regards

Venete Klein
CDSA
Eskom Board Member

Anton Minnaar

From: Jacob Leeuw
Sent: 19 March 2015 08:20 AM
To: Anton Minnaar
Cc: Sean Maritz
Subject: List of equipment collected
Attachments: Executive Equipment Collected for Suspended Employees.docx

Good day

Kindly find attached

Kind regards

Jacob Leeuw
Systems Analyst
Enterprise Development Division | Group Information Technology
Infrastructure Services | Service Design and Transition
Eskom Holdings SOC Limited

Megawatt Park, Maxwell Drive, Sunninghill Sandton PO Box 1091, Johannesburg, 2000
Tel: +27 11 800 5212 Cell: +27 762035221 Location: D3 Exec Email: leeuwj@eskom.co.za



Executive Equipment Collected for Suspended Employees

Name	Equipment	Serial Number	UID	Status
Tsholofelo Molefe	Samsung Slate	Hyww91cd200095	6004708-188-04016	Returned
	Ext hdd	W881423d9789	none	Returned
	64GB SD Card			Returned
	Vodacom 3G	89870000000003379310		Returned
	Mecer Monitor	716TUYS22R1859	6004708-188-29329	Returned
	Toshiba Docking station			Returned
	Keyboard and Mouse			returned
Koko Matshela	Samsung Slate	Hyww91ed100014	6004708-188-04241	Returned
	Ext hdd	3275081161		Returned
	64GB SD Card			Returned
	Vodacom 3G	89870000000003379369		Returned
Dan Marokane	Samsung Slate	Hyww91ed100136	6004708-188103718	Returned
	Ext hdd	3446920728		Returned
	64GB SD Card			Returned
	Vodacom 3G	89870000000003379203		Returned
Tshediso Matona	Samsung Slate	Hyww91ed100299	6004708-188-03961	returned
	64GB SD Card			returned
	Vodacom 3G	80870000000003378890		returned

Anton Minnaar

From: Jacob Leeuw
Sent: 19 March 2015 08:53 AM
To: Anton Minnaar
Subject: RE: List of equipment collected

I spoke to the CEO's PA, she has his access card.

Regards

From: Anton Minnaar
Sent: Thursday, March 19, 2015 8:27 AM
To: Jacob Leeuw
Subject: RE: List of equipment collected

Thank you Jacob

Can you also please confirm if we received all the excess cards. Know only of Dan's.
Thank you

Kind regards
Anton

From: Jacob Leeuw
Sent: 19 March 2015 08:20 AM
To: Anton Minnaar
Cc: Sean Maritz
Subject: List of equipment collected

Good day

Kindly find attached

Kind regards

Jacob Leeuw
Systems Analyst
Enterprise Development Division | Group Information Technology
Infrastructure Services | Service Design and Transition
Eskom Holdings SOC Limited

Megawatt Park, Maxwell Drive, Sunninghill Sandton PO Box 1091, Johannesburg, 2000
Tel: +27 11 800 5212 Cell: +27 762035221 Location: D3 Exec Email: leeuwj@eskom.co.za

Anton Minnaar

From: Venete Klein
Sent: 19 March 2015 09:19 AM
To: Anton Minnaar
Subject: Re: List of equipment collected

Tx Anton

Regards

Sent from my iPhone

On 19 Mar 2015, at 8:29, "Anton Minnaar" <MinnaaAi@eskom.co.za> wrote:


Dear Ms. Klein

Attached confirmation of all the equipment received. I will confirm on the excess card of Tshediso.

Kind regards
Anton

<Executive Equipment Collected for Suspended Employees.docx>



	Procedure	Human Resources Division
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Title: **Disciplinary**

Unique Identifier:

32-1113

Alternative Reference Number: **NA**

Area of Applicability: **E**

Documentation Type: **PC**

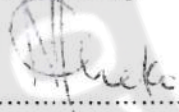
Revision: **0**

Total Pages: **14**

Next Review Date: **November 2013**

Disclosure Classification: **CONTROLLED DISCLOSURE**

Compiled by

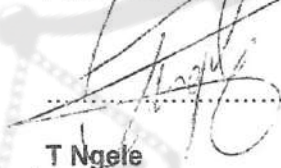


N Theko

**Employee Relations Officer
Human Resources Division**

Date: **02/03/2011**

Functional Responsibility



T Ngele

**Senior Manager Legal and
Statutory Portfolio
Human Resources Division**

Date: **02/03/2011**

Authorized by



BE Bulunga

**Divisional Executive
Human Resources**

Date: **02/03/2011**

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1. INTRODUCTION

The Disciplinary Procedure outlines the process to be followed or utilised in the event of alleged misconduct as provided for in the Disciplinary Code/Standard.

2. SUPPORTING CLAUSES

2.1 SCOPE

2.1.1 Purpose

The purpose of the Disciplinary Procedure is to correct behaviour that is unsatisfactory to Eskom and to encourage expected behaviour.

Discipline will, on the whole, be applied progressively with due regard to the nature and seriousness of infringements, but will not preclude dismissal for first infringement.

2.1.2 Applicability

This Procedure shall apply throughout Eskom Holdings Limited, its Divisions, and Business Units.

Employees who participate in unprotected industrial action need not necessarily be dealt with in terms of this Procedure, but subject to the requirements of the specific circumstances and with due cognisance of the provisions of the Labour Relations Act (66/1995), hereinafter referred to as the Act.

2.2 NORMATIVE/INFORMATIVE REFERENCES

Parties using this procedure shall apply the most recent edition of the documents listed below:

2.2.1 Normative

- [1] ISO 9001 Quality Management Systems.
- [2] Recognition Agreement.
- [3] Grievance Procedure.
- [4] Disciplinary Code.
- [5] Disciplinary Procedure
- [6] Sexual Harassment Standard
- [7] Labour Relations Act.

2.2.2 Informative

- [1] Constitution of the Republic of South Africa.
- [2] Labour Relations Act.
- [3] Basic Conditions of Employment Act.
- [4] Employment Equity Act.

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- [5] Collective agreements.
- [6] Codes of Good Practice.
- [7] Various Conditions of Services.

2.3 DEFINITIONS

2.3.1 Controlled disclosure: controlled disclosure to external parties (either enforced by law or discretionary)

2.3.2 Eskom: is used for Eskom Holdings Limited and its Divisions and owned subsidiaries.

2.3.3 Him/His: is used for describing a "person" and is not gender based, that is, male or female gender.

2.3.4 Representative: is a fellow employee or an official of a recognised trade union appointed by the employee to assist him/her.

2.4 ABBREVIATIONS

Abbreviation	Description
CCMA	Commission for Conciliation Mediation Arbitration
ER	Employment Relations
HR	Human Resources
IR	Industrial Relations

2.5 ROLES AND RESPONSIBILITIES

It is the responsibility of management to institute discipline in a lawful and equitable manner.

An employee shall, during all disciplinary proceedings, be entitled to be assisted or advised by a representative.

2.6 PROCESS FOR MONITORING

Annual review and implementation of new collective agreements and legislation.

2.7 RELATED/SUPPORTING DOCUMENTS

This procedure supersedes the previous version of the document.

3. PRINCIPLES

The following principles will be observed when applying the procedure:

- 3.1 The principle of fairness and equity shall always be adhered to.

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3.2 Any disciplinary action, shall as far as possible, emphasize corrective measures rather than punitive measures.

3.3 Eskom will endeavour to take disciplinary action within three (3) months from the date that it becomes aware of any misconduct.

4. DISCIPLINARY PROCEDURE

No disciplinary action shall be instituted against an employee unless he/she is afforded a proper opportunity to state his/her case and to defend him/herself against any allegations that may be taken into consideration against him/her.

When it is suspected that an employee has committed misconduct, one of the following disciplinary processes will be followed:

4.1 Disciplinary Enquiry

4.1.1 Disciplinary enquiry is an inquisitorial process to be conducted by the manager or supervisor of the employee. The manager has a right to determine the finding and sanction, having considered the facts.

4.1.2 The process will only be utilized for offences that, on the face of it, may not result in severe sanction.

4.1.3 In the event where it becomes apparent during the enquiry that the misconduct may require a disciplinary hearing, the manager must advise the employee and refer it to a disciplinary hearing.

4.2 Disciplinary Hearing

4.2.1 Disciplinary hearing is an adversarial process to be chaired by an internal independent chairperson.

4.2.2 The process will only be utilised for offences that may, or have the potential to, result in/or warrant a penalty of dismissal.

4.2.2 The utilisation of this process does not necessarily mean that a sanction of dismissal will be the only sanction. It means a sanction of dismissal and other sanctions (as prescribed in the Disciplinary Code/Standard) are appropriate sanctions.

4.3 Pre-Dismissal Arbitration

4.3.1 Pre-dismissal arbitration is an adversarial process to be chaired by an independent external chairperson.

4.3.2 The process will only be utilised for offences that may, or have the potential to, result in/or warrant a penalty of dismissal.

4.3.3 The process can only be utilised if the parties (employer and employee) involved in that particular disciplinary case agree to utilise the process.

4.3.4 The process is, *mutatis mutandis*, subject to the provision of Section the 188A of the LRA 66 of 1995, as amended.

4.3.5 If the parties agreed to follow a pre-dismissal arbitration procedure in terms of the LRA 66 of 1995, an agreement shall be made in writing by the parties before the case can be referred to the Commission or a selected accredited agency.

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4.3.6 The parties must exchange all relevant documents to be submitted into evidence at the arbitration, at least 4 days prior to the arbitration.

4.3.7 The process will constitute the following:

- a. A list of all arbitrators from the Commission or Panellists from any Accredited Agency shall be acquired by the parties.
- b. Parties to choose three (3) possible names from the list and, finally, select one name of the Arbitrator who will chair the Pre-dismissal arbitration.
- c. The case presenter to lead employer's case.
- d. Alleged offender and his/her representative.
- e. Legal representation during the pre-dismissal arbitration will subject to the provisions of Rule 25 of the Commission for Conciliation Mediation Arbitration rules.
- f. The arbitrator shall have the same powers as contemplated by Section 188A(7) of the LRA 66 of 1995.
- g. The provisions of Section 143 to 146 of LRA 66 of 1995 shall apply to any award made by an arbitrator in terms of this procedure.
- h. The method of recording will include audio tape recording but exclude visual recordings.
- i. The arbitrator will have 14 days to make an award; the award must be in writing.
- j. An arbitrator's award will be final and binding and have similar status and effect as those issued by the arbitrator at arbitration under auspices of the CCMA.

4.4 Suspension of employee with pay pending Disciplinary Enquiry, Hearing or Pre-dismissal arbitration

4.4.1 When it is suspected that an employee may have committed misconduct and that his/her continued presence in the premises of the company might interfere with the disciplinary investigations, the manager may decide to suspend the employee with pay pending the outcome of the investigation.

4.4.2 Depending on the outcome of the investigation, the manager may extend the suspension or impose the suspension (if the employee was not suspended) pending the outcome of disciplinary process.

4.4.3 The decision to suspend the employee must be considered if and when one or more of the following factors are involved:

- a. element of dishonesty in the alleged misconduct
- b. possibility of tampering with evidence
- c. possibility of interfering with the investigation process
- d. possibility of intimidating witnesses.

4.5 Notification of Disciplinary Enquiry, Disciplinary Hearing or Pre-dismissal arbitration

A written notice advising the employee of the alleged misconduct (charge), process to be followed (enquiry, hearing or Pre-dismissal arbitration), the particulars relating thereto, as well as his/her rights and the time and place of the hearing shall be furnished to the employee at least five (5) days prior to the hearing or three (3) days for enquiry or ten (10) days for pre-dismissal arbitration.

CONTROLLED DISCLOSURE

5 DISCIPLINARY ENQUIRY PROCEDURE

- 5.1 Once the manager has determined that the process to be followed is a disciplinary enquiry procedure in terms of paragraph 4.1 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for an inquisitorial approach.
- 5.2 The parties must exchange all relevant documents to be relied upon at the enquiry at least 24 hours prior to the enquiry.
- 5.3 At the disciplinary enquiry, the following process will be followed:
- 5.3.1 The manager will put the charge(s) and all the relevant facts and documents to the employee.
- 5.3.2 The employee will be afforded an opportunity to give an explanation for the allegations.
- 5.3.3 Witnesses may be called in to give evidence.
- 5.3.4 The manager will consider all the facts and make a finding. The finding must be in writing.
- 5.3.5 If the finding is a guilty verdict, the employee must be advised to furnish mitigating factors.
- 5.3.6 The manager must consider the mitigating factors and aggravating factors and issue a sanction. The sanction must be in writing.
- 5.3.7 The finding and the sanction of the manager do not necessarily have to be given on the same day.
- 5.3.8 The only method of recording will be in terms of the Disciplinary Enquiry Summary of Events form.

6 DISCIPLINARY HEARING PROCEDURE

- 6.1 Once the manager has determined that the process to be followed is a disciplinary hearing procedure in terms of paragraph 4.2 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for an adversarial approach.
- 6.2 The parties must exchange all relevant documents to be submitted into evidence at the hearing, at least two days prior to the hearing.
- 6.3 The process will constitute:
- 6.3.1 an internal independent chairperson; a prosecutor or case presenter;
- 6.3.2 accused employee and his representative; and
- 6.3.3 an employee relations practitioner.
- 6.4 The method of recording will include audio tape recording, but exclude visual recordings.
- 6.5 The parties will be given an opportunity to lead their respective evidence.
- 6.6 The chairperson will have 5 days to make a finding. The finding must be in writing.
- 6.7 If the finding is a guilty verdict, the employee and the case presenter must be advised to furnish mitigating and aggravating factors, respectively.
- 6.8 The chairperson must consider the mitigating and aggravating factors and issue a sanction. The written sanction must be issued within five days.
- 6.9 The sanction notice must advise the employee of his/her right to lodge an appeal against the finding and/or sanction.

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7 PRE-DISMISSAL ARBITRATION PROCEDURE

- 7.1 Once the parties have agreed to follow a pre-dismissal arbitration procedure in terms of paragraph 4.3 and the employee has been advised in terms of paragraph 4.5, the manager shall prepare for a pre-dismissal arbitration approach.
- 7.2 The parties must exchange all relevant documents to be submitted into evidence at the arbitration at least four days prior to the arbitration.
- 7.3 The process will constitute the following:
- 7.3.1 An external independent chairperson agreed to by both parties (the employer will submit three (3) names from the Tokiso Panel or any other dispute resolution agency and the employee must choose one from the names submitted) or appointed by the CCMA.
 - 7.3.2 A prosecutor or case presenter to lead employer's case.
 - 7.3.3 Accused employee and his/her representative (Legal representation during the pre-discipline arbitration will be subject to the provisions of Rule 25 of the CCMA rules).
 - 7.3.4 An employee relations practitioner.
 - 7.3.5 The arbitrator shall have the same powers as contemplated by Section 188A(7) of LRA 66 of 1995.
 - 7.3.6 The provisions of Sections 143 to 146 of LRA 66 of 1995 shall apply to any award made by an arbitrator in terms of this procedure.
 - 7.3.7 The method of recording will include audio tape recording, but exclude visual recordings.
 - 7.3.8 The arbitrator will have 14 days to make an award; the award must be in writing.
 - 7.3.9 An arbitration award will be final and binding and have similar status and effect as those issued by an arbitrator at arbitration under auspices of CCMA.

8 APPEAL

- 8.1 The employee must lodge his/her appeal in writing with the employee relations practitioner (in case of hearing) or the manager (in case of enquiry) within five working days of receipt of the sanction.
- 8.2 The employee must clearly specify his/her grounds of appeal.
- 8.3 In case of a hearing, the employee relations practitioner must advise the case presenter of the appeal and furnish him/her with a copy of the grounds of appeal.
- 8.4 The case presenter must furnish the employee relations practitioner with his/her grounds of response within 5 days of receipt of the grounds of appeal. The employee relations practitioner must furnish the employee with a copy of the grounds of response.
- 8.5 The employee relations practitioner (in case of hearing) or manager (in case of enquiry) must forward all the relevant documents (minutes, finding, sanction, grounds of appeal and grounds of responses) to the duly nominated internal independent chairperson or his/her senior manager respectively.
- (Note: appeal will only be considered on the submitted documents).**
- 8.6 New evidence that was not presented at the hearing or enquiry will not be automatically considered. The appeal chairperson must evaluate the reasons for failure to lead the evidence in the disciplinary Hearing and the significance of the evidence and decide whether he/she is going to take it into consideration.

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Disciplinary procedure

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8.7 The appeal chairperson (in case hearing) or appeal senior manager (in case of an enquiry) has five days to consider all the relevant documents and issue a written finding.

8.8 The appeal chairperson or senior manager has a right to:

8.8.1 uphold the finding and/or sanction of the disciplinary/enquiry chairperson;

8.8.2 vary or rescind the finding, and/or sanction of the disciplinary/enquiry chairperson; and

8.8.3 order a *de novo* hearing where there was a procedural defect that was prejudicial.

9 DISPUTE SETTLEMENT MECHANISM

In the event of the employee not being satisfied with the outcome of the appeal, the employee may, if he/she so wishes, invokes Part 6 of the Recognition Agreement, as amended.

10 AUTHORIZATION

Not applicable.

11 REVISIONS

Date	Rev.	Compiler	Remarks
October 2010	0	T Ngele	Adopted for Back to basics and allocated a new number

12 DEVELOPMENT TEAM

This procedure was developed in consultation with the following stakeholders:

- Eskom Holdings
- National Union of Metalworkers of South Africa (NUMSA)
- Solidarity
- National Union of Mineworkers (NUM)

13 ACKNOWLEDGEMENTS

This procedure has been negotiated with the following stakeholders:

- NUMSA
- NUM
- Solidarity

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Annexure A

(Normative)

Notice to Attend Disciplinary Enquiry

NOTICE TO ATTEND DISCIPLINARY ENQUIRY			
PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	
<u>ALLEGED MISCONDUCT</u>			
(Note: name the misconduct, and give a brief description of the incident.)			
<u>ADMINISTRATIVE DETAILS</u>			
BE ADVISED THAT THE DISCIPLINARY ENQUIRY WILL TAKE PLACE AT:			
DATE:		TIME:	
PLACE:			
<u>RIGHTS</u>			
Kindly take note that you have the following rights to:			
<ul style="list-style-type: none"> • present your case/defence; • call witnesses; and • be represented by a fellow employee or trade union representative. 			
<u>DOCUMENTATION</u>			
The parties must exchange all relevant documentation to be relied upon at the enquiry at least 24 hours prior to the enquiry.			
<u>SERVICE</u>			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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Disciplinary procedure

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Annexure B

(Normative)

Notice to Attend Disciplinary Hearing

NOTICE TO ATTEND DISCIPLINARY HEARING			
PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	
<u>ALLEGED MISCONDUCT</u>			
(Note: name the misconduct, and give a brief description of the incident.)			
<u>ADMINISTRATIVE DETAILS</u>			
BE ADVISED THAT THE DISCIPLINARY HEARING WILL TAKE PLACE AT:			
DATE:		TIME:	
PLACE:			
<u>RIGHTS</u>			
Kindly take note that you have the following rights to:			
<ul style="list-style-type: none"> • present your case/defence; • call witnesses; and • be represented by a fellow employee or trade union representative. 			
<u>DOCUMENTATION</u>			
The parties must exchange all relevant documentation to be relied upon at the hearing at least two days prior to the hearing.			
<u>SERVICE</u>			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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Annexure D

(Normative)

Notice to Attend Pre-Dismissal Arbitration

NOTICE TO ATTEND PRE-DISMISSAL ARBITRATION			
PERSONAL DETAILS			
NAME OF THE ALLEGED OFFENDER:		UNIQUE NO:	
DEPARTMENT:		POSITION:	
<u>ALLEGED MISCONDUCT</u>			
(Note: name the misconduct, and give a brief description of the incident.)			
<u>ADMINISTRATIVE DETAILS</u>			
BE ADVISED THAT THE PRE-DISMISSAL ARBITRATION WILL TAKE PLACE AT:			
DATE:		TIME:	
PLACE:		CHAIRPERSON:	
<u>RIGHTS</u>			
Kindly take note that you have the following rights to:			
<ul style="list-style-type: none"> • present your case/defence; • call witnesses; and • be represented by a fellow employee or trade union representative. 			
<u>DOCUMENTATION</u>			
The parties must exchange all relevant documentation to be relied upon at the hearing at least four days prior to the arbitration.			
<u>SERVICE</u>			
SERVED BY:		RECEIVED BY:	
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

CONTROLLED DISCLOSURE

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Standard

Human Resources
DivisionTitle: **Disciplinary code**

Unique Identifier:

32-1112

Alternative Reference Number: **NA**

Area of Applicability:

E

Documentation Type:

ST

Revision:

0

Total Pages:

7

Next Review Date:

November 2013

Disclosure Classification:

**CONTROLLED
DISCLOSURE**

Compiled by

N Theko

Employee Relations Officer
Human Resources Division

Date: 24/01/2011

Functional Responsibility

T Ngole

Senior Manager Legal and
Statutory Portfolio
Human Resources Division

Date: 24/01/2011

Authorized by

B E Bulunga

Divisional Executive
Human Resources

Date: 25/01/2011

Disciplinary code

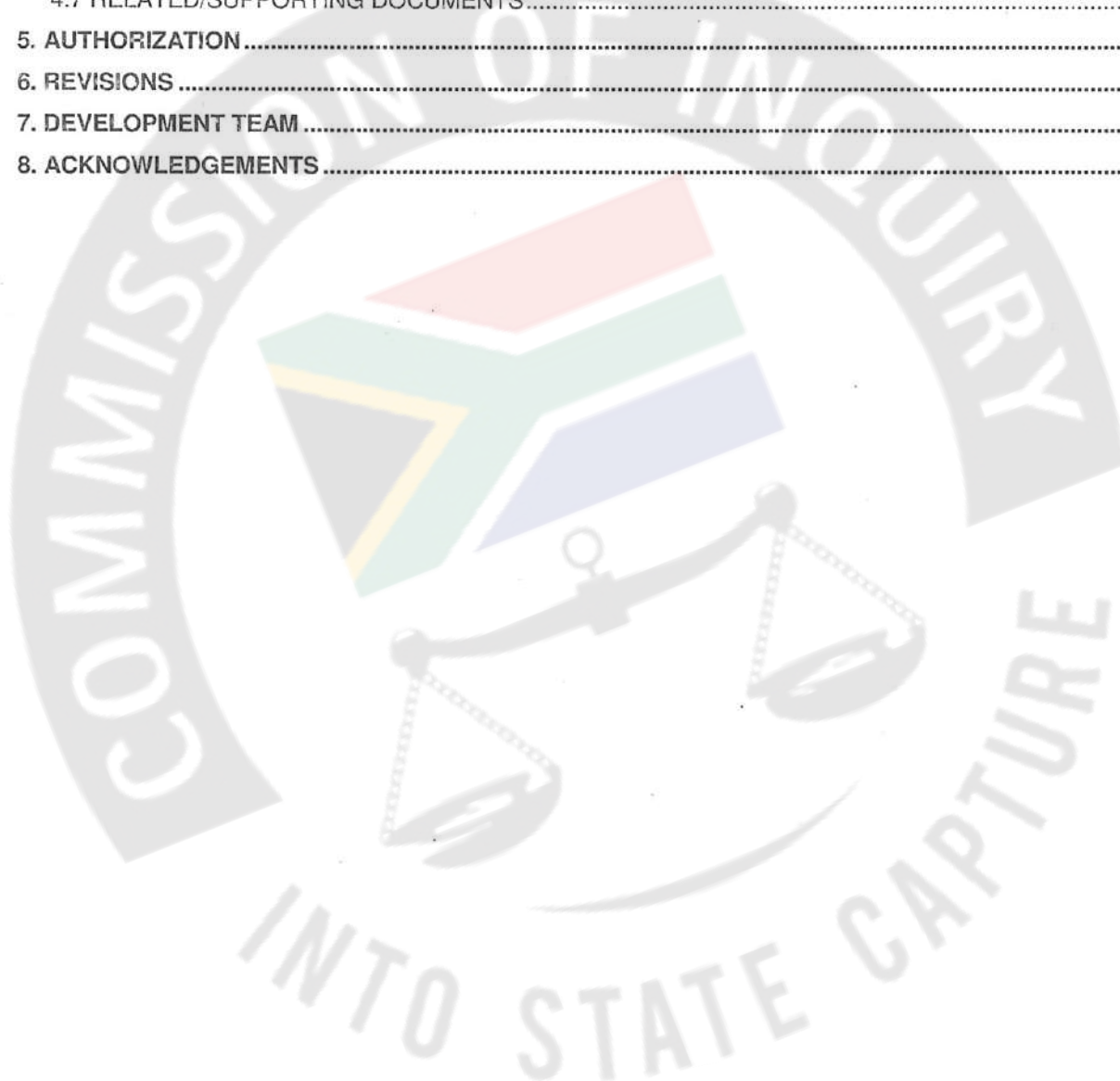
Unique Identifier: 32-1112

Revision: 0

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1. INTRODUCTION

This standard outlines and provides for conduct (actions and/or omissions) that is deemed by Eskom Holdings Limited as unacceptable.

2. ACTS OF MISCONDUCT

An employee shall be guilty of misconduct if he/she does the following.

- 2.1 Contravenes or fails to comply with Eskom's Conditions of Service, agreements with trade unions, operating regulations, security and/or safety measures, procedures, directives and applicable statutory requirements.
- 2.2 Disregards or wilfully fails to carry out a lawful order given to him/her by a person authorised to do so.
- 2.3 Assaults or attempts or threatens to assault other employees, contractors, customers or visitors.
- 2.4 Endangers the safety of fellow employees, contractors, visitors and customers.
- 2.5 Is insubordinate and/or insolent.
- 2.6 Participates in or incites unprotected industrial action or labour unrest.
- 2.7 Intimidates fellow employees, contractors, customers or visitors.
- 2.8 While on duty, conducts himself/herself in an improper or disgraceful manner or at any time behaves in such a manner that he/she harms the image of Eskom.
- 2.9 Prohibits or prevents employees from belonging to any trade union.
- 2.10 Victimises and /or harasses other employees, contractors, customers or visitors.
- 2.11 Causes racial conflict between employees, contractors, customers or visitors.
- 2.12 Operates any scheme aimed at lending money to fellow employees for which interest is charged.
- 2.13 Without authorisation, utilises Eskom's labour, material, transport, equipment, and assets to his/her own advantage or to the advantage of another.

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- 2.14 Is absent from duty without leave.
- 2.15 Without a valid reason, reports late for work.
- 2.16 Sleeps on duty.
- 2.17 Is absent from his/her workpost without authorisation.
- 2.18 Is under the influence of intoxicating liquor or drugs while on duty or when reporting for duty.
- 2.19 Is in unauthorised possession of, or removes or attempts to remove, property belonging to Eskom.
- 2.20 Is in unauthorised possession of, removes, or attempts to remove from Eskom premises, property belonging to fellow employees, contractors, customers or visitors.
- 2.21 Is found guilty by a competent court of a criminal offence that directly relates to, or arises from, his/her duties.
- 2.22 Has paid an admission of guilt in respect of a criminal offence that directly relates to, or arises from, his/her duties.
- 2.23 Is found guilty by a competent court or has paid an admission of guilt in respect of any criminal offence that can breach the trust relationship between Eskom and the employee.
- 2.24 Discloses information obtained in the course of his/her duties with Eskom that is personal and confidential to Eskom.
- 2.25 Without the written consent of Eskom, directly or indirectly accepts any benefit or compensation in cash or otherwise resulting from his/her association, engagement, or duties with Eskom.
- 2.26 Without the written consent of Eskom, performs any work in a private capacity for another person or organisation for compensation.
- 2.27 Wilfully or negligently damages Eskom's property.
- 2.28 Is negligent in the performance of his/her duties.
- 2.29 Commits an act or omission that is detrimental to Eskom.
- 2.30 Makes any false statement or representation that relates to, or ensues from, his/her duties.
- 2.31 Falsifies any documents, claim forms, or records that relate to his/her duties.
- 2.32 Knowingly gives false evidence during proceedings in terms of the provisions of the procedure.

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2.33 Possesses a dangerous weapon in the workplace without prior authorisation.

2.34 Commits an act of sexual harassment.

2.35 Conduct himself/herself in a way that is reasonably regarded as unacceptable in terms of Eskom's values and ethics.

3. PENALTIES

The following penalties will be applicable:

3.1 Written warning valid for six months.

3.2 Final written warning valid for twelve months.

3.3 Suspension without pay (minimum seven days and maximum fourteen days) and will be considered as a disciplinary record for future discipline for a period of twelve months).

3.4 Dismissal with notice or summary dismissal (without notice)

Note: the above penalties do not necessarily follow a particular order; it will depend on the severity of the misconduct / offence.

4. SUPPORTING CLAUSES

4.1 SCOPE

4.1.1 Purpose

The purpose of the Disciplinary Code is to correct behaviour that is unsatisfactory to Eskom and to encourage expected behaviour.

4.1.2 Applicability

This Disciplinary Code shall apply throughout Eskom Holdings Limited, its divisions, its subsidiaries, and entities wherein Eskom has a controlling interest.

4.2 NORMATIVE/INFORMATIVE REFERENCES

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

4.2.1 Normative

- [1] ISO 9001 Quality Management Systems.
- [2] Recognition Agreement
- [3] Agency Shop Agreement
- [4] Full time Shop Steward Agreement
- [5] Minimum Services Agreement in an Essential Service

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- [6] Grievance Procedure
- [7] Disciplinary Procedure
- [8] Social Plan
- [9] Sexual Harassment

4.2.2 Informative

- [1] Labour Relations Act
- [2] Basic Conditions of Employment Act
- [3] Employment Equity Act
- [4] Collective Agreements
- [5] Various Conditions of Service
- [6] Eskom's Operating Regulations

4.3 DEFINITIONS

4.3.1 Controlled disclosure: controlled disclosure to external parties (either enforced by law, or discretionary).

4.3.2 Eskom: is used for Eskom Holdings Limited and its divisions and owned subsidiaries.

4.3.3 Him/her: is used for describing a "person" and is not gender based (that is, male or female gender).

4.4 ABBREVIATIONS

Abbreviation	Description
HR	Human Resources
ER	Employment relations
IR	Industrial Relations

4.5 ROLES AND RESPONSIBILITIES

This standard falls under the responsibility of Corporate Industrial Relations and Stakeholder Relations (collectively known as Employment Relations).

The role of these parties is to manage and review the standard.

4.6 PROCESS FOR MONITORING

Annual review and implementation of new Collective Agreement and legislative requirements.

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Disciplinary code

Unique Identifier: 32-1112

Revision: 0

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4.7 RELATED/SUPPORTING DOCUMENTS

This standard supersedes the previous version of the document.

5. AUTHORIZATION

Not applicable.

6. REVISIONS

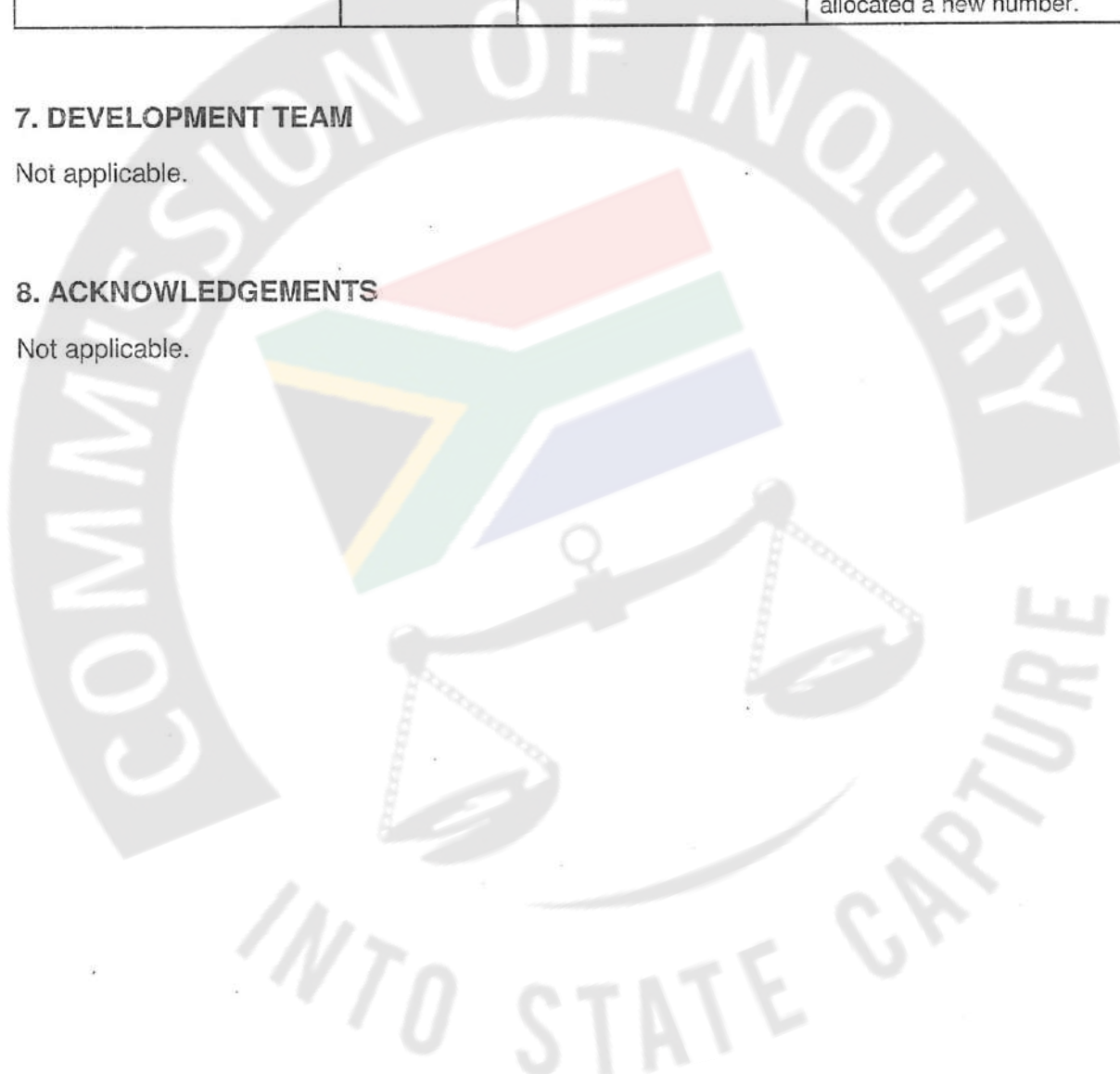
Date	Rev.	Compiler	Remarks
November 2010	0	T Ngele	Adopted for Back to basics and allocated a new number.

7. DEVELOPMENT TEAM

Not applicable.

8. ACKNOWLEDGEMENTS

Not applicable.

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Anton Minnaar

From: Neo Tsholanku
Sent: 17 March 2015 08:52 AM
To: Freddy Ndou
Cc: Anton Minnaar
Subject: Acting Letters for the Executives.

Sir, could you kindly assist with forwarding myself and Anton Minnaar the signed delegation letters for the acting executives.

Kind regards





Date:

13 March 2015

Enquiries:

Dear Abram,

CONFIRMATION OF YOUR APPOINTMENT TO THE POSITION OF ACTING GROUP EXECUTIVE: GROUP CAPITAL AND THE DELEGATION OF POWERS AND AUTHORITY

I, **Zethembe Khoza**, in my capacity as Interim Chief Executive of Eskom Holdings (SOC) Limited acting in terms of a resolution of the Eskom Holdings (SOC) Limited's People and Governance Committee taken at the Committee meeting held on the **11 March 2015** do hereby confirm your appointment to Act as **Group Executive: Group Capital** with effect from **11 March 2015** you are advised otherwise.

1. As **Acting Group Executive: Group Capital**, you are delegated full authority and powers that are to be exercised by the **Group Executive: Group Capital** as set out in the document titled **Eskom Holdings (SOC) Limited - Delegation of Authority**. You will exercise this authority and powers so as to implement or give effect to the Eskom Board mandate in the manner you deem most effective and efficient for Eskom.
2. The above is subject to the following conditions:
 - 2.1 You are hereby authorised, in writing
 - 2.1.1 to delegate further any powers and authority delegated to you, to an officer, employee, any person or committee and to allow **Sub-Delegation** of such powers in exceptional cases only once and where necessary, in terms of the needs of the business; and

Head Office

Eskom Holdings SOC Ltd, 100, Main Road, Sandton, Johannesburg, 2008

Eskom Holdings SOC Ltd Reg No 2002/015217/JO

2.1.2 to impose any limits or conditions in such **Sub-Delegation** and **Further Delegation** to ensure good governance and controls with regard to the exercise of such powers; and to

2.2 act:

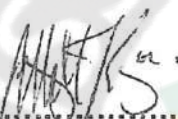
2.2.1 lawfully;

2.2.2 within the scope of your powers and authorisation and

2.2.3 In terms of the applicable Eskom Holdings (SOC) Limited rules, policies, directives and procedures.


3. **NOTWITHSTANDING** the above, where powers and authorities have been delegated to a **Group Executive: Group Capital** by the Eskom Holdings (SOC) Limited Board of Directors, such powers shall be exercised subject to limitations and conditions that may also be imposed by the **Interim Chief Executive** of Eskom.

Yours faithfully


.....
Zethembe Khoza
Interim Chief Executive

12/03/2015
.....
Date

Accepted:


.....
Abram Masango

12/03/2015
.....
Date

Loraine Visser

From: Merinda Botha
Sent: Wednesday, 29 July 2015 13:58
To: Loraine Visser
Subject: FW: [all employees] - MEDIA STATEMENT - Independent Enquiry Eskom 12 March 2015
Importance: High

From: Hettie Du Plooy
Sent: 29 July 2015 01:55 PM
To: Merinda Botha
Subject: FW: [all employees] - MEDIA STATEMENT - Independent Enquiry Eskom 12 March 2015
Importance: High

From: Corporate Affairs Division
Sent: 12 March 2015 11:03 AM
Subject: [all employees] - MEDIA STATEMENT - Independent Enquiry Eskom 12 March 2015
Importance: High



**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, Matshele 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.

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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 2020, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

[Signature] KB DINTWE Captain

COMMISSIONER OF OATHS



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).



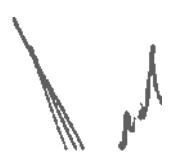
62. The said executives were called in by the Board during a P&G Committee meeting on 12 March 2015 (chaired by Mr Khoza) and were informed of their acting positions.
63. The next relevant meeting was the Board in-committee meeting of 19 March 2015, which Mr Nick Linnell attended, as the independent 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 deposited before me at PRETORIA on this the 2 day of MARCH 2020 and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



ADV. Daniel Gouws Marais
COMMISSIONER OF OATHS EX OFFICIO
AURECON SOUTH AFRICA (PTY) LTD
AURECON CENTRE
LYNNWOOD BRIDGE OFFICE PARK
4 DAVENTRY STREET, LYNNWOOD MANOR 0081
ADVOCATE, SOUTH AFRICA



AFFIDAVIT

I, the undersigned

VENETE JARLENE KLEIN

state that,

1.

I am an adult female with identity number 580914 0109 082, residing at 11 Numeral Street, Mooikloof, Pretoria. I am self-employed as the Chief Executive Officer of Klein Inc. Management Consultants and my offices are situated at 517 Mendelssohn Street, Constantia Park, Garsfontein, Pretoria. My telephone number is (012) 993 5856 and cell phone number is 082 412 5759.

2.

On 11 December 2014, I was appointed by the erstwhile Minister of Public Enterprises, Lynne Brown ("the Minister") to serve as a non-executive member on the Eskom Board of directors ("the Board").

3.

In early 2015, I was appointed as Chairperson of the Social Ethics and Sustainability Committee, at which time I also served as a member of the Investment and Finance Committee and the People and Governance ("P&G") Committee. I later became the Chairperson of the P&G Committee and a member of the Audit and Risk Committee. I am not

certain of the exact date of my appointment as Chairperson of the P&G Committee, as during the first few months of the tenure of the new board there were a number of rotations of the Board members within the Board sub-committees.

4.

In or about June 2015, I was replaced as Chairperson of the P&G Committee by Ms Mabude, only to later be reinstated as Chairperson in or about August 2015.

5.

My duties in this position were, broadly speaking, to assist the Board in dealing with the nomination and remuneration of directors and senior executives, human resources strategies and policies and to support the Board in its role as custodian of corporate governance. A more detailed summary of the responsibilities of the members of the P&G Committee is detailed in the terms of reference of the committee dated May 2015, a copy of which is attached hereto as annexure "VK1".

6.

THE APPOINTMENT OF MR MOLEFE AS GROUP CHIEF EXECUTIVE OFFICER

- 6.1 Following Mr Matona's departure, Mr Brian Molefe was seconded to Eskom as Acting Chief Executive Officer on 17 April 2015, for a period of 3 months. Mr Molefe had, prior to this position, been employed as Group Chief Executive Officer at Transnet.

6.2 At the time of Mr Molefe's secondment, Eskom was understandably in an extremely unstable position. In addition to the crisis at executive and Board level, Eskom remained with going concern problems and stage 3 load shedding. During his tenure Mr Molefe successfully addressed the various key challenges faced by the Board viz:

6.2.1 Re-organised the Eskom team in order to address load shedding, which had already reached stage 3;

6.2.2 Addressed the financial challenges facing Eskom, which had been faced with going concern problems;

6.2.3 Dealt with the integrity of data, as most data produced by executives before then had been questionable;

6.2.4 Reduced the time spent and role played by the "war room" in "solutioning" Eskom's problems.

6.3 Bearing in mind that 4 senior executives had been suspended in March 2015, I was particularly relieved and pleased with the manner in which Mr Molefe had brought immediate stability to the organisation and taken control of the business with all the correct results.

6.4 Prior to Mr Molefe's secondment from Transnet, the Board had basically become operational and spent many late nights trying to stabilise the business. As mentioned above, there was a trust deficit between the Board and the executive team, which was largely due to the inability of the executives to get a handle on the issues which plagued

Eskom at the time as well as various allegations of impropriety in conducting their duties. The Board viewed the situation as an exceptional circumstance which necessitated its "hands on" approach to the day to day running of the organisation. Mr Molefe's appointment to the position of acting Group Chief Executive Officer allowed the Board an opportunity to step back into its rightful role of fiduciary oversight.

6.5 Needless to say, the entire Board, including me, was in awe of what Mr Molefe had been able to deliver, especially as he had done so with substantially the same executive team who had previously not known how to turn the load shedding situation around.

6.6 Bearing in mind that the Board had been under severe public and media scrutiny and attack since its appointment in December 2014, the turnaround experienced under Mr Molefe's tenure had been particularly pleasing. In fact, such was his performance that Mr Molefe was nominated for the award of South African of the Year in 2015.

6.7 In his tenure as Acting Group Chief Executive, Mr Molefe assisted the Board with the turnaround of Eskom. Along with the rest of the Board, I was impressed by Mr Molefe's performance and the immediate and significant strides that Eskom made under his leadership. Mr Molefe demonstrated the expertise, urgent resolve and certainty of direction required to set Eskom on the right course.

6.8 On 19 June 2015, Ms Suzanne Daniels sent a letter, a copy of which is attached hereto as annexure "VK2", to the Minister on behalf of Dr Ngubane, in his capacity as then interim Chairperson of the Board, in which he motivated for the appointment of Mr



Molefe as Chief Executive Officer of Eskom. It appears however from correspondence between Dr Ngubane and Ms Daniels, during this time, that Dr Ngubane advised Ms Daniels that the motivation for the appointment of Mr Molefe was premature as he had not yet served 6 months as Acting Chief Executive Officer. He further advised that the correct approach would be to motivate for an extension of Mr Molefe's secondment to Eskom. A copy of the email from Dr Ngubane to Ms Daniels is annexed hereto as annexure "VK3".

6.9 On 23 June 2015, Dr Ngubane, wrote to the Minister and requested her support and endorsement for the extension of the secondment of Mr Molefe as Chief Executive Officer of Eskom for a further period of 3 months, to be negotiated between Eskom and Transnet. A copy of the letter is annexed hereto as annexure "VK4". In his letter, Dr Ngubane also advised the Minister that the P&G Committee had resolved to seek the appointment of Mr Molefe to the position of Group Chief Executive Officer, as soon as possible. He mentioned further that I was tasked with obtaining a legal opinion on the most optimal route to be followed to give effect to the appointment of Mr Molefe.

6.10 This opinion was obtained, from Bowman Gilfillan Attorneys, on 18 June 2015 and accordingly informed the contents of Dr Ngubane's aforementioned letter.

6.11 The P&G Committee decided to obtain this legal opinion as it was cognisant of the fact that its intention to recommend (to the Board, and ultimately, the Minister) the appointment of Mr Molefe without following the ordinary external search process may amount to a deviation from the terms of the MOI. It was therefore agreed that the prudent approach would be to obtain a legal opinion regarding the permissibility of



appointing a Chief Executive Officer without following the usual process of the Board providing the Minister with a shortlist of candidates from which the Minister would appoint the Chief Executive Officer.

6.12 As the Board, we strongly believed that Mr Molefe had done an outstanding job in turning Eskom around and was the ideal candidate to remain at the helm. It made no sense to risk destabilising the business by bringing in a different Chief Executive Officer, especially in circumstances where we had only just begun to stabilise the business. In fact, we considered Mr Molefe's retention as crucial to maintaining Eskom's new formed stability. The legal opinion concluded that Eskom could appoint a Chief Executive Officer without conducting an external search process and that the Board could provide the Minister with a shortlist of one candidate only, who the Minister could then decide to appoint or not.

6.13 In a letter dated 27 June 2015, a copy of which is annexed hereto as annexure "VK5", the Minister responded to Dr Ngubane's letter. In her letter, the Minister agreed, in essence, with the request to extend the period of Mr Molefe's secondment. The Minister also requested that the Board deal expeditiously with the process of appointing a new Chief Executive Officer, in accordance with the MOI, the Labour Relations Act and Eskom's employment policies and procedures. The Minister ended her letter by requesting sight of the full legal opinion and recommendation on the optimal route to follow in the appointment of the Chief Executive Officer.

6.14 The legal opinion was sent by Ms Daniels to Ms Orcillia Ruthnam, the Chief Director: Governance of the Legal and Governance Department at DPE on 13 September 2015



(annexure "VK6"). Ms Ruthnam responded to Ms Daniels on 14 September 2015 (annexure "VK7") and requested clarification regarding whether Eskom's attorneys had considered the "Guidelines for the appointment of a Chief Executive for a State Owned Enterprise" ("Guidelines") which Guidelines were also attached to the email from Ms Ruthnam. We then forwarded the Guidelines to Eskom's attorneys for a supplementary opinion on whether the proposed process for appointing Mr Molefe as Chief Executive Officer remains competent in view of the guidelines.

6.15 The supplementary opinion was received on 15 September 2015 and forwarded to Ms Ruthnam at DPE on 16 September 2015. A copy of the email to Ms Ruthnam is annexed hereto as annexure "VK8". In brief, the supplementary opinion acknowledged that the Board is actually required to make recommendations to the Minister on the top 3 candidates in order of priority, and that any proposed deviation from that requirement required the Board to notify the Minister in writing and to provide reasons for the deviation.

6.16 In accordance with the legal advice received, I subsequently submitted a notification of Eskom's departure from the application of the Guidelines in the appointment of its Chief Executive Officer, by way of a letter to the Minister, which I understand was sent to her office by Ms Daniels on 16 September 2015 (the signed version following on 23 September 2015). A copy of the email is annexed hereto as annexure "VK9". The Minister did not object to the aforementioned departure.

6.17 On 9 September 2015, the P&G Committee met to discuss the issue of vacancies in the executive team. The meeting resolved that it was important to first address the



vacancies in the office of the Chief Executive Officer and Chief Financial Officer and that approval in this regard must be sought from the Board. A copy of the P&G Committee resolution dated 9 September 2015 is annexed hereto as "VK10".

6.18 On 10 September 2015, the Board resolved that the P&G committee should submit a recommendation to the Minister around the appointment of a Group Chief Executive Officer. A copy of the Board resolution dated 10 September 2015 is annexed hereto as annexure "VK11".

6.19 Pursuant to the aforementioned Board resolution, on 11 September 2015 Dr Ngubane, addressed a letter to the Minister in which he advised the Minister of the Board's resolution to propose permanently appointing Mr Molefe as Group Chief Executive Officer. Attached to the letter was a draft employment contract, for the Minister's consideration and approval. A copy of the letter is annexed hereto as annexure "VK12".

6.20 We were confident that Mr Molefe was the right man to drive Eskom towards a successful future, given the turnaround already experience in a short space of time. Permanently appointing Mr Molefe was also identified as offering Eskom the leadership stability that had been so sorely lacking before then (it should be remembered that Eskom had appointed 7 different Group Chief Executive Officers in the prior 6 year period).

6.21 On 2 October 2015, the Minister approved the appointment of Mr Molefe as Group Chief Executive Officer. In this regard the Minister addressed a letter to Dr Ngubane, on which I was copied, enclosing copies of the letters she had addressed to Mr Molefe and Mr Singh. A copy of these letters is attached hereto as annexure "VK13". These letters

confirmed Mr Molefe's and Mr Singh's appointments as Group Chief Executive Officer and Chief Financial Officer, respectively. Furthermore, the letters indicated that their appointments would be effective as at 1 October 2015. No indication of the terms of the respective appointments was made in the letters.

6.22 On 9 October 2015, I received an email from Ms Daniels drawing my attention to email correspondence between herself and Ms Ruthnam (annexure "VK14"), in which:

6.22.1 Ms Ruthnam suggested that the Minister had approved a 5 year contract for Mr Molefe;

6.22.2 Ms Daniels had asked Ms Ruthnam to check this since the Minister's letter approving Mr Molefe's appointment had not specified a 5 year contract and all of Eskom's previous Eskom's previous Group Chief Executive Officers were permanent appointments;

6.22.3 Ms Ruthma advised that the 5 year term was a cabinet requirement but that she would revert as to whether the Minister must write back to the Board on the matter.

6.22.4 I received no further correspondence in this regard and believed the issue had been resolved.

6.23 On 16 October 2015, Dr Ngubane addressed a letter to the Minister regarding the proposed terms of Mr Molefe's appointment and remuneration. A copy of the letter is annexed hereto as annexure "VK15". The contents of this letter were informed by

various inputs received by the P&G Committee from Mercer, PE Corporate & Deloitte on chief executive remuneration packages.

6.24 The Board was officially advised in November 2015 that Cabinet had approved the terms of Mr Molefe's appointment for a period of 5 years, but by that time Mr Molefe had already signed a contract permanently appointing him to the position of Group Chief Executive Officer. I understand that Dr Ngubane had presented a permanent contract of employment (and not one for a 5 year term) to Mr Molefe on 9 November 2015, and that Mr Molefe had signed it on 11 November 2015. A copy of the contract signed by Mr Molefe is annexed hereto as annexure "VK16".

6.25 On 9 November 2015 (after Mr Molefe had signed his permanent contract of employment), I received an email from Ms Daniels enclosing a draft offer of employment letter, dated 13 October 2015. The letter specified that Mr Molefe would enter into a fixed term employment contract with Eskom, however, the term of the contract was not specified. A copy of the email and draft contract is annexed hereto as annexure "VK17".

6.26 I now understand that the Minister addressed a response to Dr Ngubane's letter dated 1 November 2015 (I am not sure on what date the letter was received by Dr Ngubane), in which she approved the proposed remuneration but confirmed that she required the term of employment to be specified as 5 years. I did not have sight of the Minister's response at the time that it was received and was only informed after Mr Molefe had already signed the permanent contract that the Minister still insisted on a 5 year contract.



6.27 The Board was faced with the challenge of having to change the signed permanent contract to a 5 year fixed term contract in accordance with the Minister's instruction.

6.28 Until that point (i.e. of learning that the Minister and Cabinet remained insistent that Mr Molefe be appointed for a fixed term of 5 years) my understanding was that the contract had been approved as permanent, as per the Board's request and as informed by all previous Chief Executive Officer appointments. As a Board we relied heavily on guidance received from Mr Anton Minnaar, the Executive Remuneration Officer, regarding the standard terms of employment of Eskom Group Chief Executive Officers (Mr Minnaar had presented to the Board prior to Mr Molefe's permanent appointment the explanation that all previous Group Chief Executive Officers had permanent contracts of employment). We placed confidence in Mr Minnaar's guidance as he had been involved in the appointment of 7 previous Chief Executive Officer's in the preceding 6 year period.

6.29 Mr Molefe was thereafter advised of the Minister's direction. I understand that Dr Ngubane had engaged with Mr Molefe in this regard, and that Mr Molefe had been quite concerned at the change that was required to be made to the terms of his appointment. The Board was advised by Dr Ngubane that Mr Molefe was willing to accept a 5 year contract, however, he had some concerns regarding the perceived pension benefit which he had understood would emanate from his permanent employment at Eskom.

6.30 Dr Ngubane and I, having considered the impact of losing Mr Molefe, if a resolution on the terms of his appointment could not be reached, engaged Mr Minnaar for advice as to how the contracts of previous Chief Executive Officers were dealt with in the past and what benefits would Mr Molefe be losing in the case of a 5 year contract, as opposed to permanent contracts of employment. Mr Minnaar explained that all previous Chief Executive Officers at Eskom had been on a permanent contract and that Mr Molefe would not be able to accumulate an equivalent pension benefit during his service at Eskom. In light of this, we agreed that an arrangement could be put in place to ensure that he is not adversely affected in respect of his pension benefits.

6.31 Mr Minnaar assisted the Chairman in drafting and dispatching a letter to the Minister on 25 November 2015 to recommend that a retirement arrangement be reached with Mr Molefe in order to allay his concerns regarding his pension and to lock him in for the benefit of Eskom. The arrangement proposed by Dr Ngubane in this regard was as follows:

- 6.31.1 Regardless of Mr Molefe's age after the 5 year termination date, he would be allowed to retire from Eskom's service on the basis that he is aged 63.
- 6.31.2 The penalties prescribed by the Eskom Pension and Provident Fund ("EPPF") for retirement prior to age 63 will be waived (i.e. not paid by Mr Molefe).
- 6.31.3 That Eskom carries the cost of such penalties (to be paid over to the EPPF).



6.31.4 In the event that Mr Molefe's contract is not extended beyond the 5 year termination date, he will not be allowed to subscribe to any other State Owned Companies or government pension fund.

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

A copy of the aforementioned letter is annexed hereto as annexure "VK18".

6.32 The effect of the retirement arrangement would be to place Mr Molefe in the same position that he would have been in had he retired from Eskom at the age of 63. The Board supported the arrangement as it was critical to securing Mr Molefe's long-term retention at Eskom. It was, at all times my understanding and what I understood as the intention of the Board, that Mr Molefe would only qualify for this benefit after serving an initial 5 year period.

6.33 The terms of the arrangement were communicated to the Minister for her noting in a letter from Dr Ngubane on 25 November, in accordance with advice received from both Legal and Executive support. I was not aware, at the time, that the Board's proposal to the Minister, with regard to Mr Molefe's retirement arrangement had not received feedback from the Minister. I accepted that the P&G Committee had the right to recommend the resolution to the Board.

6.34 The P & G Committee met on 9 February 2016 to deliberate on the conclusion of the contract with Mr Molefe, including the aforementioned issue relating to his pension

benefits. In order to better understand the distinction between appointing Mr Molefe on a fixed term versus permanent basis, and the options available to the Board for addressing Mr Molefe's concerns over the impact of a fixed term contract on his ability to grow an adequate pension benefit, the Board sought input and guidance from Mr Minnaar (in his capacity as Executive Remuneration Officer). Mr Minnaar explained to the P&G Committee at the meeting that as a result of Mr Molefe's short term contracts in the numerous public entities in which he had served at executive level, Mr Molefe had been deprived of the opportunity to grow a pension benefit in a single fund.

6.35 At the meeting of 9 February 2016, it was resolved that:

"7.5.1 the current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable;

7.5.2 in cases where an Executive Director (appointed on a fixed term contract) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

- i. bridge the gap to make up for the 10 years;*
- ii. waive penalties applicable to early retirement; and*
- iii. refund EPPF actual cost for additional service added, plus penalties applicable to early retirement."*

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

101

A copy of the minutes of minutes of the P & G meeting held on 9 February 2016 are annexed hereto as annexure "VK19".

6.36 What the minute of the P&G Committee meeting of 9 February 2016 neglected to record, was the intention of the P&G Committee that the arrangement must be structured in such a way that the benefit would only accrue to Mr Molefe upon completion of his 5 year term, and that Mr Molefe would not be able to participate in any other government pension fund after qualifying as per the resolution. These intentions were clearly recorded in the letter to the Minister dated 25 November 2015 and are clear from the audio recording of the meeting.

6.37 The resolution of the P&G Committee meeting of 9 February 2016 was approved by the Board on 19 April 2016. A copy of the Board resolution is annexed hereto as annexure "VK20".

6.38 On 7 March 2016, Mr Molefe signed a second contract of employment for a fixed five year term, with effect from 1 October 2015 and terminating on 30 September 2020. A copy of the contract is annexed hereto as annexure "VK21".

7

MR MOLEFE'S EARLY RETIREMENT

7.1 Shortly after the release by the Public Protector of her report Mr Molefe enquired from me whether he qualified for the pension pay out benefit. I was not sure as I was



M

of the view that the resolution only kicked in after he had served a period of 5 years or beyond. I therefore asked Mr Minnaar, who confirmed that Mr Molefe did indeed qualify. I was surprised by this, as I was of the understanding that Mr Molefe needed to serve out at least the 5 year term of his initial appointment in order to qualify for this benefit. I accepted that this would be debated by the Board, which I believed would still have the final say on the matter

7.2 At a special board meeting on 7 November 2016, the Board asked Mr Molefe about the allegations in the State of Capture report. Minutes of the Board meeting are annexed hereto as annexure "VK22". Mr Molefe shared with the board his side of the story and the impact it had on his family. After that meeting, Mr Molefe mentioned to me that he would be sending his letter that night. That did not happen.

7.3 During a press conference on 11 November 2016, Mr Molefe indicated that he had decided to leave his employ at Eskom. Mr Molefe indicated, in a press statement, that his decision to step down was motivated by the reputational risk to Eskom as a result of the findings made by the Public Protector in her report of 2 November 2016. A copy of Mr Molefe's statement is annexed hereto as annexure "VK23".

7.4 On 11 November 2016, Mr Molefe submitted a letter seeking approval for early retirement in terms of the Eskom Pension Fund rules read in conjunction with the resolution of the P&G Committee, dated 9 February 2016. This letter was not presented to me as chairperson of the P&G Committee, and was apparently only sent to Dr Ngubane (as chairman of the Board) and the Minister. A copy of the letter is annexed hereto as annexure "VK24".



7.5 On 11 November 2016 Eskom issued its own press release in which it confirmed Mr Molefe's decision to step down. A copy of the Eskom press release is annexed hereto as annexure "VK25".

7.6 On 21 November 2016 the P&G Committee met to deliberate on various issues, including the State Capture Report and Mr Molefe's decision to step down. I made it clear at the commencement of the meeting that the meeting was not quorate and, therefore, that no decisions could be taken at the meeting. This is reflected in the recording minutes of the meeting. A copy of the minutes of the P & G meeting are annexed hereto as annexure "VK26".

7.7 This is when I first became aware of the contents of Mr Molefe's letter of 11 November 2016 (i.e. in terms of which he sought approval for early retirement). The Committee was advised by Mr Minnaar that Mr Molefe was entitled to receive his pension benefit pursuant to his early retirement. Mr Minnaar read to the meeting an extract from a letter he had prepared for Dr Ngubane to send to Mr Molefe, confirming the acceptance of his request for early retirement.

7.8 As the meeting was not quorate, the approval of Mr Molefe's pension benefit was only supported in principle by the P&G Committee. It was understood by me, and I believe the other members of the P&G Committee that were present, that:

7.8.1 the matter would be deliberated upon and a decision would be taken at a P&G Committee meeting with a quorum;



7.8.2 the decision would then be placed before the Board as a recommendation for approval. All decisions relating to the Group Chief Executive taken by the P&G Committee were subject to Board approval in terms of Eskom's Delegation of Authority;

7.8.3 the issue relating to the non-fulfilment of the 5 year tenure would also be deliberated upon and decided at the Board meeting;

7.8.4 only once approved by the Board would a letter be sent to Mr Molefe confirming the acceptance, or otherwise, of his request for early retirement.

7.9 Further to the above, I have now been advised that as the decision related to the removal of the Group Chief Executive Officer, the matter required the Minister's approval as per Eskom's Memorandum of Incorporation, adopted on 1 July 2016. A copy of the Memorandum of Incorporation is annexed hereto as annexure "VK27".

7.10 On 24 November 2016, and without having sought approval from either the P&G Committee, the Board or the Minister, Dr Ngubane addressed a letter to Mr Molefe communicating Eskom's acceptance of Mr Molefe's request for early retirement. A copy of the letter is annexed hereto as annexure "VK28". Upon being made aware of this letter, I asked the Company Secretary, Ms Daniels, who had approved the acceptance communicated by Dr Ngubane. In response she advised that the decision to accept Mr Molefe's early retirement did not require Board approval (and had ostensibly been approved by Dr Ngubane on his own). This is contrary to what we were



advised at the P&G committee meeting on 21 November 2016. Dr Ngubane claims to have been told by Mr Minnaar that the P&G Committee had approved the letter, which it clearly had not.

7.11 I understand that Mr Minnaar called for actuarial values of the amount to be paid out to Mr Molefe if he qualified for early retirement. I also recall Mr Minnaar mentioning the financial implications of Mr Molefe's early retirement to me at some point, however, this was done in passing and did not amount to a fully-fledged discussion with respect to the amounts involved nor was this communicated to me in formal correspondence.

7.12 My understanding is that Mr Molefe chose to receive 30% of the pension benefit as a lump sum payment and that the remainder is to be paid out to him as a monthly pension of R100 000 per month.

8

REINSTATEMENT OF MR MOLEFE


8.1 The following Wednesday, 19 April 2017, we were summoned to the Minister's office to discuss Mr Molefe's pension payout. At the meeting, the Minister enquired as to why Mr Molefe had qualified for the pension payout, considering that he was on a 5 year contract. In response to the Minister's query, we explained that this was the first time that any Eskom Group Chief Executive Officer was on a fixed term contract and that the Board was in quandary when advised (after signing the permanent contract on 11 November 2015) that there ought to have been a term attached to Mr Molefe's

contract. We further explained that Mr Molefe had some concerns regarding the perceived loss of the pension benefit which he understood would have emanated from his permanent employment at Eskom, which is what led to us recommending a solution to the Minister in Mr Ngubane's letter dated 25 November 2015. It was only at this point (at the meeting with the Minister on 19 April 2017) that I became aware that our recommendation was never accepted by the Minister. A copy of an unsigned and undated letter from Dr Ngubane to the Minister with the subject "*Rationale behind the retirement of Mr Brian Molefe*" is annexed hereto as annexure "VK29".

8.2 The Minister expressed her dissatisfaction with the early retirement arrangement reached with Mr Molefe and instructed the Board to engage with Mr Molefe with the view to renegotiate the terms of his early retirement. At that meeting the Minister advised that her team had given input in response to the Board's recommendation of 25 November 2015 and that the Director General had given the DPE's feedback to Eskom's Chief Financial Officer, Mr Singh. Whatever the discussions were, the outcome was never communicated back to the Board.

8.3 The Board had also been advised by Ms Daniels that we did not require the Minister's approval in respect of the acceptance of Mr Molefe's retirement.

8.4 Neither I nor the Board had received any feedback from Mr Singh as articulated by the Director General of the DPE to suggest that our recommendation was not supported.



8.5 At that meeting it became clear that there were quite a few issues where I had been led to be of one view – on account of feedback from either Mr Minnaar, Ms Daniels or the Chairman - and the DPE was of another, viz:

8.5.1 the Fixed term contract of the Chief Executive Officer versus the full-term contract, given that this was the first time that Eskom had adopted a fixed term contract in respect of the Chief Executive Officer.

8.5.2 the request of the change of Eskom policy in order to secure Mr Molefe's appointment on a 5 year contract and the DPE's handling of this matter.

8.5.3 the question of whether Mr Molefe qualified to be a member of the EPPF notwithstanding the fact that he was only on a 5 year fixed term contract (I believed that he did, whereas the DPE contends that he never).

8.6 I was surprised by the events of the day as my colleagues and I had been led to believe that we had acted within the rules of the EPPF and that the transaction had met all the governance protocols as confirmed by Ms Daniels, who was both the Company Secretary, and the Head of Legal at the time.

8.7 The main point of contention was that we were operating under the previous Memorandum of Incorporation ("MOI"), in terms of which the Minister was not required to sign off on the exit of the Chief Executive Officer. Also, according to Ms Daniels, the resolution of the P&G Committee adopted on 9 February 2016 stood. According to her, this had the effect that Dr Ngubane did not require approval from the Board to affect the signing of the application for early retirement by Mr Molefe.



This, coupled with the feedback from the EPPF to the effect that Mr Molefe qualified for early retirement in terms of the EPPF rules, gave me comfort that we had acted completely within the rules and the mandate of the Board. It therefore came as a surprise to me to learn that the pension arrangement didn't carry the Minister's blessing.

8.8 The Minister gave the Board 7 days to renegotiate with Mr Molefe, as she advised that she simply could not support a payout of R30 million. To my mind, the money had not yet been paid over, so looking for an alternative solution was workable.

8.9 As we were under pressure for time, Ms Daniels and I were mandated to go and meet with Mr Molefe to explain the Minister's position on the matter. At that meeting on the evening of 19 April 2017 we explored all the possible ways in order to resolve the impasse, and the following alternatives emerged:

8.9.1 Mr Molefe abandoning the pension benefit;

8.9.2 Agreeing on a more acceptable benefit;

8.9.3 Mr Molefe returning to Eskom.

8.10 It has to be noted that Ms Daniels and I did not have the requisite mandate to agree on anything with Mr Molefe; we were merely engaging with him in order to explore possible resolutions – which still required Board approval.



8.11 At this meeting with Mr Molefe we learnt that 30% of the pension benefit had already been paid over in January 2017, and that Mr Molefe has been receiving monthly pension payments of *circa* R100 000 since then.

8.12 Early the next morning (i.e. on 20 April 2017)) Mr Molefe called me and explained that he had been thinking about how best to resolve the matter, and that if he agrees to forego all retirement benefits he would effectively still be in the employ of Eskom. I shared the information conveyed in the call with both the Company Secretary and the Chairman, Dr Ngubane.

8.13 Dr Ngubane and I met with Mr Molefe that Friday morning (i.e. on 21 April 2017) in order to look at workable solutions to what had by now become a matter of immense public interest. Nothing came of the meeting, as it remained unclear how best to address the impasse.

8.14 That next Sunday (i.e. 23 April 2017)), before any of our discussions had been properly explored, the Minister publicly expressed her view that the Board had acted improperly in the award of the R30 million pension benefit and that she had instructed the Board as articulated above. This created additional pressure as I, for one, was hopeful that we could resolve the matter amicably – albeit that this would be very difficult to achieve at that time.

8.15 On 24 April 2017, the Board met to discuss the events as published in the media as well as the Minister's concerns in the meeting of 19 April 2017. The Board was also

updated on the discussions with Mr Molefe on 19 April and 21 April 2017. The meeting was attended by Mr Adiel Patel of Cliffe Dekker Hofmeyer attorneys. Mr Patel explained to the Board that the EPPF Board had the option to decline the request by Mr Molefe in respect of his early retirement. The minute of this Board meeting is annexed hereto as annexure "VK30".

8.16 At the meeting of 24 April 2017 Ms Daniels further advised that the Minister's approval for the pay out of retirement benefits was not required. I also confirmed with Mr Patel whether the proper decision making process had been followed. He confirmed that it was his view that the required decision making process had been followed.

8.17 At this meeting I raised the following points:

8.17.1 The pension arrangement only arose as a result of the introduction of a fixed term contract of 5 years. It was initially the intention of the Board to provide Mr Molefe with a permanent contract as was the case with the previous Chief Executive Officers;

8.17.2 Mr Molefe had advised previously that he wanted to retire from Eskom as he had been on various 5 year assignments and that was the biggest attraction to him and the reason that he agreed to be seconded from Transnet to Eskom.


8.18 The Board met on Tuesday, 2 May 2017 in order to look at the various options at its disposal, at which point we also considered the upshot of the legal opinion received from senior counsel on 28 April 2017. Ms Daniels prepared a summary of the legal

opinion, which she submitted to the Board for consideration at its meeting of 2 May 2017. We were informed that senior counsel's advice was that Mr Molefe's return was the most plausible resolution to the dilemma faced by the Board.

8.19 On 2 May 2017, the Board took the view that, subject to confirmation by another Senior Counsel, should Mr Molefe be amenable to returning to Eskom and if it was plausible (given that he was by now a Member of Parliament), his return to Eskom could solve more than just the issue of the R30 million. A copy of the minutes of the Board meeting held on 2 May 2017 is annexed hereto as annexure "VK31".

8.20 Eskom had by that time engaged a Search Firm, Woodburn Mann, and had agreed on a shortlist for the appointment of the next Group Chief Executive Officer. We were also faced with extreme media challenges regarding the acting Group Chief Executive Officer (i.e. Mr Koko) regarding contracts awarded to a company in which his step-daughter had a substantial interest (Impulse International (Pty) Ltd) being investigated at the time.

8.21 On 2 May 2017, the Board resolved that the best of the options presented by senior counsel was to rescind the decision to accept Mr Molefe's early retirement and to reinstate Mr Molefe. A decision was accordingly taken to rescind the acceptance of Mr Molefe's early retirement. The Board understood this to be entirely lawful and acceptable based on the opinion received from senior counsel.



8.22 At the meeting the Board again considered that it had acted within the rules of the EPPF and Eskom's MOI, and agreed that its decisions and actions had been reasonable and rational considering all the factors and dynamics at the time of the request for early retirement as well as when it was trying to conclude the contract of employment with Mr Molefe in February 2016.

8.23 I appreciate now that the mere rescission (if that is legally possible) of the acceptance of Mr Molefe's application for early retirement does not necessarily automatically mean that he ought to have been reinstated to the position of Group Chief Executive Officer. I say so as Mr Molefe's public statements were to the effect that he would be stepping down, and not that he would only do so if his application for early retirement was approved. Therefore, even if the acceptance of Mr Molefe's application for early retirement was rescinded, I now understand that it shouldn't necessarily follow that he should be reinstated to the position of Group Chief Executive Officer, as the position remained that he had *de facto* stepped down from that position. The Board, however, was never advised of this. On the contrary, the Board was advised that this was entirely lawful and acceptable. The Board was also not advised whether Mr Molefe's reinstatement required the approval of the Minister, which I now understand that it did.

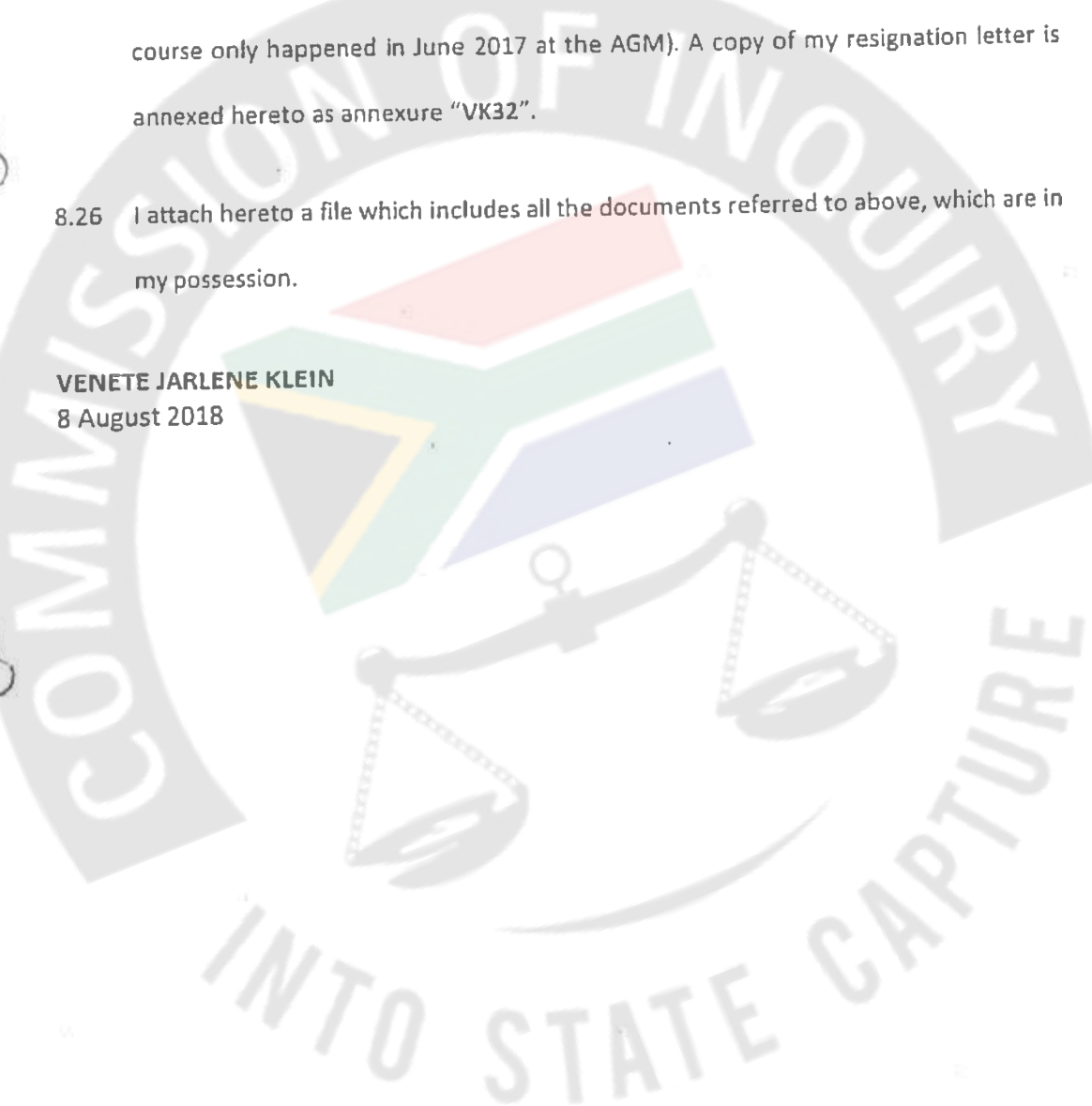
8.24 I was not privy to the negotiations around Mr Molefe's reinstatement. In this regard, the Chairman and Company Secretary attended a range of meetings with different stakeholders.



8.25 To my mind, we were solving quite a few problems with Mr Molefe's return. I could not have imagined the outrage of "SA Inc" on this decision. Having viewed the impact of this when Mr Molefe's return was announced on 12 May 2017, I decided immediately to affect my resignation (which I had first tendered on 7 June 2016 and later postponed until October 2016 at the request of the Minister, as she needed support for the Eskom board until she appointed additional members – which of course only happened in June 2017 at the AGM). A copy of my resignation letter is annexed hereto as annexure "VK32".

8.26 I attach hereto a file which includes all the documents referred to above, which are in my possession.

VENETE JARLENE KLEIN
8 August 2018



[Handwritten signature]

04



**public enterprises**

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Suite 301, Infotech Building 1090 Acadia Street Hatfield, 0083 Private Bag X15 Hatfield 0028
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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



[Media Room](#)[Eskom Board commissions independent enquiry](#)

Eskom Board commissions independent enquiry

2015/03/12

Thursday, 12 March 2015: The Eskom Board has today resolved to commission an independent enquiry on the current status of the business and its challenges. The Board, in its quest to address the current challenges faced by Eskom, has deemed it prudent to seek an independent view on the status of, among other things:

- The poor performance of generation plant
- Delays in bringing the new generation plant on-stream
- High costs of primary energy
- Cash flow challenges

"To ensure that this process is as transparent and uninhibited as possible, the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this enquiry," said Eskom Chairman, Mr Zola Tsotsi,

The other executives who have been asked to step down while the enquiry is underway are Ms Tsholofelo Molefe (Finance Director), Mr Dan Marokane (Group Capital) and Mr Matshela Koko (Commercial and Technology). One of the current non-executive Board members, Mr Zethembe Khoza, has been asked to assume the position of interim Chief Executive. Mr Khoza will be supported by Ms Nonkululeko Veleti (Finance), Mr Abram Masango (Group Capital) and Mr Edwin Mabelane (Commercial and Technology).

"All these senior executives have been with the organisation a long time and we are confident that they will maintain business continuity during this period," Mr Tsotsi said.

The Board also resolved that the independent enquiry be conducted by external parties, who will be selected within the next week. They will be given unfettered rights of access to all information deemed necessary for this probe to be successful.

The Board has emphasized that this process is a critical step towards ensuring that the situation facing Eskom improves as expeditiously as possible. "To that end, we would like to assure our customers and employees that this was done in the best interest of all our stakeholders, and we hope to come out of this with a better grasp of all the challenges facing the business, and most importantly, with solutions", added Mr Tsotsi.

END

More on the interim appointees

Ms Nonkululeko Veleti

Ms Nonkululeko Veleti is a registered Chartered Accountant and has been with the organisation for almost 14 years working in the Finance Department.

Abram Masango

Mr Abram Masango, a qualified engineer, has been with Eskom for over 18 years and is currently Project Director at Kusile. He brings to the role many years of valuable experience, having occupied various senior positions within the organisation.

Edwin Mabelane

Mr Edwin Mabelane has been with the organisation for 21 years. He is a qualified engineer has been a very senior executive before this appointment. He brings into the role many years of valuable experience.

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Eskom gives golden handshake to another suspended executive

Monday 1 June 2015 - 2:26pm



File: An image of Dan Marokane from his Facebook page. Marokane, Eskom's group executive for group capital, has received a golden handshake from the parastatal.

CAPE TOWN – Eskom and another of the executives it suspended in March have “mutually agreed to part ways on an amicable basis”, the power utility said in a statement on Monday.

Details of exactly how much the exit settlement with Dan Marokane, group executive for group capital, would cost the utility would not be made available immediately, Eskom spokesman Khulu Phasiwe told the African News Agency.

Marokane was suspended along with (<http://www.enca.com/south-africa/lights-out-four-eskom-board-members>) former CEO Tshediso Matona (<http://www.enca.com/south-africa/eskom-ceo-challenges-suspension-court>), finance director Tsholofelo Molefe, and technology and commercial executive Matshela Koko to allow for an independent fact-finding inquiry into the troubled utility to go ahead unhindered.

"It is expressly noted that no misconduct or wrongdoing is alleged by Eskom against Mr Marokane," Eskom said on Monday.

"Mr Marokane believes that the agreement to separate is in the best interests of both parties; to allow the Board to pursue its plans for the company under the current leadership and for him to seek new career opportunities."

Marokane's suspension would now fall away and the inquiry would go ahead.



"The separation is also by no means in anticipation of the outcome of the inquiry, the latter whose objective is to enable the organisation to deal with its challenges," Eskom said.

More than a week ago, Eskom said it had parted ways with Matona (<http://www.enca.com/money/eskom-and-ceo-matona-part-ways>), and also refused to divulge the details of the negotiated settlement between the two parties.

Asked what sum Matona would be paid as part of his exit package, Phasiwe said at the time: "At this stage those details are not going to be made public. We will do so in due course when we issue our financial year end statement."

In terms of the Public Finance Management Act, Eskom is obliged to disclose the salaries and packages paid out to executives and board members.

However, since both Matona and Marokane's departure from Eskom falls in the 2015/16 financial year, Eskom was legally allowed to only make the disclosure when it releases its financial year end results next year.

Matona, Marokane, Molefe and Koko were asked to step aside in March by former Eskom chairman Zola Tsotsi so that members of an inquiry could have unfettered access to the utility.

Tsotsi had since stepped down as board chairman, and a new inquiry was launched.

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Suspended Marokane to leave Eskom



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Eskom and suspended group capital executive **Dan Marokane** have mutually agreed to part ways "on an amicable basis", the energy utility said on Monday.

While declining *Engineering News Online's* request for clarity on the terms of separation, the State-owned company expressly noted that no misconduct or wrongdoing was alleged by Eskom against Marokane.



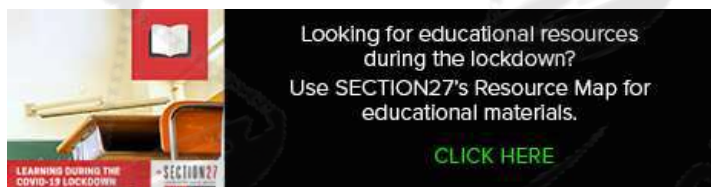
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The utility outlined in a statement that the outgoing executive believed that the agreement to separate was in the best interests of both parties and would allow the board to pursue its plans for the company under the current leadership.

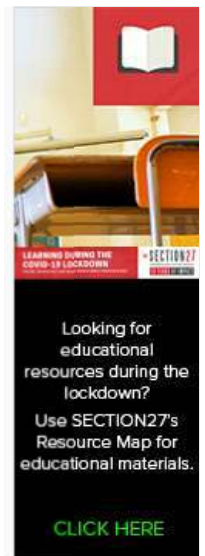
The inquiry initiated by Eskom's board into the state of affairs at Eskom would continue as planned.

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"The separation is also by no means in anticipation of the outcome of the inquiry, the latter whose objective is to enable the organisation to deal with its challenges," it held.

Eskom in March announced the suspension of four senior executives – including Marokane and CEO **Tshediso Matona** –



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Matona last month also agreed to part ways with Eskom.

Marokane joined Eskom in January 2010 and held executive leadership roles in the primary energy, enterprises, commercial and technology and capital divisions.

In his position as group capital executive, the company said he drove Eskom's build programme and the attainment of the first synchronisation of unit 6 of the Medupi power station, in Limpopo.



Meanwhile, Abram Masango stepped in as acting executive for group capital in March.

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 unpacks her
 agenda ahead of
 the party's federal
 conference

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Greg Ardé unpacks
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 How The ANC's
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