EXHIBIT U 16

NICHOLAS HUGH LINNELL

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

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214 to 0651
Email: inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

INDEX: EXHIBIT U 16

#	Description	Pages
1	**Affidavits and Annexure of Nicholas Hugh Linnell**	**001-104**
	1.1 Unsigned statement by Nick Linnell to the Portfolio Committee on Public Enterprises, dated 21 November 2017	001-023
	1.2 Unsigned second supplementary statement by Nick Linnell to the Portfolio Committee on Public Enterprises, dated 27 November 2017	024-025
	1.3 Affidavit by Nick Linnell to the Portfolio Committee on Public Enterprises, dated 9 March 2018	026-097
	1.4 Undated draft unsigned statement by Mr Nick Linnell	098-104
2	**Statements, affidavits, transcripts and submissions**	**105-190**
	2.1 Sworn statement by Sarah-Jane Trent, dated 4 December 2017	105-125
	2.2 Transcripts of Zola Tsotsi before the Portfolio Committee on Public Enterprises, dated 22 November 2017	126-143
	2.3 Statement by Zola Tsotsi to the Portfolio Committee on Public Enterprises, dated 21 November 2017	144-151

#	Description	Pages
	2.4 Affidavit by Zola Tsotsi to the Commission, dated 13 February 2020	152-179
	2.5 Statement by Dudu Myeni to the Portfolio Committee on Public Enterprises, dated 5 March 2018	180-190
3	**Minutes of Eskom Meetings**	**191-425**
	3.1 Eskom Board minutes for the meeting held on 9 March 2015	191-196
	3.2 Eskom Board in-committee minutes for the meeting held on 11March 2015	197-200
	3.3 Minutes of the Eskom Board meeting with Minister Lynne Brown held on 11 March 2015	201-204
	3.4 Eskom People & Governance meeting held on 11 March 2015	205-208
	3.5 Transcript for the Eskom Board meeting of 11 March 2015	209-306
	3.6 Transcript for the Eskom People & Governance meeting of 11 March 2015	307-425
4	**Media articles**	**426-503**
5	**Email correspondence**	**504-514**
6	**Further documents provided my Mr Nick Linnell**	**515-634**
	6.1 Write up on further documents	515-523
	6.2 Further documents provided by Mr Linnell	524-634

IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

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

STATEMENT

I, the undersigned,

NICHOLAS HUGH LINNELL

State that;

1. I am a director and shareholder in CT&A Project Management Pty Ltd (trading as *The Project Office*) and employed there since 2001/2. We provide business improvement services across a number of disciplines.

2. I hold BL. LLB law degrees from the University of Zimbabwe and a B.Com (Honours) degree from University of Cape Town. I have been engaged in business activities within corporates and in consulting services for 35 odd years.

3. I was approached on or about 7th March 2015 by Dudu Myeni for who I had provided consulting services at Mhlathuze Water and SAA. The request was to attend a meeting with the President and the Chairperson of Eskom, in Durban on the 8th March. The purpose was to discuss the feasibility of undertaking an inquiry into Eskom.

4. Context
   4.1. At that time the country was experiencing rolling power outages and there were commentaries suggesting they would get worse before they got better. These included views that a complete outage was possible and that should that happen it would potentially take weeks to begin to bring the network up again. During such a period there would be no

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

4.2. There were continuing media articles alleging corrupt or improper commercial activities at Eskom with some executives being publically named.

4.3. Public statements by Minister (Brown) that she was not receiving credible information from Eskom must have further concerned stakeholders.

4.4. There was a national crisis at this time.

4.5. There were public calls for an in depth enquiry into Eskom.

5. I attended the meeting in Durban on Sunday 8th March 2015. When I arrived at the Presidency Mr Tsosti, the then Chairman of Eskom and Ms Dudu Myeni were already there. We discussed the intended enquiry, how it would take place and what it would seek to achieve. After a period we joined the President.

6. The President was clearly familiar with the purpose of the meeting and we provided a summary of what was proposed (arising from the earlier discussions referred to above).This included a number of key principles.

6.1. For the enquiry to have credibility it needed to be open, independent and comprehensive. It needed to be free from internal interference.

6.2. It needed to be quick as lengthy previous enquiries in other state entities led to greater harm than good.

6.3. It needed the capacity and capability of the best investigators across commercial, financial and technical disciplines. It was therefore not suitable for one entity to conduct it.

6.4. It needed to be seen to be credible. Sound communications with stakeholders and the public were necessary.

6.5. I cannot now recall whether my proposal for a retired judge to oversee the enquiry was mentioned during this discussion. However it was always my contention that that was necessary and it was included in the Terms of Reference and media release.

6.6. The Board and the Minister (Brown) must be in agreement and supportive and seen to be so.

6.7. I discussed implications of board and PFMA approvals (see memorandum referred to below which included seeking approval of Ministry of Finance)

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

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

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

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

7. The President listened to these views and asked one or two questions then he agreed. He undertook to speak with the Minister and Mr Tsosti would speak with the Board.

8. As the matter was urgent I would travel to Johannesburg the following day and be available to the board as and when required.

9. Overnight I drafted a proposed Board memorandum, proposed resolutions and an aide memoire on suspensions. I forwarded these to Mr Tsosti. (**Attached**). I assume this was subsequently circulated to the Board. This included;
   9.1. Detailed background to the importance of events and the seriousness of the state of Eskom.

   9.2. Process of consensus and approval between the President, The Board, the Mister (Brown) and Ministry of Finance (funding approval). This is important as it clearly is inclusive, transparent and required the approvals of Finance and DPE.

10. On that Monday 9th, I sort legal advice from leading labour attorneys (in my own capacity) on the labour issues and obtained opinion from them.

11. I went to Megawatt Park in anticipation of being called by the Board. I took with me a senior labour lawyer to deal labour law matters if requested by the Board . We were however later told the Board was not in agreement and we left. In part I considered that that might be the end of the matter.

12. On Wednesday 11th I was again called by the Chairman to Megawatt Park. On this occasion I was called into the board meeting.

13. Clearly the matter had already been discussed and agreed to. I was asked to introduce myself and there were a number of questions. These included the proposed suspensions. We also discussed how the communication aspect of these should be managed. It was important to be

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

14. During that meeting I had the impression that the Minister of Public Enterprises had immediately prior to that moment addressed the Board on the matter. I was not privy to those discussions nor the Chairman's presentation.

15. After that meeting there was a press conference attended by a number of the Directors at which the Chairman stated publically that there would be an in-depth enquiry, it would speedy and was urgent. My appointment was coordinator was announced.

16. The media announcement created significant interest which was not negative. This is important in the context of the following week's ratings announcement.

17. After the press briefing I met with Ms Mabude (chosen to lead the Board committee overseeing the enquiry) and we discussed the scope and principles of terms of reference. I suggested matters such as the need for an independent whistle-blower facility to allow people to give anonymous tip-offs and meeting the executive team. Their input would be critical but more importantly their trust in the process was critical. I also met with the Senior General Manager: Assurance and Forensic Office of the Chief Executive and discussed the approach and IA involvement.

18. That same afternoon, Ms Mabude and Mr Naidoo (Board Recovery and Build Programme Review Committee (BRBPR) chair) and I met with the Executive (about 30 executives). Mr Naidoo introduced me as having been appointed by the board to coordinate the enquiry. I was asked to provide a brief overview of the enquiry and the purpose of the interaction with them – to obtain suggestions for the scope. It was agreed that they would provide the – I think head of legal, with all their suggestions and these would be forwarded to me to have included in the proposed scope.

19. I then left Megawatt Park. The enquiry firmly in progress with Board approval, the executive and the public informed.

20. Following that I received a number of communications from Eskom including an invitation from Mr Naidoo, a director, to join the Board Recovery and Build Programme Review Committee (BRBPR) workshop the following week. His communication with that committee included reference to the Board's intention to commit to a "deep dive" investigation.

21. I also received an invitation to attend a Board A&R subcommittee (delegated board authority to oversee the enquiry) meeting to be held on the 19th and then again on the 23rd March.

22. On the 12th March Minister Brown released a media statement endorsing the Board's decision to hold an in depth enquiry.

23. There was no doubt that at this time that the enquiry was in motion.

24. I was about that time required to provide my proposed draft terms of reference to Malesela Phukubje the company secretary by Sunday 15th 6pm.

25. Over the next few days I made enquiries with legal and accounting firms seeking those which had capacity, capability and no prior conflicts (previous advice to Eskom).

    25.1. I met with ENS and received from them a written "CV". I considered them for the commercial forensic investigation stream.

    25.2. I had telephonic discussions with Grant Thornton for the financial stream. Other leading accounting firms had previous advisory experience with Eskom.

    25.3. I canvassed potentially names for the retired judge role with a highly respected lawyer and compiled a list with a preferred candidate. This candidate would without any doubt have been welcomed by all stakeholders and the public as providing the right oversight (It would not be fair to identify this candidate as he was never in the end approached or aware of the possible role).

    25.4. I spoke with industry experts as to potential candidates for the technical stream. While this never developed further there was the formation of two teams for this area (it being hugely complex and difficult to scope). One team would be an overseas technical entity and the other, a group of acknowledged South Africa technical experts (group of "wise men/women"). The advantage would be that they would have "local" knowledge and be able to assist with directing focus for the overseas entity.

26. I emailed the draft terms of reference to Ms Mabude and the company Secretary on Sunday 15th at 7.05pm (**attached)**. [Just before or after this I received a company proposed terms of Reference from the Company Secretary which I did not use but serves a point of comparison to that proposed by myself].

27. There were a number of important issues included in my proposed terms of reference.
    27.1. It was detailed and comprehensive in it's scope – it was to be an in depth enquiry.

    27.2. It proposed the appointment of a retired judge – it would have credible independent oversight;

    27.3. It referenced the streams of enquiry that would be undertaken by different entities - it was unlikely that one entity could have the cross skills necessary for such a comprehensive enquiry.

28. On the evening of Monday 16th I had a discussion with Ms Mabude regarding the terms of reference which I had submitted. That discussion was brief. I was concerned that Ms Mabude

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

29. At 4.50 am on the 17th March I received an email from a Mr Thulo Selele copied to the Company secretary informing me that I was no longer required to attend the BRBPR meeting as the A&R subcommittee would now be handling the inquiry. The time of this email struck me as peculiar. It was also contrary to the previous evening's parting understanding with Ms Mabunde. My perception was there had been an intervening event.

30. Upon making some enquiries concerning this abrupt change of events I received information (hearsay) that a number of members of the board and some of the suspended executives had attended an late night private meeting during the night of Monday 16th. I assumed that this was linked to the early morning email.

31. On Wednesday 18th at 9.21am I forwarded a further draft of the terms of reference and proposed media release to the Chairman of Eskom and Ms Mabunde. I strongly recommended that the media statement be released urgently – by midday same day (18th) as it was important to maintain a positive endorsement through the press – public and stakeholder opinion was critical.

32. I never received any response to this email from the chairperson of A&R (Ms Mabunde).

33. However the Chairman contacted me and informed me that he had spoken to Ms Mabunde and she had undertaken to come to his house as soon as she was able to discuss the documents sent. He asked that I also attend.

34. By midmorning there was no further response and I called the chairperson and suggested I visit him as the media were asking for comment and without it the company was beginning to receive negative publicity. What was intended to be a positive intervention was evaporating. I was keen to have information in the public domain and receive informed commentary the following day.

35. The Chairperson informed me that the Minister had called him and instructed him to ensure a media report was issued due to the poor press – it was now a week after the announcement and there had been no further media release and the public was already sceptical of Eskom. He agreed to the release and instructed me to forward it directly to the company secretary and manager in his office. The instruction was that it follows the normal process and be copied to all directors and the minister.

36. Later I realised it was never released and upon enquiry by me to the Chairman I was informed by Mr Tsosti that the Minister of DPE and certain directors had objected to the press release and he had told the company secretary not to release it.

37. He also informed me that the Minister's office stated (hearsay) that protocol does not allow the Board to appoint a retired judge without the President's authority. I stated that to my knowledge that is not true. Effectively this aspect of the TOR was being rejected.

38. Later that evening (Wednesday 18th) I received a call around 6pm from the Chairman asking me to come to his house as the Chair of A&R had arrived. The three of us met and we first reviewed the media statement. In effect the Ms Mabunde wanted all the references to the scope and approach including the retired judge and the use of three independent forensic teams to be excised.

39. I provided reasons why I disagreed with that view and none of these reasons were challenged by Ms Mabude. The response was simply "the committee does not want this". When I asked for reasons why the committee would have a different view Ms Mabude did not provide any. At this time the Chairman intervened as he did not like the adversarial tone that the discussion had taken on.

40. Ms Mabude then suggested that I attend a meeting of A&R the next day – Thursday 19th in the evening and present my arguments to them. I subsequently received a formal meeting invite to that planned meeting.

41. However it was subsequently cancelled and my attendance not required. Instead an urgent board meeting was called, I think for the Friday 20th.

42. I was later informed that Mr Tsosti was to appear before the board for a disciplinary hearing arising from his actions to set up the enquiry. I was asked by his legal representatives to provide a statement of my and Mr Tsosti's roles which I did. The content of much of this statement here is taken from that contemporaneous statement provided around the 20th March.

43. I have in my possession original documents and emails that support this statement and which will also provide timing and dated versions of documents referred to.

44. I subsequently saw a press release from Eskom stating that I had been removed alongside Mr Tsosti.

45. Notwithstanding the termination of the enquiry, the Board did not reinstate the suspended executives despite their suspension having been explicitly linked to the enquiry.

46. Subsequent information

    46.1. Subsequent to the aborted enquiry there was public demand for an investigation into Eskom. This resulted in the Board appointing a legal firm, Dentons to undertake an enquiry. Later (much) Eskom released parts of their report. The questions ought to be posed – Why was a second enquiry mandated given the first was aborted; Why specifically was Dentons appointed; What were their agreed terms of reference and if they were narrower than the first enquiry proposed why were they narrower; What were their

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

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

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

47. Conclusion

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

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

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

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

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

Signed on 21st November 2017 at Cape Town

Nicholas Linnell

ESKOM SOC

9TH MARCH 2015

Memorandum

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ESKOM SOC

DECISION RECORD OF THE BOARD
9TH MARCH 2015

Resolution

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

Resolution 1

Approved	☐	Not Approved	☐

Resolution 2.

Approved	☐	Not Approved	☐

Resolution 3.

Approved	☐	Not Approved	☐

Resolution 4

Approved	☐	Not Approved	☐

Resolution 5

Approved	☐	Not Approved	☐

Resolution 6

Approved	☐	Not Approved	☐

Conditions / Follow-up Actions:

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

DRAFT

TERMS OF REFERENCE FOR A FACT FINDING INQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

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

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

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

2. OBJECTIVE/PURPOSE

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

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

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

3. APPROACH

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

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

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

4. TIMING

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

5. RESOURCES

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

6. SCOPE OF INQUIRY

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

6.1. Technical

6.1.1. In respect of all generating plants' (+/-87), benchmark maximum output capacity, planned capacity and actual output for the immediate past 36 months;

6.1.2. Review current status of all generating plants and provide opinion on the causes and contributory factors for sub optimum output (in excess of 33 require major repair);

6.1.3. Review all major incidents at plants and their causes and any avoidable factors not acted upon (including communications between plant and executive);

6.1.4. Review maintenance requirements of all generating plants assessing actual vs planned maintenance and review all contracts and service level agreements and compliance to the same as well as costs relative to plan. Have particular regard to all unplanned failures and review in context of maintenance conducted/not conducted;

6.1.5. Review all 3rd party electricity supply available to the grid (including proposals received but not acted on) and compare to actual supply connected to the grid for the past 36 months. Provide an opinion on the technical reasons and cost implications for not having connected when possible. Review all information including correspondence, negotiations and contracting with regard to that supply and reasons for less than optimum connected supply. In addition, consider the available potential of supply from foreign countries and determine any reasons for supply (from time to time) less than that potential and consider any reasons thereof;

6.1.6. Specifically enquire into the principal causes of failure at Majuba and Duvha and make recommendations as necessary. In so doing have regard to management reports and independent insurance/assessor reports and determine the degree of transparency of reporting to the Board and have regard to the reasons for any late submissions of these reports to the Board.

6.1.7. Conduct high level reviews of the new builds at Medupi and Kusile and determine the principal causes and contributory factors to the overruns of cost and time.

6.1.7.1. The degree of depth of this report to be agreed between the subcommittee and the inquiry team bearing in mind the time available.

6.1.7.2. To determine whether appropriate contingency plans were in place and acted upon at the earliest possible instance;

6.1.8. In collaboration with the Financial and Commercial inquiry teams to the review the supply of primary energy (coal, diesel, gas, water) to all plants over the past 36 months and determine whether supplies met specification, quality and delivery requirements (also have regard to any incorrect specifications provided).

6.1.9. Review the causes of disruption of power to two Rand Water pumps at Rand Water in September 2014 paying special attention to any lack of proactive or reactive management response i.e. were there warning and how effectively did we react;

6.1.10. To consider the impact of weather on the performance of any of the plants and to provide an opinion as to whether these risks could have been mitigated;

6.1.11. To review risk management and contingency plans to determine that such are sufficient to negate any generation risk, and at times of plant failure and whether such were implemented effectively.

6.2. Commercial

6.2.1. Review all procurement and other contracts for capital projects, primary energy supplies and operational services (exceeding R1 million or such figure as varied with agreement with the subcommittee) for the past 48 months and determine adherence to supply chain policy and business case approvals. Have special regard to any contracts and payments made but not matched to specification (cost, time and quality). Have regard to any rolling or renewed contracts that have cumulative value above the threshold;

6.2.2. Review all contracts related to Medupi and Kusile from inception. Review these in context to the original business case and adherence to tender and supply chain requirements. The focus to be on commercial matters and not technical. The team to coordinate their inquiry with the Technical and financial teams.

6.2.3. Review employee and contractor contracts and payments made to employees and contractors and identify any that bear *prima facie* concern.

6.2.4. Undertake electronic assessment of all company email correspondence, identifying certain key words to be proved by the subcommittee, for the last 24 months, and where appropriate undertake interviews with internal and external parties to probe where indicated.

6.2.5. Review a random sample of internal correspondence between project leaders and plant/project management on Medipi, Kusile, Majuba and Duvha and identify whether plant management foresaw problems and communicated risk upwards. Review management reactions;

6.2.6. Similarly (plants as per above) review all correspondence between suppliers and company in which disputes are debated. Interview suppliers as necessary.

6.2.7. Review new posts created over past 36 months and provide a schedule of position and TCC.

6.2.8. Review all executive and Board reports pertaining to new builds and summarise material implications and decisions.

6.2.9. Review contracts and recruitments of employees with TCC >R1.5m per annum for last 24 months;

6.2.10. Review a sample of senior employee suspensions, disciplinary hearings and dismissals (and reinstatements) of employees last 36 months (filter those earning >R1 000 000 p.a.).

6.2.11. Review summaries of internal audit reports over the last 36 months and management responses and any action taken on material risks identified;

6.2.12. Review internal audit programs – schedule of audits and risk analysis and review Internal audit reports of the same and review actions taken;

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

6.3. Financial

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

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

6.4. Coordination

6.4.1. The inquiry coordinator shall:

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

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

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

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

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

7. REPORTING

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

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

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

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

8. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

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

9. FEES

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

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____

Name of Signatory

_____

Designation of Signatory

For and on behalf of

[Service Provider]

_____

Signature

_____

Name of Signatory

_____

Designation of Signatory

DRAFT

ESKOM SOC

PRESS RELEASE

THE BOARD ENQUIRY

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

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

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

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

The purpose of the inquiry is:

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

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

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

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

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

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

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

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

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

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

Annexure G

IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

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

SECOND SUPPLEMENTARY STATEMENT

I, the undersigned,

NICHOLAS HUGH LINNELL

State that;

1. On the 21st November I provided the Committee with a written statement and I supplemented that with a further statement on the 29th November 2017.

2. I met with the evidence leader on the 23rd November and provided him with a memory stick containing all the documents and emails in my possession relating to the March 2015 Eskom investigation. I also said I would be preparing a supplementary statement which I have now done.

3. In the context of this statement reference is made to paragraphs 8,9 and10 of my supplementary statement.

4. On the 28th November 2017 I reviewed a document on my computer titled “Eskom Energy crisis 2”. (attached). I recollected seeing this document before and checked the properties of the document to determine where and how I had got it. It was loaded to my computer on the 8th March 2015.

Annexure G

5. The properties indicate that the document was originally created on a computer whose Microsoft licence was registered to the company “Toshiba”. After that the document was last amended and saved on a computer named as “Univer Capital”.

6. I conducted a za google search for Univer Capital and identified a Linkin association for a “Jabu Maswanganye” referred to a Director of Univer Capital Johannesburg. I conducted a CIPC and there are no companies registered in South Africa by that name. There is however a Russian financial company based in Moscow with the name Univer Capital.

7. I then conducted a google search for Jabu Maswanganye and found a number of links and include the two below.
https://www.news24.com/Archives/City-Press/Zuma-fires-fong-con-20150429
https://www.news24.com/Archives/City-Press/Fong-con-cheated-firm-out-of-R3m-20150429

Signed on 29th November 2017 at Cape Town

Nicholas Linnell

IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

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

SUBMISSION BY NICHOLAS HUGH LINNELL

SCHEDULE OF DOCUMENTS

	Document	pages
1.	This page – Schedule of documents	1
2.	Affidavit	2-14
3.	Email to Chairman Tsotsi dated 9th March 2015 enclosing proposed board memorandum and resolutions	15-21
4.	Email string providing brief to ENS and ENS in principle response and opinion	22
5.	Suspensions memorandum sent to Mr Tsotsi as approved by ENS labour attorney	23-28
6.	Email and attachments to Ms Myeni 18032015 as intermediary updating progress	29-41
7.	Email to Mabude and Tsotsi with TOR and Media release 18032015	42-56
8.	Email to ENS with attachment TOR 18032015	57
9.	Email to Grant Thornton with attachment TOR 18032015	58
10.	Email to Company secretary with media release instructing release to media 18032015	59-62
11.	Email to ENS re difficulties with mandate 190302015	63-64
12.	Email to Grant Thornton re difficulties with mandate 19032015	65-67
13.	Draft letter for Tsotsi to address Minister with TOR challenge	68-71
14.	Email to Chair of Parliamentary committee of Public enterprises with TOR 18032015	72

IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

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

AFFIDAVIT

I, the undersigned,

NICHOLAS HUGH LINNELL

do hereby make oath and say;

1. I provided a number of written statements the Evidence Leader in November 2017. The purpose of this affidavit is to depose my statement under oath and to place it is a single document. I stand by the factual content of those statements as read together.

2. I am a director and shareholder in CT&A Project Management Pty Ltd (trading as *The Project Office*) and employed there since 2001/2. We provide business improvement services across a number of disciplines.

3. I hold BL. LLB law degrees from the University of Zimbabwe and a B.Com (Honours) degree from University of Cape Town. I have been engaged in business activities within corporates and in consulting services for 35 odd years.

4. Context
   4.1. During the period leading up to the events covered in this deposition in early 2015, the country was experiencing rolling power outages and there were commentaries suggesting they would get worse before they got better. These included views that a complete outage was possible and that should that happen it would potentially take weeks to begin to bring the network up again. During such a period there would be no power at all. Business has since estimated that these failures cost the economy billions and billions of Rands. The troubles at Eskom must also have weighed on the minds of the rating agencies.

   4.2. There were continuing media articles alleging corrupt or improper commercial activities at Eskom with some executives being publically named.

4.3. Public statements by Minister (Brown) that she was not receiving credible information from Eskom must have further concerned stakeholders.

4.4. There was a national crisis at this time.

4.5. The powers-that-be could not even publically agree whether the situation could be termed a "crisis" or not a "crisis".

4.6. There were public calls for an in depth enquiry into Eskom.

5. I was contacted on 6th March 2015 by Ms Dudu Myeni and asked to travel the same day to Pretoria to attend an urgent meeting with the President.

6. At that time I was well known to Ms Myeni who had been a client of mine from time to time over a number of years on various projects in her representative capacity at Mhlathuze Water Board and South African Airways. At this time I was engaged in a major project at SAA, similar but on a smaller scale to what would become the subject of this deposition.

7. On arrival at the Presidency sometime after midday I met with Ms Myeni. No one else attended that meeting.

8. While the SAA matter might also have been discussed, in the context of this deposition, Ms Myeni informed me that the President was concerned about the state of Eskom and wanted an in-depth investigation into its affairs. She had recommended to the President that I would be suitable for that role.

9. Ms Myeni proceeded to brief me on the background for an enquiry. Included in this discussion was reference to some documentation that Ms Myeni had.

10. The President did not join that meeting as I understood he was unexpectedly otherwise engaged.

11. To the best of my recollection it was then agreed that I would need to travel to Durban on Sunday the 8th March to meet with the President to complete this briefing and mandate.

12. I left with an understanding that I would be asked to conduct the enquiry into Eskom and I ought to prepare for that.

13. Prior to the 6th March I did not know who the Chairman of Eskom was nor had I ever met or heard mention of Mr Tsotsi.

14. During the following day, Saturday 7th March Mr Tsotsi either called me or I was provided his contact number but I requested from him company documents and policies which would be required for proposing the enquiry and its terms. During that exchange it was evident he would also be at the meeting in Durban on the Sunday 8th March 2015.

15. I attended the meeting in Durban on Sunday 8th March 2015. When I arrived at the Presidency Mr Tsosti and Ms Dudu Myeni were there. In attendance was also Ms Myeni's son and another person introduced as "Jabu". At that time I knew nothing of Jabu's role at large.

16. While Ms Myeni's son played no active role in the meeting, Jabu provided information about the state of Eskom including allegations of wrongdoing and reasons for business failure, some of which was in the public domain.

17. To the best of my recollection Jabu had a number of documents that dealt with alleged events at Eskom. These were largely from unidentified sources and unverified content. These were things that an investigation would identify and were background in context, but in part some of the allegations did provide some value in scoping an approach to the investigation.

18. When preparing for this enquiry in November 2017 (nearly 3 years later), I located one document loaded to my computer on that same 8th March titled "Eskom Energy crisis 2". I reviewed the properties of this document to identify its source. It pertained to the Westinghouse/Areva/Koeberg matter and appeared to be a document written months earlier.

    18.1. The properties indicate that the document was originally created on a computer whose Microsoft licence was registered to the company "Toshiba". The document was last amended and saved on a computer named as "Univer Capital".

    18.2. I conducted a za google search for "Univer Capital" and identified a Linkin association for a "Jabu Maswanganye" referred to a Director of Univer Capital Johannesburg. CIPC has no record of a company by that name.

19. The group at the meeting referred to above discussed the intended enquiry, how it would take place and what it would seek to achieve.

20. After a period we joined the President.

21. The President was clearly familiar with the purpose of the meeting and we provided a summary of what was proposed (arising from the earlier discussions referred to above).This included a number of key principles.

    21.1. For the enquiry to have credibility it needed to be open, independent and comprehensive. It needed to be free from internal interference.

    21.2. It needed to be quick as lengthy previous enquiries in other state entities led to greater harm than good.

    21.3. It needed the capacity and capability of the best investigators across commercial, financial and technical disciplines. It was therefore not suitable for one entity to conduct it.

21.4. It needed to be seen to be credible. Sound communications with stakeholders and the public were necessary.

21.5. I cannot now recall whether my proposal for a retired judge to oversee the enquiry was mentioned during this discussion. However it was always my contention that an independent role was necessary.

21.6. The Board and the Minister (Brown) must be in agreement and supportive and seen to be so.

21.7. I discussed implications of board and PFMA approvals.

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

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

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

21.8.3. The enquiry would be limited to 3 months.

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

22. The President listened to these views and asked one or two questions then he agreed. He undertook to speak with the Minister and Mr Tsosti would speak with the Board.

23. As the matter was urgent I would travel to Johannesburg the following day and be available to the board as and when required on the Monday 9th March 2015.

24. That evening I drafted a proposed Board memorandum, proposed resolutions and forwarded these to Mr Tsosti. The email also provided process guidance notes for Mr Tsotsi for the board meeting. This note emphasised the need to inform the board of the President's role and the key requirements of the proposed enquiry. **(Attached Reference pages 15-21.)**

25. Between Monday 9th March and 11th March, I took formal legal advice on the proposed suspensions. This included the opinion that the proposed suspensions were not inconsistent with the Eskom disciplinary code or prevailing case law. **(Attached Reference page 22).**

26. I prepared an aide memoire detailing the process of the suspension discussions together with draft suspension letter which were reviewed, amended and finalised by the senior labour

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

27. I went to Megawatt Park in anticipation of being called by the Board. I took with me the senior labour lawyer consulted and his associate to deal labour law matters if requested by the Board. We were however later told the Board was not in agreement and we left. In part I considered that that might be the end of the matter.

28. On Wednesday 11th I was again called by the Chairman to Megawatt Park. On this occasion I was called into the board meeting.

    28.1. Clearly the matter had already been discussed and agreed to. I was asked to introduce myself and there were a number of questions. These included the proposed suspensions.

    28.2. We also discussed how the communication aspect of these should be managed. It was critical to take the public into the board's confidence and say what the Board was doing and why. Experience dictates that transparency is critical to credibility.

    28.3. During that meeting I had the impression that the Minister of Public Enterprises had immediately prior to that meeting addressed the Board on the matter. I was not privy to those discussions or the Chairman's presentation.

    28.4. It was quite clear to me that the board approved the enquiry and processes to implement that were discussed and agreed.

29. After that meeting there was a press conference attended by a number of the Directors at which the Chairman stated publically that there would be an in-depth enquiry, it would speedy and was urgent. My appointment was coordinator was announced.

30. The media announcement created significant interest which was not immediately negative but there was a credibility risk in the media narrative. This is important in the context of the following week's ratings announcement.

31. I met with Ms Mabude (chosen to lead the Board committee overseeing the enquiry) and we discussed the scope and principles of terms of reference. I suggested matters such as the need for an independent whistle-blower facility to allow people to give anonymous tip-offs and meeting the executive team. Their input would be critical but more importantly their trust in the process was critical. I also met with the Senior General Manager: Assurance and Forensic Office of the Chief Executive and discussed the approach and IA involvement.

32. Ms Mabude and Mr Naidoo (Board Recovery and Build Programme Review Committee (BRBPR) chair) and I met with the Executive (about 30 executives). Mr Naidoo introduced me as having been appointed by the board to coordinate the enquiry. I was asked to provide a brief overview of the enquiry and the purpose of the interaction with them – being to obtain input for the

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

33. The enquiry was firmly in progress with Board and Minister's approval, the executive and the public informed and the enquiry in motion.

34. Following that I received a number of communications from Eskom including an invitation from Mr Naidoo, a director, to join the Board Recovery and Build Programme Review Committee (BRBPR) workshop the following week. His communication with that committee included reference to the Board's intention to commit to a "deep dive" investigation. This is relevant to the recognition that the enquiry was underway.

35. I received an invitation to attend a Board A &R subcommittee (delegated board authority to oversee the enquiry) meeting to be held on the 19th and then again on the 23rd March.

36. On the 12th March Minister Brown released a media statement endorsing the Board's decision to hold an in depth enquiry.

37. I was about that time required to provide my proposed draft terms of reference to Malesela Phukubjc the company secretary by Sunday 15th 6pm.

38. It was my view that it would be impossible to have a single entity undertaking the whole enquiry and that streams were necessary with separate entities having the best skills and capacity undertaking aspects best suited for them. They ought not have done advisory work for Eskom that might conflict the enquiry.

39. Over the next few days I made enquiries with legal and accounting firms seeking those which had capacity, capability and no prior conflicts (previous advice to Eskom).

    39.1. I met with ENS and received from them a written "CV". I considered them for the commercial forensic investigation stream.

    39.2. I had telephonic discussions and email communication with Grant Thornton for the financial stream. Other leading accounting firms had previous advisory experience with Eskom.

    39.3. I canvassed potential names for the retired judge role and compiled a list with a preferred candidate. This candidate would without any doubt have been welcomed by all stakeholders and the public as providing the right oversight. That candidate was never approached nor been made aware of his candidature as subsequent events interrupted that process.

    39.4. I spoke with industry experts as to potential candidates for the technical stream. While this never developed further there was the formation of two teams for this area (it being hugely complex and difficult to scope). One team would be an overseas technical

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

40. I emailed the first draft terms of reference to Ms Mabude and the company Secretary on Sunday 15th at 7.05pm.

41. On the evening of Monday 16th I had a discussion with Ms Mabude regarding the terms of reference which I had submitted. That discussion was brief. I was concerned that Ms Mabude now refused to allow me access to the input received from the executives (see above). There was a notable cooling of enthusiasm. That conversation ended with an agreement that I would meet Ms Mabude the following morning at around midday (17th).

42. At 4.50 am on the 17th March I received an email from a Mr Thulo Selele copied to the Company secretary purporting to inform me that the Board Audit, Risk and Compliance Committee would now be handling the Forensic Fact Finding Enquiry (I assumed to be referring to the enquiry I was preparing for). I was informed that I was no longer required to attend meeting previously arranged.

43. The time (4.50am) of this email struck me as peculiar. It was also contrary to the previous evening's parting understanding with Ms Mabude. My perception was there had been an intervening event.

44. Upon making some enquiries concerning this abrupt change of events I received information that a number of members of the board and some of the suspended executives had attended a late night private meeting during the night of Monday 16th. I assumed that this was linked to the early morning email cancelling my appointment.

45. Although recognising the factual implication of that notification, I did not regard that notice as being a formal communication and continued preparing the terms of reference and interfacing with the chairman.

46. On Wednesday 18th I forwarded to the Chairman of Eskom and Ms Mabude, a final draft of the terms of reference, the proposed media release and a version of a draft TOR recommended to me from the company secretary (for purposes of comparison to that submitted by myself) (**Attached Reference pages 42-56**).

    46.1. The terms of reference included the appointment of a retired judge – it would have credible independent oversight;

    46.2. It provided for independent professional streams to the enquiry with entities having particular skills for each stream.

    46.3. It was comprehensive in its terms – it was an in depth enquiry.

47. In the covering email, I strongly recommended that the media statement be released urgently – by midday same day (18th) as it was important to maintain a positive endorsement through the press – public and stakeholder opinion was critical.

48. The media release ensured transparency and made similar reference to:

    48.1. a retired judge;

    48.2. informed the public that the terms of reference would be communicated publically;

    48.3. the enquiry would commence the following Monday, on the 23rd March.

49. At the same time. 18th March 2015, I also emailed a report to Ms Myeni, being the intermediary of the President. This included copies of the same terms of reference and the proposed media release being sent to the Chair and Ms Mabude. It also included a briefing document updating on progress which included reference to the considerations of a retired judge. **(Attached Reference pages 29-41).**

50. I emailed the same terms of reference to both ENS and Grant Thornton, both being considered for the respective commercial and financial streams. **(Attached Reference pages 57 and 58)**

51. I never received any response to this email from Ms Mabude.

52. However the Chairman contacted me and informed me that he had spoken to Ms Mabude and she had undertaken to come to his house as soon as she was able to discuss the documents sent. He asked that I also attend.

53. By midmorning there was no further response from Ms Mabude and I called the chairperson and suggested I visit him as the media were asking for comment.

54. Communication was now urgent and without clarity the company was beginning to receive negative publicity. What was intended to be a positive intervention was evaporating. I was keen to have information in the public domain and receive informed commentary in the press the following day.

55. The Chairperson informed me that the Minister had called him and instructed him to ensure a media report was issued due to the poor press – it was now a week after the announcement and there had been no further media release and the public was already sceptical of Eskom.

56. The Chairman agreed to the media release and instructed me to forward it directly to the company secretary and manager in his office. The instruction was that it should follow the normal process and be copied to all directors and the minister but it be released immediately. **(Attached Reference pages 59-62).**

57. Later I realised it was never released and upon enquiry I was informed by Mr Tsosti that the Minister of DPE and certain directors had objected to the press release and he had told the company secretary not to release it.

58. He also informed me that the Minister's office stated (hearsay) that protocol does not allow the Board to appoint a retired judge without the President's authority. I stated that to my knowledge that is not true. Effectively this aspect of the TOR was being rejected.

59. Later that evening (Wednesday 18th) I received a call around 6pm from the Chairman asking me to come to his house as the Ms Mabude had arrived. The three of us met and we first reviewed the media statement. In effect the Ms Mabude wanted all the references to the scope and approach including the retired judge and the use of three independent forensic teams to be excised.

60. I provided reasons why I disagreed with that view and none of these reasons were pointedly challenged by Ms Mabude. The response was simply "the committee does not want this". When I asked for reasons why the committee would have a different view Ms Mabude did not provide any. At this time the Chairman intervened as he did not like the adversarial tone that the discussion had taken on.

61. Ms Mabude then suggested that I attend a meeting of A&R the next day – Thursday 19th in the evening and present my arguments to them. I subsequently received a formal meeting invite to that planned meeting.

62. However that meeting was subsequently cancelled and my attendance not required. Instead an urgent board meeting was called, I think for the Friday 20th.

63. Following that meeting with Ms Mabude and the Chairman on the 18th, I immediately on the 19th March communicated in writing to both ENS and Grant Thornton that there was a hold on the enquiry until further notice. In the case of ENS I included reference to my own frustration and purpose at that time.(**Attached Reference pages 63 -4 and 65 -67**)

64. I was later informed that Mr Tsosti that members of the Board had met with the Minister on Friday 20th March concerning Mr Tsotsi's role in the enquiry and that he was to appear before a Board disciplinary hearing.

65. I was subsequently asked by his legal representatives to provide a statement of my and Mr Tsosti's roles in the matter for his disciplinary hearing, which I did. The content of that statement to his legal representatives is substantially identical to this affidavit as it was a contemporaneous record of events and formed a useful reference in preparing this document.

66. On the 21st March I drafted a letter for Mr Tsotsi to be addressed to Minister Brown complaining about the Board's role in terminating the enquiry. The purpose was twofold – it addressed the Board's attempt to remove Mr Tsotsi (said to be directly related to setting up the enquiry) and it

U16-NHL-036

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

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

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

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

70. My role

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

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

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

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

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

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

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

U16-NHL-037

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

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

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

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

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

71. The suspensions

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

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

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

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

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

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

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

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

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

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

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

72. Subsequent events related to the suspensions;

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

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

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

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

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

72.6. The one executive that the Board did reinstate has since faced a disciplinary enquiry for alleged wrongdoing.

72.7. The question has been posed whether the suspension of the executives on the 11th March directly resulted in the downgrade of Eskom the week following the suspensions.

72.8. The risk of the downgrade was contemplated at the time.

72.9. However it warrants further enquiry whether it was the suspensions *per se* that triggered the downgrade or by the hiatus and confusion caused by cancellation of the enquiry the week immediately before the downgrade.

NICHOLAS HUGH LINNELL

I certify that:

I. The Deponent acknowledged to me that:

A. He knows and understands the contents of this declaration;
B. He has no objection to taking the prescribed oath; and
C. He considers the prescribed oath to be binding on his conscience.

II. The Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God."

III. The Deponent signed this declaration in my presence on the 9th day of March 2018

.....7079909-1
BAATJIES AJ W/O

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
UNIT COMMANDER PARLIAMENT
PROTECTION AND SECURITY SERVICES
WESTERN CAPE
2018 -03- 09
PRIVATE BAG X1, STALPLEIN 8015
CAPE TOWN
SOUTH AFRICAN POLICE SERVICE

Signed on 09th March 2018 at Cape Town

Nick Linnell

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

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

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

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

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

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

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

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

Please call me if you need more information
Kind regards
Nick

Nick Linnell
The PROJECT office
email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office

Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

COMMISSION OF INQUIRY INTO STATE CAPTURE

ESKOM SOC

9TH MARCH 2015

Memorandum

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ESKOM SOC

DECISION RECORD OF THE BOARD
9TH MARCH 2015

Resolution

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

Resolution 1

Approved		Not Approved	

Resolution 2.

Approved		Not Approved	

Resolution 3.

Approved		Not Approved	

Resolution 4

Approved		Not Approved	

Resolution 5

Approved		Not Approved	

Resolution 6

Approved		Not Approved	

Conditions / Follow-up Actions:

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

Nick Linnell

From: Fritz Malan <fmalan@ensafrica.com>
Sent: Wednesday, 11 March 2015 11:09 AM
To: Nick Linnell
Subject: RE: suspension briefing notes f (Eskom).docx

Hi Nick.

I am looking at your briefing note on the suspension and have almost finalised my (limited) comments. I am happy that the proposed approach is not inconsistent with paragraph 3.4 of the disciplinary code or the prevailing case law on suspension. I will also look at the letter of suspension and comment. I do not have the resolution you refer to in my possession – could you mail me a copy?

Kind regards,
Fritz

From: Nick Linnell [mailto:nickl@theprojectoffice.com]
Sent: 11 March 2015 09:25 AM
To: Fritz Malan
Subject: suspension briefing notes f (Eskom).docx

Hi Fritz
My information is that the Board meets this morning and a decision will be out by say 11am.
The suspension discussions will follow immediately thereafter
Could you:

1. Review the resolution provided the other day and be satisfied that the subcommittee will have the power to suspend
2. Review the attached – and turn upside down if you need. This forms an aide memoire to the subcom in these discussion.
3. We need to do it right
4. Review the letter of suspension and correct as necessary
5. Advise on any other risk as you feel fit

Many thanks
Nick

Fritz Malan
director
employment
tel: +27 11 269 7600
cell: +27 83 258 8832
email: fmalan@ENSafrica.com
offices: ENSafrica locations

Africa's largest law firm
law | tax | forensics | IP
info@ENSafrica.com
ENSafrica.com
level 2 BBBEE rating
Edward Nathan Sonnenbergs Incorporated registration number 2006/013209/21

This email contains confidential information. It may also be legally privileged. Interception of this email is prohibited. The information contained in this email is only for the use of the intended recipient. If you are not the intended recipient, any disclosure, copying and/or distribution of the content of this email, or the taking of any action in reliance thereon, or pursuant thereto, is strictly prohibited. Should you have received this email in error, please

Briefing notes for pre-suspension hearing – aide memoire

Background

1. The suspension is not a disciplinary tool. It is known as a precautionary suspension as its purpose is to ensure that the investigation is carried without interference or influence from the employee. In this case the Company believes that the presence of the employee might jeopardise any investigation. It does not indicate any judgement on any allegations and does not infer any guilt.
2. Any labour measure must adhere to the basic principles of fairness. This requires:
   2.1. The employee must be informed of the allegations against him within a reasonable period of time prior to the hearing (see later)
   2.2. The employee must understand the nature of the allegations against him
   2.3. He must have an opportunity to hear the allegations and test them
   2.4. He must have the opportunity to counter them and provide his version
   2.5. The employer must consider both versions and make a decision based on the facts and law without any prejudgement. It cannot have made up its mind beforehand.
3. A pre-suspension hearing is exactly that – it is a hearing to decide whether to suspend or not. It must follow the principles above;
4. The hearing is an internal hearing. The employee is not entitled to any outside representation. He may not invite his lawyer.
5. The employee must attend the hearing if instructed to do so. He cannot refuse
6. An outcome of the meeting may if appropriate and satisfactory to the employer result in the employee agreeing to take paid leave at his/her own volition to limit any risk to his/her reputation – which is not an intended outcome for the employer. This may then be communicated as a decision either of the employee or an agreement with the employee to step aside for the period of investigation to enable the investigation to proceed without any perception of potential influencing of the investigation by the employees.

Pre-suspension hearing

1. The Chairperson to lead the discussion. All three members of the subcommittee must be present.
2. Either a detailed note or a recording of the conversation should be made.
3. Inform the individuals that the Board has considered the need for an enquiry to investigate the organisation as a whole and the causes of its current circumstances and identify any acts/omissions associated with serious negligence or wilful acts/omissions that contributed to this.
4. Restate points above points 2-6 under "Background"
5. Inform the each that this session now constitutes a hearing to determine whether he should be suspended or not pending the completion of the investigation. Stress that no decision has been taken to suspend – it is a proposal and would only be decided after having heard his input.
6. If so determined then this would be a precautionary suspension.

6.1. It would not indicate fault or wrongdoing - that would be left to the investigation to consider.

6.2. Any precautionary suspension would be on full pay and benefits

6.2.1. Stress that these are only allegations and that the Board has not come to any conclusion as to their truth or otherwise.

6.3. The proposal to place him/them on paid suspension is not made lightly but it is suggested in the interests of fairness to both him/them and the Board and in the interests of the Company.

7. Explain to the individual(s) that:

7.1. The Board has considered that the may be a risk to the investigation being properly conducted with the employees [each treated individually not as a group) at work and there is a risk of interference – whether deliberate or not. The Board believes that the presence of the employees, and particularly given the positions which they occupy, might jeopardise the investigation into the alleged misconduct or pose a potential risk to the Company.

7.2. A major principle of this enquiry is that it is independent and free from influence (active or passive) of any persons who may be implicated and who has the situational influence to inhibit the enquiry and fact gathering.

7.3. The board is considering suspension of certain employees and need to consult with each to determine whether this is an appropriate approach.

7.4. Stress in this situation suspension does not imply guilt or wrong doing. It is precautionary in nature.

7.5. The subcommittee is of the view that the following persons might reasonably be considered for precautionary suspension:

7.5.1. Tshidiso Matona
Chief Executive
372 Jutlander Road
Beaulieu

7.5.2. Dan Marokane
Group Executive
Group Capital
4 Sunset Villas
5 Vickey Avenue
Morningside
2196

7.5.3. Matshela Koko
Group Executive
Commercial and Technology
325 Spoonbil Way
Zanadu Residential Estate
Hartbeespoort

7.6. The "allegations" or requirements that need to be addressed are:

7.6.1. The totality of the enquiry is to determine whether there have been any wilful, or negligent or corrupt/wrongful acts or omissions on the part of any employee or service provider that has given rise to or contributed to any failure of Eskom to distribute the energy output that Eskom is capable of producing and distributing;

7.6.2. The three are heads of critical service delivery departments and in the case of the CEO of the organisation as a whole. In the event that any wrongful conduct or mismanagement is established it is probable that some of these are established in departments under their control and that they will have ultimate accountability in relation to such wrongful conduct or mismanagement.

7.6.3. It is important that they not be present at work during the investigation as it is a possibility and there is likelihood or a perception or fear held by employees that their careers might be at risk if they provide information that might reflect badly either on the organisation, its leadership or the individual executives concerned.

7.6.4. In the event that serious and material wrong-doing by the three executives, or conduct which they ought to have been aware of in their areas of responsibility and failed to detect it (negligent), or were wilful in participation or cover up of is uncovered by the enquiry serious additional business risks may have accrued to the organisation during the period of the investigation. In any of these conceivable circumstances the executives might reasonably be also be expected to supress or cause others to suppress the exposure of such information.

7.6.5. Should they be in office there is a reasonable risk that their presence will inhibit the gathering of evidence, the freedom of people to come forward and provide information and also inhibit suppliers from freely sharing information pertinent to the investigation.

7.6.6. There are also specific instances in relation to the ToR of the investigation that illustrates the risks involved.

7.6.6.1. In respect to the CEO there is an allegation that he has covered up certain alleged wrongdoings of Mr Marokane and Mr Koko. If correct this demonstrates a propensity to cover up matters of wrongdoing

7.6.6.2. In the case of Mr Dan Marokane an allegation that he interfered with security investigating wrongdoing that occurred on the company premises involving Mr Koko. At the time Mr Marokane was acting CEO. This is an allegation which has come to light and requires investigation and will form part of the ToR. In the event that it is true it demonstrates his ability and propensity to interfere with an investigation.

7.6.6.3. In respect of Mr Koko there is an allegation that also requires investigation and shall form part of the ToR that he wrongfully suspended Mr Sekhasimbe for ulterior motives which might include an attempt to cause a division between the Chairperson and the Board. This if true would show a propensity to wrongfully use his position to achieve an improper outcome.

7.6.6.4. These instances lend weight to the risk of executives interfering in this investigation.

8. Ask him to consider what you have said and invite him to give reasons why a precautionary suspension would not be in the interests of Eskom in the light of the need to conduct an e enquiry.
9. Tell him that should he require some more time he is welcome to give it some thought before you resume and you suggest 1 hour and set a time to continue. Ask him not to leave the office. You leave him there and you come back.

On resumption of the meeting

1. On resumption, note that this is a continuation of the earlier session and summarise what has happened:
   1.1. The Board wishes to investigate allegations of serious misconduct.
   1.2. The matter by its nature but also is serious due to his pivotal role in leading the organisation and it is urgent as the company must urgently address its future.
   1.3. He has had an opportunity to consider the allegations and to consider reasons for the board not to suspend him.
   1.4. Stress the Board has not yet made any decision to suspend.
2. Ask him for reasons why he feels that he ought not to be suspended.
   2.1. These must relate to the suspension and not the enquiry
   2.2. If he wants to argue that he is not guilty of anything then reassures him that a suspension would not imply any fault and is precautionary.
   2.3. Whatever reasons are given by him should be considered and he must be told whether they are acceptable or not.
      2.3.1.The issue is only is there a reasonable risk of him interfering with the investigations.
      2.3.2.If you are able to respond to any of his reasons you should do so
   2.4. After this discussion is exhausted, ask him whether he has anything more to say.
   2.5. If not, ask him to wait outside for a time while the Board considers the matter.
   2.6. After considering, if you as a Board subcommittee remain convinced that there is a reasonable risk of interference then you may suspend.
   2.7. Call him back in and inform him of your decision.
   2.8. Hand him the attached suspension letter and ask him to sign.
   2.9. Stress the following:
      2.9.1. Suspension shall be until further notice
      2.9.2.He shall continue to receive full pay and benefits
      2.9.3.He may not contact or be in contact with any employee of the Company and may not enter any company premises unless expressly authorised to do by the Chairperson.
      2.9.4.He may not contact any persons who might reasonably be considered a potential witness.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Letterhead of Eskom

Mr [insert]

11th March 2015

Dear Mr [insert]

YOUR SUSPENSION AS [insert]

1. I refer to the meeting of today, 11th March 2015, wherein we discussed the company's concerns regarding the serious state of the company and the Board resolution to conduct an independent inquiry into the possibility that the power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the importance of it being free of any influence from leadership in the organisation, pending the completion of an investigation into these matters, you should be placed on suspension without any loss of benefits and pay.
2. I confirm that you were advised of the nature and extent of the enquiry and that you were afforded an opportunity to make representations to the Board subcommittee why you should not be suspended pending the outcome of the enquiry.
3. You were advised that the Board subcommittee was considering placing you on precautionary suspension because of concerns that might pose a risk to the influence- free requirement of the enquiry.
4. These concerns have been discussed with you.
5. I confirm that you made various representations in respect of your possible suspension. We have considered them thoroughly.
6. We have concluded that, in view of the serious nature of the above and after having considered your representations, the company regrets to inform you that it has decided to suspend you on full pay without any loss of benefits to be calculated from today pending completion of the enquiry.
7. In order for the investigation to proceed as expeditiously as possible, it would not be appropriate for you to remain at work whilst such investigation is in place. You will be advised of the outcome of the enquiry as soon as possible.
8. At that time the subcommittee will consider the enquiry report before considering the matter further.
9. You are instructed to remain in telephonic contact with me during the period of your suspension. We expect you to be contactable in the event that it is necessary for you to attend at the company premises during normal working hours for the purposes of assisting with such investigation. You are further directed not in any manner to approach any member of the company staff, its clients or any third party with whom the company presently has or has had

dealings in the past (including the media) without obtaining my prior written permission. You are also directed not to attend at the company's premises during the period of your suspension.

10. The company will regard any contravention of the above instructions in a serious light and further disciplinary steps may be instituted against you in respect of such contravention. You are in addition requested to hand over all work tools issued to you including but not limited to access cards, cell phone, laptop and the like. You are not to make use of the company's information technology hardware and software such as intranet and internet facilities during your suspension.
11. You are requested to surrender your company access card, office keys, laptop and any other company property, documents, computer disks and the like in your possession, with immediate effect.
12. Should you feel uncertain about any aspect of the contents of this letter, you are requested to contact me telephonically.

Yours faithfully

_____

Duly authorised:

For and on behalf of the Board

Zola Tsotsi
Chairperson

I acknowledge receipt of this notification:

Signature: _____Date: _____Time:_____

Insert name

Signature _____ Date: _____Time:_____

Zola Tsotsi

In the event that the employee refuses to sign:

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

Signed _____ Position _____ Date _____

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: 18 March 2015 07:19 AM
To: 'skillsdm@mweb.co.za'
Subject: Update
Attachments: Draft Terms of reference - Eskom 18032015.docx; Media release 18032015.docx; Eskom briefing.docx

Tracking:

Recipient	Read
'skillsdm@mweb.co.za'	Read: 2015/03/18 12:38 PM

Hi D
Please find

1. Briefing document
2. Terms of reference – to be confirmed
3. Media statement – to be confirmed

Chat now
Regards
nick

Nick Linnell
The PROJECT Office
Business Improvement Services
email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

Briefing

1. **Background**
   1.1. A week ago on the 11th March the board approved the commissioning of an independent inquiry into the status of the company.
   1.2. Since then there has been some difficulty is settling the terms of reference and appointing the key service providers. This now appears to be resolved
   1.3. During the week there has been much media speculation. In principle most people are pleased that government has taken this action but sections of the press have looked to find some conspiracy.

2. **Current position**
   2.1. Terms of reference. These have been agreed with the chairman of the board and are presently being sent to the member of the oversight committee (A&R committee). Following some obstruction over the past few days we anticipate this will be cleared.
   2.2. The members of the inquiry team.
      2.2.1. We will appoint an independent retired judge to ensure that no conflict of interest or undue influence is introduced. It will be reactive role where any allegations of improper influence that arise will be referred to him to assess and report to the Board and shareholder. Suggestions:
         2.2.1.1. Former Chief Justice Sandile Ngcobo (preferred)
         2.2.1.2. Justice Zak Yacoob
         2.2.1.3. Justice Myberg
         2.2.1.4. Justice Robert Nugent
         2.2.1.5. Justice Meyer Joffe
      2.2.2. Professional service providers
         2.2.2.1. Commercial forensics – preferred – Edward Nathan Sonnenbergs
         2.2.2.2. Financial- preferred Grant Thornton
         2.2.2.3. Technical - under consideration

3. **Media**

3.1. We propose to release the attached press release. It will spell out the process, the independence and the fact that media releases will provide full details. This more clearly acknowledges the current failings at Eskom

4. **Timetable**

4.1. 18th March – press release

4.2. 18th march confirmation of Terms of Reference

4.3. 19th March appointment of professional teams and further media statement

4.4. 23rd March – begin inquiry

4.5. Stakeholder engagements to ensure ongoing public support and visability.

4.6. 10th June – final report

Attached

1. Proposed terms of reference
2. Proposed media release

COMMISSION OF INQUIRY INTO STATE CAPTURE

DRAFT

TERMS OF REFERENCE FOR A FACT FINDING INQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

The Board has received complaints and concerns raised by various sources, both internal and external to Eskom with regards to, inter alia, sufficiency and reliability of supply of electricity; escalating build project costs; escalating maintenance costs; high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently.

These together with the Board's own review, make it clear that the Company has failed to fulfil its mandate of providing electricity to meet the needs of business and the public. To the extent that we have failed, this must be fixed. We accept this reality and resolve to urgently and effectively work towards restoring the service and the performance (financial and operational) of Eskom to where it is expected to be.

We are committed to rooting out all misconduct and inefficiency. We will pursue these twin challenges with vigour. We will determine what is wrong, what needs to be done and we will begin to fix it. Misconduct will be stopped and some inefficiency will be righted immediately. Some of the major infrastructural and systemic issues may take time but the process of improvement will start immediately and will be sustained. We are committed to this improvement. It is our mandate.

To achieve this we need to be clear about where to start. To identify what is wrong and what it will require to fix. We recognise that this must be seen to be believed. The process and our actions must be transparent.

The Board has therefore recognised the need for independent assessment of the state of the company's capability and performance. To ensure this proceeds quickly and without hindrance or interference we have taken a number of steps.

The Board of Directors has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of reference. The terms of reference will provide for sound and transparent governance and these will be made public.

Included in the authority to institute this inquiry is also the authority to:

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

2. OBJECTIVE/PURPOSE

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

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

3. APPROACH

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

The inquiry will be managed by a project coordinator who shall be responsible for the delivery of the mandate.

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

4. TIMING

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

5. RESOURCES

5.1. The inquiry teams shall have access to all documentation and other data belonging to the Company as deemed by the inquiry teams to be necessary and shall be permitted to interview and receive information from any employee and supplier as necessary.

5.2. Each team and the inquiry coordinator shall have access to all premises of the Company at all reasonable time and upon reasonable notice;

5.3. The internal audit department will provide assistance as agreed from time to time with the Head of Internal audit department.
5.4. The Board subcommittee shall provide appropriate and necessary assistance to the inquiry teams as requested from time to time.
5.5. Board and board committee agenda packs and minutes shall be available to each team on request.
5.6. The Company shall provide a meeting room sufficient to house 6 persons and shall provide access as required to interview rooms.
5.7. All prior inquiries and reports in connection with matters included in this scope shall be made available to the inquiry.
5.8. The inquiry shall be permitted to establish an independent reporting "hot-lines" enabling internal and external people to provide anonymous input to the inquiry.
5.9. The respective teams comprising the inquiry shall meet on a fortnightly basis to ensure coordination.

6. SCOPE OF INQUIRY

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

6.1. Technical

6.1.1. In respect of all generating plants' (+/-87), benchmark maximum output capacity, planned capacity and actual output for the immediate past 36 months;
6.1.2. Review current status of all generating plants and provide opinion on the causes and contributory factors for sub optimum output (in excess of 33 require major repair);
6.1.3. Review all major incidents at plants and their causes and any avoidable factors not acted upon (including communications between plant and executive);
6.1.4. Review maintenance requirements of all generating plants assessing actual vs planned maintenance and review all contracts and service level agreements and compliance to the same as well as costs relative to plan. Have particular regard to all unplanned failures and review in context of maintenance conducted/not conducted;
6.1.5. Review all 3rd party electricity supply available to the grid (including proposals received but not acted on) and compare to actual supply connected to the grid for the past 36 months. Provide an opinion on the technical reasons and cost implications for not having connected when possible. Review all information including correspondence, negotiations and contracting with regard to that supply and reasons for less than optimum connected supply. In addition, consider the available potential of supply from foreign countries and determine any reasons for supply (from time to time) less than that potential and consider any reasons thereof;
6.1.6. Specifically enquire into the principal causes of failure at Majuba and Duvha and make recommendations as necessary. In so doing have regard to management reports and independent insurance/assessor reports and

determine the degree of transparency of reporting to the Board and have regard to the reasons for any late submissions of these reports to the Board.

6.1.7. Conduct high level reviews of the new builds at Medupi and Kusile and determine the principal causes and contributory factors to the overruns of cost and time.

6.1.7.1. The degree of depth of this report to be agreed between the subcommittee and the inquiry team bearing in mind the time available.

6.1.7.2. To determine whether appropriate contingency plans were in place and acted upon at the earliest possible instance;

6.1.8. In collaboration with the Financial and Commercial inquiry teams to the review the supply of primary energy (coal, diesel, gas, water) to all plants over the past 36 months and determine whether supplies met specification, quality and delivery requirements (also have regard to any incorrect specifications provided).

6.1.9. Review the causes of disruption of power to two Rand Water pumps at Rand Water in September 2014 paying special attention to any lack of proactive or reactive management response i.e. were there warning and how effectively did we react;

6.1.10. To consider the impact of weather on the performance of any of the plants and to provide an opinion as to whether these risks could have been mitigated;

6.1.11. To review risk management and contingency plans to determine that such are sufficient to negate any generation risk, and at times of plant failure and whether such were implemented effectively.

6.2. Commercial

6.2.1. Review all procurement and other contracts for capital projects, primary energy supplies and operational services (exceeding R1 million or such figure as varied with agreement with the subcommittee) for the past 48 months and determine adherence to supply chain policy and business case approvals. Have special regard to any contracts and payments made but not matched to specification (cost, time and quality). Have regard to any rolling or renewed contracts that have cumulative value above the threshold;

6.2.2. Review all contracts related to Medupi and Kusile from inception. Review these in context to the original business case and adherence to tender and supply chain requirements. The focus to be on commercial matters and not technical. The team to coordinate their inquiry with the Technical and financial teams.

6.2.3. Review employee and contractor contracts and payments made to employees and contractors and identify any that bear *prima facie* concern.

6.2.4. Undertake electronic assessment of all company email correspondence, identifying certain key words to be proved by the subcommittee, for the last 24 months, and where appropriate undertake interviews with internal and external parties to probe where indicated.

6.2.5. Review a random sample of internal correspondence between project leaders and plant/project management on Medipi, Kusile, Majuba and Duvha and identify whether plant management foresaw problems and communicated risk upwards. Review management reactions;

6.2.6. Similarly (plants as per above) review all correspondence between suppliers and company in which disputes are debated. Interview suppliers as necessary.

6.2.7. Review new posts created over past 36 months and provide a schedule of position and TCC.

6.2.8. Review all executive and Board reports pertaining to new builds and summarise material implications and decisions.

6.2.9. Review contracts and recruitments of employees with TCC >R1.5m per annum for last 24 months;

6.2.10. Review a sample of senior employee suspensions, disciplinary hearings and dismissals (and reinstatements) of employees last 36 months (filter those earning >R1 000 000 p.a.).

6.2.11. Review summaries of internal audit reports over the last 36 months and management responses and any action taken on material risks identified;

6.2.12. Review internal audit programs – schedule of audits and risk analysis and review Internal audit reports of the same and review actions taken;

6.2.13. Review draft external audit reports for the past 3 years (2012-2014) and identify risks noted and not in final reports and determine reasons for such

6.2.14. Interview sustainability executive for insight to risks not identified;

6.2.15. Review correspondence from insurers of major claims submitted (to be objectively assessed by the team) and premium adjustments for those and reasons for them for past 36 months.

6.2.16. To review the organismal model and consider the implication on the performance of the company and make recommendations as required.

6.2.17. To consider the implementation of any policy decisions and their impact on the performance of the Company. To coordinate with Financial and Technical inquiry teams to ensure appropriate consideration by each.

6.2.18. Review company policies to determine compliance of good governance, transformation and conflict of interest.

6.2.19. Review whistle-blower reports for past 36 months and provide an opinion of the satisfactory follow-ups thereof.

6.3. Financial

6.3.1. Review the approved financial statements of the Company as at 30th September 2014 and provide a summarised "red flag" report on material concerns. Review the current management report forecast for the year ending March 2015 and provide similar comments and in particular to any variations not anticipated in September 2014.

6.3.2. Review material funding facilities/contracts /bonds of any nature and provide an opinion of the terms relative to the market and the company's risk.

6.3.3. Review all steps taken by the Company to recover unpaid "government/municipal" debt (debtors) currently estimated at R4.7 billion. Provide commentary on the impact on the financial standing of the company on such unpaid debt.

6.3.4. Review all non- government trade debtors (customers) and provide a similar review and in particular to steps taken to secure payment;

6.3.5. Conduct (together with Commercial team) a review of all primary energy supplies over the past 36 months and determine the cost implications of any contracts "not for value";

6.3.6. Determine the lost revenue and/or penalty cost implications of all non-implemented 3rd party electricity supply opportunities.

6.3.7. Determine the net wasted cost (and reasons therefore) of payments made to primary energy suppliers for materials not received but paid for over the past 36 months.

6.3.8. Review all non-government major electricity-user sales contracts (together with their business cases) and determine the value of lost revenue over time and, together with commercial, provide an opinion on the proprietary/commercial wisdom of such contracts at the time.

6.3.9. Review all contracts and payment of pre-sold electricity "buy-backs" and access the cost/benefit of such decisions.

6.3.10. Together with Technical teams provide an estimated cost to the company of the cost (increased costs) and time (lost revenue) overruns at Medupi and Kusile;

6.3.11. To consider asset management policies and practices;

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

6.4. Coordination

6.4.1. The inquiry coordinator shall:

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

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

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

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

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

7. REPORTING

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

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

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

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

8. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

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

9. FEES

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

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____

Name of Signatory

_____

Designation of Signatory

For and on behalf of

[Service Provider]

_____

Signature

_____

Name of Signatory

_____

Designation of Signatory

Failure of the mandate

Financial and operational failure

Root out misconduct and inefficiency

What wrong what needs to be done and

083 3885480 Bernard van der Walt

Bjorn

COMMISSION OF INQUIRY INTO STATE CAPTURE

ESKOM SOC

PRESS RELEASE

THE BOARD ENQUIRY

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

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

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

The status quo

Firstly, as a Board we acknowledge that the company has not fulfilled its mandate to the South African public. Maladministration, operational and financial inefficiencies and poor decision-making are evident for all to see. We are determined that these will be rooted out.

What has failed must be fixed. What is wrong must be put right. Where misconduct and inefficiency exists it will be rooted out. Organisational weakness will be corrected. If these are not done with determination and effectiveness the status quo will continue. We will work towards restoring the service and the performance (financial and operational) of Eskom to where it is expected to be.

Some of the major infrastructural and systemic issues may take time but the process of improvement will start immediately and will be sustained. We are committed to this improvement. It is our mandate.

The inquiry

To achieve this we need to be clear about where to start. To identify what is wrong and what it will require to fix. We recognise that this must be seen to be believed. The process and our actions must be transparent.

The Board has therefore recognised the need for independent assessment of the state of the company's capability and performance. To ensure that this proceeds quickly and without hindrance or interference we have taken a number of steps.

The Board of Directors has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of

reference. The terms of reference will provide for sound and transparent governance and these will be made public.

The purpose of the inquiry is:

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

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

The scope and structure

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

1. The appointment of a retired judge to ensure that the inquiry is free from influence and bias. The eminent person will not run the inquiry but will have oversight of its governances.
2. The appointment of industry and professional experts in specific fields to undertake the work defined in the scope of the inquiry. These entities/people will be credible and capable.
3. The appointment of a person outside the company who shall coordinate the various aspects and be accountable to the Board subcommittee for the timely delivery of the objectives.

The subcommittee has approved the terms of reference and scope of the inquiry and has put to a number of professional entities that we believe have the capacity and expertise to complete this mandate in the time allowed. These will be selected carefully so as to avoid any risk of conflict of interest.

The Board will provide the public with details of the terms of reference and those persons engaged to undertake the inquiry. We shall do this before the end of Friday 20th March. The inquiry will begin on Monday the 23rd.

The Board has attracted some criticism regarding this inquiry from various sectors. We believe that is more due to a failure to adequately engage our many and varied stakeholders. For this inquiry to have credibility we need to convey what is it is we are doing to every stakeholder and to continuously seek their views and opinions.

If we do this right only good will flow from it.

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

inquiry is focused on internal matters that have affected our performance and identify some key remedial actions that might be identified.

This initiative has the complete support of our shareholder Minister Lynn Brown.

Finally we need to refer to the request to certain senior executives to step aside during this inquiry.

This inquiry is about identifying what is wrong with this organisation. We need to create the space for the inquiry teams to have unfettered access to the company, its people, its systems and it suppliers. In any organisation, its executive has situational influence just through their presence – they would not be leaders otherwise. We have asked them to acknowledge this and we believe that they do. The speculation around their absence from the business is without cause. This inquiry is not about them but about this organisation as a whole. It has a single purpose to restore this company's ability to meet its mandate. What is found to be wrong along the way will be put right.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Wednesday, 18 March 2015 9:22 AM
To: Chwayita Mabude (MabudeC@eskom.co.za); ztsotsi@liquifire.biz
Subject: Board enquiry
Attachments: Media release 18032015.docx; Draft Terms of reference - Eskom 18032015.docx; Legal Dept input DRAFT TORS INQUIRY 15 MARCH 2015 (3).docx

Importance: High

Dear Chair and Chwayita

Yesterday I worked further on the terms of reference and the sourcing potential professional service providers. Late last evening I also received from Neo Tsholanku a draft of his ToR. I have attached both my draft and his for your consideration.

I also spent much time yesterday reviewing the media commentary on the enquiry and clearly there is public concern about a lack of information and also of a concern that this will not be independent (see Business Day).

As I understand it from her public comments, the Minister has endorsed the enquiry, has stated that it must be comprehensive and that it must be seen to be independent. Anything short of that now will lack credibility.

The attached draft terms prepared by myself provides for a comprehensive enquiry with very clear independence. It includes independent oversight from a retired judicial officer. It provides for the appointment of credible service providers.

Attached also is a draft media release. It is my suggestion that this and the terms of reference are approved before midday. Failing that there will be further media scrutiny tomorrow which will be to the detriment of the company.

I believe we have a small window in which to put the company's clear purpose and approach before the public.

I am available at any time to meet with you to discuss this morning.

Kind regards
Nick

Nick Linnell
The PROJECT Office
email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

DRAFT

TERMS OF REFERENCE FOR A FACT FINDING INQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

The Board has received complaints and concerns raised by various sources, both internal and external to Eskom with regards to, inter alia, sufficiency and reliability of supply of electricity; escalating build project costs; escalating maintenance costs; high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently.

These together with the Board's own review, make it clear that the Company has failed to fulfil its mandate of providing electricity to meet the needs of business and the public. To the extent that we have failed, this must be fixed. We accept this reality and resolve to urgently and effectively work towards restoring the service and the performance (financial and operational) of Eskom to where it is expected to be.

We are committed to rooting out all misconduct and inefficiency. We will pursue these twin challenges with vigour. We will determine what is wrong, what needs to be done and we will begin to fix it. Misconduct will be stopped and some inefficiency will be righted immediately. Some of the major infrastructural and systemic issues may take time but the process of improvement will start immediately and will be sustained. We are committed to this improvement. It is our mandate.

To achieve this we need to be clear about where to start. To identify what is wrong and what it will require to fix. We recognise that this must be seen to be believed. The process and our actions must be transparent.

The Board has therefore recognised the need for independent assessment of the state of the company's capability and performance. To ensure this proceeds quickly and without hindrance or interference we have taken a number of steps.

The Board of Directors has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of reference. The terms of reference will provide for sound and transparent governance and these will be made public.

Included in the authority to institute this inquiry is also the authority to:

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

2. OBJECTIVE/PURPOSE

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

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

3. APPROACH

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

The inquiry will be managed by a project coordinator who shall be responsible for the delivery of the mandate.

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

4. TIMING

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

5. RESOURCES

5.1. The inquiry teams shall have access to all documentation and other data belonging to the Company as deemed by the inquiry teams to be necessary and shall be permitted to interview and receive information from any employee and supplier as necessary.

5.2. Each team and the inquiry coordinator shall have access to all premises of the Company at all reasonable time and upon reasonable notice;

5.3. The internal audit department will provide assistance as agreed from time to time with the Head of Internal audit department.
5.4. The Board subcommittee shall provide appropriate and necessary assistance to the inquiry teams as requested from time to time.
5.5. Board and board committee agenda packs and minutes shall be available to each team on request.
5.6. The Company shall provide a meeting room sufficient to house 6 persons and shall provide access as required to interview rooms.
5.7. All prior inquiries and reports in connection with matters included in this scope shall be made available to the inquiry.
5.8. The inquiry shall be permitted to establish an independent reporting "hot-lines" enabling internal and external people to provide anonymous input to the inquiry.
5.9. The respective teams comprising the inquiry shall meet on a fortnightly basis to ensure coordination.

6. SCOPE OF INQUIRY

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

6.1. Technical
6.1.1. In respect of all generating plants' (+/-87), benchmark maximum output capacity, planned capacity and actual output for the immediate past 36 months;
6.1.2. Review current status of all generating plants and provide opinion on the causes and contributory factors for sub optimum output (in excess of 33 require major repair);
6.1.3. Review all major incidents at plants and their causes and any avoidable factors not acted upon (including communications between plant and executive);
6.1.4. Review maintenance requirements of all generating plants assessing actual vs planned maintenance and review all contracts and service level agreements and compliance to the same as well as costs relative to plan. Have particular regard to all unplanned failures and review in context of maintenance conducted/not conducted;
6.1.5. Review all 3rd party electricity supply available to the grid (including proposals received but not acted on) and compare to actual supply connected to the grid for the past 36 months. Provide an opinion on the technical reasons and cost implications for not having connected when possible. Review all information including correspondence, negotiations and contracting with regard to that supply and reasons for less than optimum connected supply. In addition, consider the available potential of supply from foreign countries and determine any reasons for supply (from time to time) less than that potential and consider any reasons thereof;
6.1.6. Specifically enquire into the principal causes of failure at Majuba and Duvha and make recommendations as necessary. In so doing have regard to management reports and independent insurance/assessor reports and

determine the degree of transparency of reporting to the Board and have regard to the reasons for any late submissions of these reports to the Board.

6.1.7. Conduct high level reviews of the new builds at Medupi and Kusile and determine the principal causes and contributory factors to the overruns of cost and time.

6.1.7.1. The degree of depth of this report to be agreed between the subcommittee and the inquiry team bearing in mind the time available.

6.1.7.2. To determine whether appropriate contingency plans were in place and acted upon at the earliest possible instance;

6.1.8. In collaboration with the Financial and Commercial inquiry teams to the review the supply of primary energy (coal, diesel, gas, water) to all plants over the past 36 months and determine whether supplies met specification, quality and delivery requirements (also have regard to any incorrect specifications provided).

6.1.9. Review the causes of disruption of power to two Rand Water pumps at Rand Water in September 2014 paying special attention to any lack of proactive or reactive management response i.e. were there warning and how effectively did we react;

6.1.10. To consider the impact of weather on the performance of any of the plants and to provide an opinion as to whether these risks could have been mitigated;

6.1.11. To review risk management and contingency plans to determine that such are sufficient to negate any generation risk, and at times of plant failure and whether such were implemented effectively.

6.2. Commercial

6.2.1. Review all procurement and other contracts for capital projects, primary energy supplies and operational services (exceeding R1 million or such figure as varied with agreement with the subcommittee) for the past 48 months and determine adherence to supply chain policy and business case approvals. Have special regard to any contracts and payments made but not matched to specification (cost, time and quality). Have regard to any rolling or renewed contracts that have cumulative value above the threshold;

6.2.2. Review all contracts related to Medupi and Kusile from inception. Review these in context to the original business case and adherence to tender and supply chain requirements. The focus to be on commercial matters and not technical. The team to coordinate their inquiry with the Technical and financial teams.

6.2.3. Review employee and contractor contracts and payments made to employees and contractors and identify any that bear *prima facie* concern.

6.2.4. Undertake electronic assessment of all company email correspondence, identifying certain key words to be proved by the subcommittee, for the last 24 months, and where appropriate undertake interviews with internal and external parties to probe where indicated.

6.2.5. Review a random sample of internal correspondence between project leaders and plant/project management on Medipi, Kusile, Majuba and Duvha and identify whether plant management foresaw problems and communicated risk upwards. Review management reactions;

6.2.6. Similarly (plants as per above) review all correspondence between suppliers and company in which disputes are debated. Interview suppliers as necessary.

6.2.7. Review new posts created over past 36 months and provide a schedule of position and TCC.

6.2.8. Review all executive and Board reports pertaining to new builds and summarise material implications and decisions.

6.2.9. Review contracts and recruitments of employees with TCC >R1.5m per annum for last 24 months;

6.2.10. Review a sample of senior employee suspensions, disciplinary hearings and dismissals (and reinstatements) of employees last 36 months (filter those earning >R1 000 000 p.a.).

6.2.11. Review summaries of internal audit reports over the last 36 months and management responses and any action taken on material risks identified;

6.2.12. Review internal audit programs – schedule of audits and risk analysis and review Internal audit reports of the same and review actions taken;

6.2.13. Review draft external audit reports for the past 3 years (2012-2014) and identify risks noted and not in final reports and determine reasons for such

6.2.14. Interview sustainability executive for insight to risks not identified;

6.2.15. Review correspondence from insurers of major claims submitted (to be objectively assessed by the team) and premium adjustments for those and reasons for them for past 36 months.

6.2.16. To review the organismal model and consider the implication on the performance of the company and make recommendations as required.

6.2.17. To consider the implementation of any policy decisions and their impact on the performance of the Company. To coordinate with Financial and Technical inquiry teams to ensure appropriate consideration by each.

6.2.18. Review company policies to determine compliance of good governance, transformation and conflict of interest.

6.2.19. Review whistle-blower reports for past 36 months and provide an opinion of the satisfactory follow-ups thereof.

6.3. Financial

6.3.1. Review the approved financial statements of the Company as at 30th September 2014 and provide a summarised "red flag" report on material concerns. Review the current management report forecast for the year ending March 2015 and provide similar comments and in particular to any variations not anticipated in September 2014.

6.3.2. Review material funding facilities/contracts /bonds of any nature and provide an opinion of the terms relative to the market and the company's risk.

6.3.3. Review all steps taken by the Company to recover unpaid "government/municipal" debt (debtors) currently estimated at R4.7 billion. Provide commentary on the impact on the financial standing of the company on such unpaid debt.

6.3.4. Review all non- government trade debtors (customers) and provide a similar review and in particular to steps taken to secure payment;

6.3.5. Conduct (together with Commercial team) a review of all primary energy supplies over the past 36 months and determine the cost implications of any contracts "not for value";

6.3.6. Determine the lost revenue and/or penalty cost implications of all non-implemented 3rd party electricity supply opportunities.

6.3.7. Determine the net wasted cost (and reasons therefore) of payments made to primary energy suppliers for materials not received but paid for over the past 36 months.

6.3.8. Review all non-government major electricity-user sales contracts (together with their business cases) and determine the value of lost revenue over time and, together with commercial, provide an opinion on the proprietary/commercial wisdom of such contracts at the time.

6.3.9. Review all contracts and payment of pre-sold electricity "buy-backs" and access the cost/benefit of such decisions.

6.3.10. Together with Technical teams provide an estimated cost to the company of the cost (increased costs) and time (lost revenue) overruns at Medupi and Kusile;

6.3.11. To consider asset management policies and practices;

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

6.4. Coordination

6.4.1. The inquiry coordinator shall:

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

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

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

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

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

7. REPORTING

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

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

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

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

8. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

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

9. FEES

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

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____

Name of Signatory

_____

Designation of Signatory

For and on behalf of

[Service Provider]

_____

Signature

_____

Name of Signatory

_____

Designation of Signatory

Failure of the mandate

Financial and operational failure

Root out misconduct and inefficiency

What wrong what needs to be done and

083 3885480 Bernard van der Walt

Bjorn

ESKOM SOC

PRESS RELEASE

THE BOARD ENQUIRY

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

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

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

The status quo

Firstly, as a Board we acknowledge that the company has not fulfilled its mandate to the South African public. Maladministration, operational and financial inefficiencies and poor decision-making are evident for all to see. We are determined that these will be rooted out.

What has failed must be fixed. What is wrong must be put right. Where misconduct and inefficiency exists it will be rooted out. Organisational weakness will be corrected. If these are not done with determination and effectiveness the status quo will continue. We will work towards restoring the service and the performance (financial and operational) of Eskom to where it is expected to be.

Some of the major infrastructural and systemic issues may take time but the process of improvement will start immediately and will be sustained. We are committed to this improvement. It is our mandate.

The inquiry

To achieve this we need to be clear about where to start. To identify what is wrong and what it will require to fix. We recognise that this must be seen to be believed. The process and our actions must be transparent.

The Board has therefore recognised the need for independent assessment of the state of the company's capability and performance. To ensure that this proceeds quickly and without hindrance or interference we have taken a number of steps.

The Board of Directors has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of

reference. The terms of reference will provide for sound and transparent governance and these will be made public.

The purpose of the inquiry is:

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

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

The scope and structure

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

1. The appointment of a retired judge to ensure that the inquiry is free from influence and bias. The eminent person will not run the inquiry but will have oversight of its governances.
2. The appointment of industry and professional experts in specific fields to undertake the work defined in the scope of the inquiry. These entities/people will be credible and capable.
3. The appointment of a person outside the company who shall coordinate the various aspects and be accountable to the Board subcommittee for the timely delivery of the objectives.

The subcommittee has approved the terms of reference and scope of the inquiry and has put to a number of professional entities that we believe have the capacity and expertise to complete this mandate in the time allowed. These will be selected carefully so as to avoid any risk of conflict of interest.

The Board will provide the public with details of the terms of reference and those persons engaged to undertake the inquiry. We shall do this before the end of Friday 20th March. The inquiry will begin on Monday the 23rd.

The Board has attracted some criticism regarding this inquiry from various sectors. We believe that is more due to a failure to adequately engage our many and varied stakeholders. For this inquiry to have credibility we need to convey what is it is we are doing to every stakeholder and to continuously seek their views and opinions.

If we do this right only good will flow from it.

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

inquiry is focused on internal matters that have affected our performance and identify some key remedial actions that might be identified.

This initiative has the complete support of our shareholder Minister Lynn Brown.

Finally we need to refer to the request to certain senior executives to step aside during this inquiry.

This inquiry is about identifying what is wrong with this organisation. We need to create the space for the inquiry teams to have unfettered access to the company, its people, its systems and it suppliers. In any organisation, its executive has situational influence just through their presence – they would not be leaders otherwise. We have asked them to acknowledge this and we believe that they do. The speculation around their absence from the business is without cause. This inquiry is not about them but about this organisation as a whole. It has a single purpose to restore this company's ability to meet its mandate. What is found to be wrong along the way will be put right.

DRAFT

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

1.1. For the past 2 (two) years, the Office of the Chairman and the Eskom Board of Directors (both the new and the old Boards) have been inundated with complaints and concerns raised by various sources internal and external to Eskom with regards to the unreliable power supply, escalating build project costs, escalating maintenance costs, high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. To this end, the Board of Directors have resolved to institute an enquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute this enquiry to the Audit and Risk Committee under the Chairmanship of Ms Chwayita Mabude. Included in the authority to institute this enquiry, is also the authority to:

- Appoint a service provider
- Manage the costs of executing the enquiry, and
- Ensuring that the service provider delivers on its mandate within the prescribed time lines.

2. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

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

3. SCOPE OF THE INVESTIGATION

The Service Provider will investigate and report on the following:

3.1. the integrity of the procurement processes and their compliance with legislation as well as Eskom's procurement policies;

3.2 management of price escalations in contracts as well as the cost of contract modifications with specific references to causes of delays in contract implementation, and the penalty costs arising therefrom;

3.3 the capacity within Eskom to manage implementation of the contracts;

3.4 security failures and accountability at Eskom as a key national point;

3.5. capacity for fleet maintenance and reasons therefor;

3.6. the effectiveness of Eskom Board oversight and its ability to exercise oversight over management;

3.7. primary energy, with focus on coal and diesel, such as but not limited to costs related thereto

3.8. Unreliable power supply, including unnecessary load shedding

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

3.10 Review of processes of raising bonds and reporting thereof

3.11 Recommendations on identified shortcomings and strong points

4. **PROCESS**

The Service Provider will follow the guidelines below in conducting the investigation:

4.1. Conduct interviews with employees in its investigation.

4.2. In addition to employees, mentioned in terms of clause 4.1 above, the Service Provider may further conduct interviews with any other party/ies or person/s who may have information regarding this enquiry.

4.3. Obtain and analyse, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by an employee or any other person interviewed in accordance with 4.1 to 4.2 above.

4.4. At the end of the enquiry, present to the Audit and Risk Committee a report.

The aforementioned report will contain the following:

4.4.1. Documents relied upon during the investigation,

4.4.2. Details of evidence submitted by the Parties and/ or employees interviewed,

4.4.3. Analysis of the evidence and documentation referred to in 4.3 above as presented by the Parties and/ or employees, and

4.4.4. Conclusion/s and recommendation/s.

6. **DURATION OF THE ENQUIRY**

6.1. The enquiry will be concluded in a period of three (3) months commencing no later than two (2) days after the signing of these terms of reference by the Party signing last.

6.2. Notwithstanding the provisions of clause 4.4 above, the Service Provider will provide to the Audit and Risk Committee a progress report every two weeks. The first progress report will be due two weeks from the date of the signing of these terms of reference by the Party signing last.

7. **THE OUTCOME OF THE ENQUIRY**

7.1. The conclusion/s and recommendation/s in the report will be final l.

8, **FEES**

8.1 The Parties will negotiate and agree the fees that Eskom will pay to the Service Provider, which fees will take into account the imperatives of the Business Productivity Programme that Eskom is presently embarking on.

Signed at _____ on this the day _____ 2015

For and on behalf of Eskom

Signature

_____
Name of Signatory

_____
Designation of Signatory

For and on behalf of
[Service Provider]

_____
Signature

_____
Name of Signatory

_____
Designation of Signatory

COMMISSION OF INQUIRY INTO STATE CAPTURE

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Wednesday, 18 March 2015 1:06 PM
To: spowell@ensafrica.com
Subject: Draft Terms of reference - Eskom 18032015.docx
Attachments: Draft Terms of reference - Eskom 18032015.docx

Hi Steven
Here are draft terms and scope. We would like you to consider the commercial stream.
Could you let us know if that is ok and your normal terms and conditions
Thanks
Nick

COMMISSION OF INQUIRY INTO STATE CAPTURE

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Wednesday, 18 March 2015 4:27 PM
To: 'bernard.vanderwalt@za.gt.com'
Subject: Draft Terms of reference - Eskom 18032015.docx
Attachments: Draft Terms of reference - Eskom 18032015.docx

Dear Bernard
Thanks for taking my call.
As discussed would you be kind enough to review the attached and let us know if you are able in principle to undertake this assignment. If you would have regard to any conflicts, capacity and ability to start almost immediately.
Many thanks
Nick

Nick Linnell
The PROJECT Office
email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

COMMISSION OF INQUIRY INTO STATE CAPTURE

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Wednesday, 18 March 2015 12:02 PM
To: 'leo.dlamini@eskom.co.za'; Malesela Phukubje (PhukubM@eskom.co.za); 'zola.tsotsi@eskom.co.za'
Subject: Media release
Attachments: Media release 18032015. v3docx.docx

Dear Leo/Malesela
The Chair has asked that this media release (to be formatted as you would normally do) be sent to you with the request that it be released immediately. Could you also send it to all Board members and to the Minister.
Kind regards
Nick

Nick Linnell
The PROJECT Office
email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

COMMISSION OF INQUIRY INTO STATE CAPTURE

ESKOM SOC

PRESS RELEASE

THE BOARD ENQUIRY

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

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

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

The status quo

Firstly, as a Board we acknowledge that the company has not fulfilled its mandate to the South African public. Maladministration, operational and financial inefficiencies and poor decision-making are evident for all to see.

What has failed must be fixed. What is wrong must be put right. Where misconduct and inefficiency exists it will be rooted out. Organisational weaknesses will be corrected. If these are not done with determination and effectiveness the status quo will continue. We will work towards restoring the service and the performance (financial and operational) of Eskom to where it is expected to be.

Some of the major infrastructural and systemic issues may take time to fix but the process of improvement will start immediately and will be sustained. We are committed to this improvement.

The purpose of the inquiry is:

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

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

The structure and approach

To achieve this purpose we need to identify what is wrong and what it will require to fix it. We recognise that this must credible if it is to be effective. The process and our actions must be transparent.

The Board has therefore recognised the need for independent assessment of the state of the company's capability and performance. To ensure that this proceeds quickly and without hindrance or interference we have taken a number of steps.

The Board of Directors has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process.

There will be three distinct areas of enquiry.

A commercial forensic enquiry led by a reputable and leading legal forensic entity. Their scope will inter alia be to review all commercial transactions.

A financial enquiry led by a large accounting firm. They will consider a wide range of financial performance issues more fully detailed in their scope of work.

A technical enquiry led by an engineering team which will also be recognised for its capacity to do the job. This will review the operational performance of the company and also enquire into some of the major failures that we have experienced.

The Board has also decided to appoint a retired judge to ensure that the inquiry is free and importantly seen to be free from influence and bias. This eminent person will not run the inquiry but will have oversight of its governances and will have the authority to investigate any complaints of interference or bias and report these to the board.

The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of reference. He will effectively project manage the inquiry. We have already appointed a business consultant Mr Nick Linnell to fulfil this role.

Scope

The terms of reference have been drafted and are currently being negotiated with the entities which will be appointed to lead the three streams of the inquiry. The scope is wide and it shall be as deep as the enquiry teams deem material and necessary to pursue. At risk is the danger of scope creep and an extended inquiry. We will manage this on the basis of risk and importance and should certain issues require further attention the Board will authorise further inquiry. However there will be a report within three months.

The Board will provide the public with details of the terms of reference and those persons engaged to undertake the inquiry. We shall do this before the end of Friday 20th March. The inquiry will begin on Monday the 23rd.

Some speculation has arisen as to the overlap of the Board's inquiry and what might appear to be parallel initiatives. The Board's inquiry focuses on operational matters that have affected our performance and to identify some key remedial actions.

The executive role

Finally we need to refer to the request by the Board to certain senior executives to step aside during this inquiry.

This inquiry is about identifying what is wrong with this organisation. We need to create the space for the inquiry teams to have unfettered access to the company, its people, its systems and its suppliers. In any organisation, its executive has situational influence - just through their presence. They would not be leaders otherwise. We have asked them to acknowledge this and we believe that they do. The speculation around their absence from the business is without cause. This inquiry is not about them but about the organisation as a whole. It has a single purpose to restore this company's ability to meet its mandate. Any culpability regardless of a person's position will be dealt with appropriately.

General

The Board has attracted some criticism regarding this inquiry from various sectors. We believe that is more due to a failure to adequately engage our many and varied stakeholders. For this inquiry to have credibility we need to convey to every stakeholder what we are doing. We will ensure regular and meaningful updates of progress.

If we do this right only good will flow from it.

This initiative has the complete support of our shareholder, Minister Lynn Brown.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Thursday, 19 March 2015 10:38 AM
To: spowell@ensafrica.com
Subject: Eskom

Hi Steven
Developments overnight

1. I met with the chairman and the Chair of A&R last night
    a. A&C refuse to agree to the ToR – do not want independent oversight and do not want 3 companies undertaking the inquiry – they want 1 company reporting directly to the committee. The Chair of A&C was not able to advance a single reason for their position but simply that was there position.
    b. I made it clear to both that I do not believe that is in the best interests of the company or the public at large. I said I could not agree to the changes;
    c. It was agreed that I would present my argument to the full A&R committee Thursday evening but I also said that as I had been appointed by the full board I would provide a full report to the board if the A&R committee persisted in limiting the scope and transparency.
2. Overnight the media release was published in IOL news online
    a. I had earlier forwarded the release to the Eskom Company Sec and communications head copying the chairman who had approved the release. The chairperson had also in my presence called both and instructed them to release the media statement immediately on receipt from me. I asked them to give prior copies to the full board and the Minister
    b. The minister immediately pushed back saying that only the President could on the recommendation of the minister of Justice approach a retired judge – some nonsense but nonetheless.
    c. Various members of the A&R then asked the Chairman not to release it
    d. This was inevitably leaked – now copied to a host of people. However the leak is somewhat garbled as it contains information not in the release and also announces Grant Thornton as leading the commercial stream!! It also appears to target the Chairperson as saying he is running the investigation.
3. Where are we?
    a. The powers that be must determine what they want today.
    b. There are clearly vested interests with one side wanting a narrow and secret/closed inquiry and the other wanting a broad and open inquiry.
    c. My position is that I agreed to do it on the basis that it would be meaningful and properly conducted. I have no doubt you would feel the same.
    d. I think this will now be a battle of political will and not my space to play. It will be decided one way or the other today as the A&C is now compromised by the expose in the media that a judge will oversee it with independent investigators.

For interest we should not confuse a transparent inquiry (ToR and independent investigators published) with a confidential report to the Board. We have not said that the report would be made public – that would depend of the Board at the time. But the process must be subject to scrutiny.

Could you keep this confidential – you would need to mention it to Michael

I'll be in touch
Kind regards
Nick

Nick Linnell

email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

COMMISSION OF INQUIRY INTO STATE CAPTURE

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Friday, 20 March 2015 11:10 AM
To: 'Bernard van der Walt'
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Tracking:

Recipient	Read
'Bernard van der Walt'	Read: 2015/03/20 11:12 AM

Hi Bernard

We have a problem with mandates and authority - could we hold for a while
Thanks
nick

Nick Linnell

email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

From: Bernard van der Walt [mailto:Bernard.vanderWalt@za.gt.com]
Sent: 20 March 2015 08:10 AM
To: Nick Linnell
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Hi Nick,

Yes please, phone me on my mobile, 083 388 5480.

Many thanks,
Bernard

Bernard van der Walt | Partner
Grant Thornton Cape
6th Floor, 119 Hertzog Boulevard Foreshore, Cape Town, 8001
T (direct) +27 (0)21 417 8799 | T (office) +27 (0)21 417 8800
F +27 (0)21 417 8700
E bernard.vanderwalt@za.gt.com | www.gt.co.za

Grant Thornton
An instinct for growth

From: Nick Linnell [mailto:nickl@theprojectoffice.com]
Sent: 19 March 2015 10:40 PM
To: Bernard van der Walt
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Dear Bernard
There have been some developments that have impacted our earlier intentions - may I revert to you for an explanation
Kind regards
Nick

From: Bernard van der Walt [mailto:Bernard.vanderWalt@za.gt.com]
Sent: 19 March 2015 03:55 PM
To: Nick Linnell
Cc: Imtiaaz Hashim; Fayaz Mohamed
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Dear Nick,

Thank you for the update. We have been meeting with our sector experts for most of today. We are busy putting all the CVs and experience together and will have this for you tomorrow.

Can we meet tomorrow at 12 or have a conference call to discuss the plan of action?

Many thanks and kind regards,
Bernard

Bernard van der Walt | Partner
Grant Thornton Cape
6th Floor, 119 Hertzog Boulevard Foreshore, Cape Town, 8001
T (direct) +27 (0)21 417 8799 | T (office) +27 (0)21 417 8800
F +27 (0)21 417 8700
E bernard.vanderwalt@za.gt.com | www.gt.co.za

Grant Thornton
An instinct for growth

From: Nick Linnell [mailto:nickl@theprojectoffice.com]
Sent: 19 March 2015 10:34 AM
To: Bernard van der Walt
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Dear Bernard
Many thanks
When we spoke on the phone I mentioned the request was for you to consider the "financial" stream but I notice that I neglected to mention that in the email to you. I see there is a press article saying that you were appointed to do the commercial forensics. Not sure where that came from but the board would be considering Grant Thornton for the financial stream.
Kind regards
Nick

From: Bernard van der Walt [mailto:Bernard.vanderWalt@za.gt.com]
Sent: 18 March 2015 06:56 PM
To: Nick Linnell
Subject: RE: Draft Terms of reference - Eskom 18032015.docx

Dear Nick,

Thank you for the email. Our team has started working on this and we will revert asap.

Many thanks,
Bernard

Bernard van der Walt | Partner
Grant Thornton Cape
6th Floor, 119 Hertzog Boulevard Foreshore, Cape Town, 8001
T (direct) +27 (0)21 417 8799 | T (office) +27 (0)21 417 8800
F +27 (0)21 417 8700
E bernard.vanderwalt@za.gt.com | www.gt.co.za

Grant Thornton
An instinct for growth

From: Nick Linnell [mailto:nickl@theprojectoffice.com]
Sent: 18 March 2015 04:27 PM
To: Bernard van der Walt
Subject: Draft Terms of reference - Eskom 18032015.docx

Dear Bernard
Thanks for taking my call.
As discussed would you be kind enough to review the attached and let us know if you are able in principle to undertake this assignment. If you would have regard to any conflicts, capacity and ability to start almost immediately.
Many thanks
Nick

Nick Linnell
The PROJECT Office
email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Saturday, 21 March 2015 9:47 PM
To: ztsotsi@liquifire.biz
Subject: document

Chair a suggested letter

Dear Minister
At the emergency Board meeting held in the evening of Thursday 19th, to which I received a late and unexpected notice, the Board asked me to recuse myself during which the remaining members held a private discussion regarding my tenure as a Director and Chairman of the Board.

The Board then informed me that they would be meeting you shortly to ask that I be suspended.

That meeting with you took place on Friday 20th and I was subsequently informed that it had been agreed that a further special Board meeting would be called at which my ongoing role would be discussed. I assume that this was with your approval.

Firstly, in so far as these meetings are concerned I regard them as being irregular in terms of the Companies Act and the MOI and otherwise improper.

Secondly, I would respectfully wish to address with you the background to these meetings.

On the 11th March the Board resolved to commission an enquiry referred to above. A coordinator was appointed by the Board and he provided a draft terms of reference and a proposed approach and governance as instructed by the A&C on Sunday 15th.

I am informed that on the following night, Monday night 16th certain board members met with the suspended executive. In the early hours of the following morning (Tuesday) an email was sent to the coordinator stating "*Please note that Board Audit, Risk and Compliance Committee will be attending to the matter relating to the Forensic Fact Finding Inquiry, as per advice*" This cancelled a scheduled meeting that he had been invited to attend. His further involvement apparently no longer required.

Clearly the meeting between the suspended executives and the Board members was highly irregular. Further a decision of this meeting directly led to the termination of the coordinator's function. It is unfathomable and shocking that the suspended executives were permitted by these Board members to have a role in such a decision.

The A&R thereafter failed to act with regard to the terms and conditions of the enquiry. On Wednesday morning 18th the coordinator ignoring the apparently termination of his function emailed a further draft of the Terms of Reference to both me and the Chairperson of A&R. Upon receipt thereof I attempted to arrange a meeting with the A&R chair. By midday and having received information regarding the earlier night time meeting referred to above, I had a media statement drafted and sent to the company Secretary to distribute with copies to the Board and yourself.

That evening I met with the Chair of R&A and the coordinator. The Chair of A&R was not at all happy about the press release or the terms of reference. There followed a lengthy discussion regarding the principles of the enquiry. The chair of A&R opposed both on the basis that "the A&R committee does not want that to happen". Presumably such a decision having been made at the Monday night meeting with the suspended executives.

The next day the emergency Board meeting was called and the events described above then followed.

It is clear to me that the Board is intent of frustrating the need for an open and independent enquiry and is acting in consort with certain suspended executives.

In the light of the aforegoing, the decisions arising from your meeting on Friday with the board are therefore of considerable concern. Clearly there is gross misconduct and the motives behind these are cause for greater concern.

I would urge you to afford me the right to respond to the allegation made and to ask you to ensure the conduct of both members of the Board and the suspended executives are properly investigated. I feel that this in itself is reason enough to require that the enquiry is not under the control of those involved in activities above.

Yours faithfully

COMMISSION OF INQUIRY INTO STATE CAPTURE

Eskom

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

Date:
22 March 2015

Enquiries:
Tel +27 11 800 8111

Dear Minister Brown

At the emergency Board meeting held in the evening of Thursday 19 March 2015, to which I received a late and unexpected notice, the Board asked me to recuse myself and continued with the Board meeting. The Board then informed me that they would be meeting you shortly. When I enquired about the reason for the meeting with you I was informed that the Board reserved its right not to inform me. I considered that response improper and has the makings of conspiratorial conduct.

That meeting with you took place on Friday 20 March 2015 and I was subsequently informed that it had been agreed that a further special Board meeting would be called at which I would be informed of the outcome of your meeting with the Board. I assume that this was with your approval. As I write this letter I have not received this feedback.

Firstly, in so far as these meetings are concerned I regard them as being irregular in terms of the Companies Act and the Memorandum of Incorporation (MOI). Secondly, I would respectfully wish to address with you the background to these meetings.

On the 11 March 2015 the Board resolved to commission an inquiry referred to above. I informed the Board that there was a coordinator that could assist the Board with the inquiry. The coordinator drafted terms of reference and a proposed approach and governance as instructed by the Audit and Risk (A&R) on Sunday 15 March 2015.

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

Eskom Holdings SOC Limited Reg No 2002/015527/08

COMMISSION OF INQUIRY INTO STATE CAPTURE

I am informed that on the night of Monday 16 March 2015 certain Board members met with some of the suspended executives. In the early hours of the following morning an email was sent to the coordinator stating "*Please note that Board Audit and Risk will be attending to the matter relating to the Forensic Fact Finding Inquiry, as per advice*" This cancelled a scheduled meeting that the coordinator had been invited to attend – his further involvement was apparently no longer required. Clearly the meeting between the Board members and the suspended executives was highly irregular, which meeting led to the termination of the coordinator's function.

The Audit and Risk (A&R) Committee thereafter failed to act with regard to the terms and conditions of the enquiry. On the morning of Wednesday 18 the coordinator, ignoring the apparent termination of his function, emailed a further draft of the Terms of Reference to both me and the Chairperson of A&R. Upon receipt thereof I attempted to arrange a meeting with the A&R chairperson. By midday and having received information regarding the earlier night time meeting referred to above, I had a media statement drafted and sent to the company Secretary to distribute with copies to the Board and yourself.

That evening I met with the Chairperson of A&R and the coordinator. The Chairperson of A&R was not happy about the press release, specifically the reference to the terms of reference, which she alleged were not in accordance to the A&R committee. The next day a special Board meeting was called and the events described above then followed. It is clear to me that the Board is intent on frustrating the need for an open and independent enquiry and is acting in consort with certain suspended executives.

Clearly there is gross misconduct and the motives behind this behavior is of even greater concern. In the light of the forgoing I have come to the conclusion that the Board is dysfunctional and not serving the best interests of the company. Consequently, I urge you to consider the dissolution of this Board forthwith.

Yours sincerely

Zola Tsotsi
Chairman

CC: His Excellency President Jacob Zuma

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: Sunday, 22 March 2015 10:14 PM
To: 'letsatsi.duba@gmail.com'
Subject: Eskom
Attachments: chairperson of the Porfolio committee.docx; Draft Terms of reference - Eskom 18032015.docx

Dear Honourable Chairperson

I communicated earlier this week to let you know that the Chairperson would be contacting with regard to an update on the enquiry.

I believe he has now made an appointment to see you urgently.

Please see the attached background to the meeting

Also attached is the draft proposed terms of reference which is not supported by the A&R committee

Kind regards
Nick

Nick Linnell

email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell | M Green
Postal Add PO Box 15813 | Panorama | 7506

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Nick Linnell <linnell@iafrica.com>
Sent: Thursday, 27 August 2020 19:26
Cc: Rohan R. Hiles; Tshego T. Mahlangu-Yiwombe
Subject: FW: Zola
Attachments: Statement by.docx

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: 29 March 2015 10:16
To: 'Tabeth' <tabeth@nmaattorneys.co.za>; 'Nick Linnell' <nickl@theprojectoffice.com>
Cc: 'John Ngcebetsha' <john@nmaattorneys.co.za>; 'ncassim@law.co.za' <ncassim@law.co.za>
Subject: RE: Zola

Dear Tabeth
Please find my statement as requested. Please note that we would need to agreed that I would in fact be witness or that the contents can be used in the hearing.
Kind regards
Nick

Nick Linnell

The PROJECT Office
Business Improvement Delivery

email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell| M Green
Postal Add PO Box 15813 | Panorama | 7506

From: Tabeth [mailto:tabeth@nmaattorneys.co.za]
Sent: 27 March 2015 02:58 PM
To: 'Nick Linnell'
Cc: 'John Ngcebetsha'; ncassim@law.co.za
Subject: RE: Zola

Dear Nick

Duly Noted. We await receipt of the documents tomorrow morning.

Our landlines are working and the numbers are as follows:

- 011 784 0043/45; or
- 011 784 5057

Regards

Tabeth

From: Nick Linnell [mailto:nickl@theprojectoffice.com]
Sent: 27 March 2015 12:41 PM
To: tabeth@nmaattorneys.co.za
Subject: Zola

Dear Tabeth
Your office kindly followed up with regard the letter this morning – unfortunately I am now only getting the information in the morning (Saturday) I will have it with you before lunch tomorrow - sorry about that but awaiting this information.
Kind regards
nick
PS – I think your office landline not working?

Nick Linnell

email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell| M Green
Postal Add PO Box 15813 | Panorama | 7506

This email has been checked for viruses by Avast antivirus software.
www.avast.com

Statement by

Nicholas Hugh Linnell

1. I am an adult male residing at 10 Parade Crescent Constantia Hills Cape Town.
2. I am a business consultant employed at CT&A Project Management Pty Ltd trading as The Project Office
3. I was introduced to Mr Zola Tsosti, the Chairman of Eskom SOC on or about the week before the 9th March 2015
4. He was aware that I had led an investigation into allegations of wrongdoing at South African Airways.
5. He informed me that there might be a similar need for an investigation at Eskom and we discussed whether I would be interested in leading that at Eskom.
6. I explained my standard approach and how I would go about this and he appeared comfortable with this approach. This approach includes the appointment of forensic investigators having particular knowledge and skill in the areas within the scope of the inquiry.
7. I was given to understand that the requirement was for an in-depth comprehensive inquiry across the whole company being technical, finance and commercial. He stated that it was necessary that it be independent and should be also being seen to be independent. This would also necessitate ensuring that the executive were not seen to have influence.
8. I concurred that the top executives who had situational influence should be considered for precautionary suspension. We spoke about who these might be and I subsequently conducted public research into media and Eskom website sources to determine who they might be.
9. I was informed that I would need to meet the board and the Board would appoint a subcommittee to oversee the inquiry.
10. I was asked to be available on Monday 9th March to appear before the Board.
11. In further preparation for that meeting I prepared standard aide memoire for precautionary suspension for reasons of ensuring that situational influence was removed. I also prepared standard letters of suspension. These were blank without names as the actual decision as to which executives would be considered for suspension would be for the Board to determine.
12. I also began preparations for what the proposed approach would be and the scope of the inquiry might be. Tis amount of advance preparation would be common in consulting circles and one would never pitch for a contract without first having a very solid idea of the preferred approach.
13. On Monday 9th I consulted Fritz Malan of ENS labour department to review the preparations that I had made to ensure that I was on sound ground. On the 9th I went to Megawatt Park and was informed by the Chairman that the Board had not decided to proceed with the inquiry. At that point I was of the mind that that was the end of the opportunity.
14. Possibly the next day the chairperson contacted me to say the Board was to reconsider the matter again on Wednesday and I ought to be available.
15. On Wednesday 11th the chairperson asked me to come to Megawatt Park – I think around 10am or thereabouts. When I arrived I went to the executive suite and waited until asked to join the board meeting.
16. The Chairman introduced me briefly and asked that I introduce myself to the Board and tell them what I do.

Draft ... not for use without the express permission in writing of Nick Linnell

17. During that discussion I had the impression that the board had decided to hold the inquiry, that it would consider suspending the executives and had appointed me to coordinate the inquiry.
18. There was a lengthy discussion regarding the suspensions and I stressed the point that these were precautionary and to ensure there was no situational influence exerted by them. We spoke of the option of putting it to them that they voluntarily take leave of absence. We discussed the need to provide the opportunity to consider the reasons why the Board wished them to be suspended and the need to consider their responses before determining whether or not to do so. We also discussed a proposed media statement and the need for internal communications
19. There was a discussion regarding the appointed subcommittee and an acting CEO in the event of the suspensions.
20. During that meeting I had the impression that the Minister of Public Enterprises had immediately prior to that moment addressed the Board on the matter and had provided guidance to the board that the board ought to mandate the inquiry to proceed.
21. After that meeting there was a press conference attended by a number of the Directors at which the Chairman stated publically that the board had appointed me as the coordinator.
22. After the press briefing I met with the chairperson of the Audit and Risk committee and we discussed the scope and terms of reference. She required that these be determined as soon as possible. I advised that it would be a good idea to provide an opportunity to the executive for their input. Firstly they knowing the business well might have some valuable suggestions but as importantly they would "buy-into" the inquiry more if they considered it inclusive.
23. We also spoke about the need for an independent whistle-blower facility to allow people to give anonymous tip-offs.
24. The Chairperson of A&R then introduced me to the Molefi Nkhabu Senior General Manager: Assurance and Forensic Office of the Chief Executive and the three of us discussed the approach and IA involvement. It was agreed that IA would send me certain IA reports. The first of these were subsequently sent to me via email.
25. At about 3pm Ms Mabude (A&R chair) and Mr Naidoo (Board Recovery and Build Programme Review Committee (BRBPR) chair) and I met with the executive. Mr Naidoo introduced me to the executive as having been appointed by the board to coordinate the enquiry. I was asked to explain the purpose of the interaction with them – to obtain suggestions for the scope. It was agreed that they would provide the – I think head of legal, with all their suggestions and these would be forwarded to me to have included in the proposed scope.
26. I then left Megawatt Park.
27. Over the followingdays I received a number of communications from Eskom.
    27.1. An invitation from Mr Naidoo, a director, to join the Board Recovery and Build Programme Review Committee (BRBPR) workshop the following week
    27.2. A requirement to provide my proposed draft terms of reference to Malesela Phukubje the company secretary by Sunday 15th 6pm which was copied to Ms Mabude
    27.3. Invitation to attend a A&R subcommittee meeting to be held on the 19th and then again on the 23rd march.
28. I provided the draft terms of reference to Ms Mabude and the company Secretary on Sunday 15th at 7.05pm copied to Ms Mabude, Chair of the A&R.
29. At 4.50 am on the 17th March I received an email from Mr Thulo Selele copied to the Company secretary informing me that I was no longer required to attend the BRBPR meeting as the A&R subcommittee would now be handling the inquiry. This struck me as peculiar was as at about

Draft ... not for use without the express permission in writing of Nick Linnell

8pm the previous evening (Monday 16th) I had had a discussion with Ms Mabude regarding the terms of reference which I had submitted. That discussion was for a duration of about 8 minutes, part of which concerned Ms Mabude refusing to allow me access to the input received from the executives (see para 24 above)which had been previously agreed that I would have access to. This was somewhat strange as it had been agreed that these were for my purpose to draft the terms of reference. That conversation ended with an agreement that I would meet Ms Mabude the following morning at around midday (17th).

30. Upon making some enquiries concerning this abrupt change of events I received information that a number of members of the subcommittee and other Board members attended a private meeting during the night of Monday 16th together with some of the suspended executives. This might have coincided with the timing of my call the previous evening (see above para 28).
31. My perception is that prior to that meeting of some of the board members and the executives on the night of the 16th, the Board and particularly Ms Mabude acted as though the Board had in principle appointed me. Following that meeting there was a distancing although not a complete termination of contact.
32. I should make the point that contracting for my services had not and has still not taken place as this was in fact part of the process of the terms of reference. Clearly that would form the basis of what was required of me. My perception that I had been authorised to proceed was tacit from the actions of the board and the Chair of the subcommittee which had the delegated authority to oversee the inquiry and more express from the various pieces of correspondence exchanged with Eskom executives, copied to Board members.
33. On Wednesday 18th at 9.21 am I forwarded a copy of my terms of reference and proposed media release to the Chairman of Eskom and the chair of the A&R committee. In addition to the attachments, I noted that I strongly recommended that the media statement be released urgently – by midday same day (18th)as it was important to stem the negative media reporting and to better inform the public of the nature and process of the inquiry.
34. I never received any response to this email from the chairperson of A&R. however the chairperson contacted me and informed me that he had spoken to the chair of A&R and she had undertaken to come to his house as soon as she was able to discuss the documents sent. He asked that I also attend.
35. By midmorning there was no further response and I called the chairperson and suggested I visit him as the media were asking for comment and without it the company was beginning to receive negative publicity. I know that press releases issued after midday are less likely to receive adequate commentary the following day and by the next day would be old news.
36. I reviewed the media statement with the Chairperson and informed him that I had not received any response from the chair of A&R to my earlier email with attachments. He informed me that the Minister had called him and instructed him to ensure a media report was issued due to the poor press. He agreed to the release and asked that I forward it directly to the company secretary and manager in his office. The instruction was that it follows the normal standard and be copied to all directors and the minister.
37. Later I realised it was never released and upon enquiry by me to the chairman I was informed that the minister and the DPE and certain directors had objected to the press release and he had told the company secretary not to release it. He informed me that the minister's office stated that protocol does not allow the Board to appoint a retired judge without the President's

Draft ... not for use without the express permission in writing of Nick Linnell

authority. To my knowledge that is not true as I have had retired judges appointed as arbitrators etc before and never invoked anyone else's permission.

38. Later that evening (Wednesday 18th) I received a call from the Chairman asking me to come to his house as the Chair of A&R had arrived. This was around 6pm. The three of us met and we first reviewed the media statement. In effect the chair of A&R wanted all the references to the scope and approach including the retired judge and the use of three independent forensic teams to be excised. I provided reasons why I disagreed and none of these were challenged other than the statement "the committee does not want this". When I asked for reasons why the committee would have a different view the chair of A&R did not provide any. At this time the Chairman intervened as he did not like the adversarial tone that the discussion had taken on.
39. The chair of A&R then suggested that I attend a meeting of A&R the next day – Thursday 19th in the evening and present my arguments to them. I subsequently received a formal meeting invite to that planned meeting but it was subsequently cancelled. Instead an urgent board meeting was held.
40. At this point my perception was that I was still "working' with Eskom and the subcommittee. This was notwithstanding the previous email received in the early hours of the morning of the 17th March.
41. I have been provided with a copy of a notice of directors meeting in terms of which the board proposed to invoke S71(3)(b) of the Companies Act and to allow the Chairman to make representations why he should not be removed from the board on grounds of misconduct including dishonesty.
42. The first charge (1.1) relates to the procurement of the services of me without following the prescribed processes.
43. To the extent that my services have been procured it would require my agreement. In so far as my agreement would be applicable it was implied from my meeting with the whole Board of Eskom and the express and implied conduct of the Board and the subcommittee to engage my, at least to begin the inquiry. To my knowledge the chairman would have been part of that collective. I have no direct agreement with him. Rather he proposed my services to the board.
44. In so far as the prescribed procurement processes are concerned, I had provided the chairperson with a set of proposed board resolutions in the event that they engaged my services and one of these included the Board's waiver of the internal procurement processes. The simple logic being the executive departments conduct those processes and not the Board and if they were to be followed the executive would play the determining role in that selection. The other logic is that the board has the legal right to determine these matters without following their own policies.
45. Besides that the Board has a number of legally trained persons and corporate governance persons on it and as it was quite clear the board was engaging me they ought to have made objections during that meeting on the 11th or any other time following that through to the 18th when I was invited to attend a subcommittee meeting to discuss the work that I had done.
46. While this is a legal issue that would be argued by the right people it does reflect my understanding of what I was proposing and was accepted by the Board.
47. The second charge (1.2) relates to me having started work without the other directors being informed. Clearly that is not true and is evidenced above. At all times the work that I did was with the knowledge of the chairperson of the A&R committee who was the delegated person to interface with me.

Draft ... not for use without the express permission in writing of Nick Linnell

48. The aspect of there being no contract is equally incorrect in that the board as a whole was aware that I had begun and the A&R committee was clearly aware of my work of the terms of reference and the chair of A&R was aware of that and my terms of reference. I also understand that this was the subject of the private discussions held on the night of Monday 16th.
49. As to the company having been exposed to non-compliance it would appear to me that the whole board having been in the sequence of meetings from the meeting with the minister, the Board meeting that followed and my appearance before it that were as aware as anyone as to what compliance had taken place. Neither during that meeting nor thereafter was I ever given any indication that the board had not approved my engagement to commence. To the extent that to this day there has been formalisation of my contract of engagement I would acknowledge that my services are limited to what the subcommittee required me to work on immediately.
50. The third charge (1.3) is a matter that the chairman and the board would need to determine. However in so far as I was concerned I had provided a copy of the proposed press release to both the Chair of the A&R and the chairman of the Company by about 9.30 am before it was thereafter approved for release by the chairperson. To my knowledge the media release was not issued by the Company.
51. I would make the point that since the press conference on the 11th I have monitored the press reports with regard to this matter. These are a matter of public knowledge and most have been internal leaks to the press as they have tended to quoted "sources" or a "member of the Board".
52. With regard to the reputation of the Board and the damage done one would have reference to the media reports since the 11th march to determine the causes of the damage if any.
53. Given the nature of the work that I was anticipating been engaged to do, I have since the 11th been receiving information from anonymous sources that might be relevant to an inquiry of this nature. Amongst these were:
    53.1. That the CEO had been given advance warning of his possible suspension prior to the 11th.
    53.2. That the Minister met privately with some of the Board members prior to the formal meeting on the 11th
    53.3. That the Minister had previously cancelled a scheduled board meeting on the 29th February as it had come to her knowledge that the board wished to raise the issue of no confidence in the Chairman. This was presumably well before the inquiry was ever mooted.
    53.4. That the Board in fact informed the Minister on the 20th of their determination to remove the Chairman
    53.5. That the Minister was reported having told the Portfolio Committee on the 26th or thereabouts that she was expecting a "formal" letter with regard to the Board intention to remove the Chairman.

Draft ....not for use without the express permission in writing of Nick Linnell

SWORN STATEMENT

Sarah-Jane Trent, ID No. [redacted] 083 with Tel No. 08[redacted] states under oath as follows:

1

I am an adult female Executive Director of 'Forensics for Justice' a not for profit company, which aims to expose state sponsored crime and operates from No. [redacted] Johannesburg. The purpose of this statement is to open a docket against the following persons:

1. Ms Duduzile Myeni **'Myeni'**
2. Ms Lynette Brown **'Brown'**
3. Mr Jacob Zuma **'Zuma'**
4. Mr Nicholas Linnell (Id No. [redacted]) **'Linnell'**
5. Mr Tony Gupta **'Gupta'**
6. Mr Salim Essa **'Essa'**
7. Mr Ben Ngubane **'Ngubane'**
8. Mr Thalente Myeni **'Thalente'**

Collectively **'the Suspects'**

For the offences of: **Corruption**, **Fraud** and **Racketeering**, as more particularly set out below.

BACKGROUND

2

Myeni was the founder and chairman of the Jacob Zuma Foundation. She was also the erstwhile chairman of South African Airways **'SAA'** and was also the erstwhile chairman at Mhlathuze Water Board **'MWB'**.

3

Brown was at all material times the Minister of Public Enterprises, and as such the 'shareholder' representative of both SAA and Eskom, until SAA was moved to the Ministry of Finance.

4

Zuma is the current State President of the Republic of South Africa. He is also the father of Thalente Myeni and Duduzane Zuma.

5

Linnell claims to be a lawyer, yet there is no showing of him on South African law society registers. In 2011, he was unlawfully hired by Myeni to 'fix' publicity issues following her gross misconduct at MWB. He was later (in 2014 and 2015) unlawfully hired by Myeni, to 'fix' and cover up her criminal conduct at SAA. As will be seen, he was also unlawfully hired by Eskom to assist in unlawfully getting rid of certain executives, thereby participating in the corrupt capture of Eskom by certain members of the Gupta family and their businesses, which included one of the sons of Zuma, namely Duduzane, who was at all material times in business with the notorious Gupta family. Linnell also participated in 1978 to 1980 in the illegal regime of Ian Smith in then Rhodesia.

6

As evidence of the long-standing relationship (unlawfully sponsored with public funds) between Myeni and Linnell, I attach hereto a copy of three 'open source' documents:

6.1

Annexure 'SJT-1' is a copy of a press ombudsman judgement in a complaint falsely brought by Myeni against a newspaper that exposed her unethical conduct at MWB in 2011.

SJT

6.2

Annexure 'SJT-2' is a copy of an on-line newspaper article dated 09 August 2015, which clearly shows Linnell is assisting Myeni to cover up her criminal conduct, by helping her lay false criminal charges against myself and then suspended CEO Monwabisi Kalawe. I note from this article that, as at that stage, Linnell had been paid more than R850,000.00 by SAA and yet there were no procurement procedures followed at all. That makes the payments to him classed as fruitless and wasteful expenditure. I also note that he is purporting to carry out 'background checks' and 'investigations' into both Paul O'Sullivan and Kalawe. I have checked with the Private Security Industry Regulatory Authority, **'PSIRA'** and it is apparent that Linnell is not registered with PSIRA to carry out investigative work, which is a criminal offence. I will come back to this later.

6.3

Annexure 'SJT-3' is a copy of an on-line newspaper article dated 07 April 2015, which suggests that Linnell was unlawfully hired by Eskom.

7

Gupta is a member of the now infamous Gupta family, which was during 2016 and 2017 found to have infiltrated Eskom and through fraudulent and corrupt practices removed at least R3 billion from Eskom. In this docket, I do not go into the detail of the R3 billion that was stolen from Eskom, but merely focus on how the suspects created the enabling environment for such theft.

7.1

Essa is a personal assistant to Tony Gupta and carried out a lot of his criminal activities for him.

8

Ngubane was at all material times, firstly a non-executive director of Eskom and then, the Chairman of Eskom.

CONDUCT GIVING RISE TO CRIMINAL COMPLAINT

9

On **2017-11-21**, at parliament in Cape Town and during a parliamentary enquiry into the criminal capture of Eskom, which capture predicate wholesale corruption and looting from Eskom's assets, a certain Mr Zola Andile Tsotsi, **('Tsotsi')** gave evidence to the enquiry. **He gave that evidence under oath.** A copy of the document he presented to parliament is attached hereto, as **ANNEXURE 'SJT-4'.** It is necessary to carefully analyse what the Suspects have been up to, in respect of facilitating fraud and corruption at Eskom, which has run into Billions of Rand of tax-payer monies. I do this hereunder.

10

The sub-paragraphs contained at paragraph 4.1 through 4.19 of Annexure 'SJT-3' make it crystal clear that the suspects manipulated then board chair of Eskom to do the following:

- Unlawfully pressurise Tsotsi to do the bidding of Tony Gupta by threatening Tsotsi with the loss of his position as Chairman of Eskom.
- Unlawfully intervene and postpone a board meeting of Eskom.
- Unlawfully appoint Linnell in an 'advisory' capacity to the board chairman of Eskom. A similar unlawful role that Linnell had carried out, and continued to carry out for Myeni at SAA.
- Allow Linnell to unlawfully prepare letters of suspension for the purpose of unlawfully targeting certain named executives of Eskom.
- Unlawfully and in conspiracy with Tony Gupta, a business associate of Duduzane Zuma, and with Lynne Browne the responsible minister for Eskom, the suspects did intimidate Zola Tsotsi into complying with the wishes of the suspects, in bringing about the suspension of the four named executives.

11

Over and above what was contained in the document handed to parliament, Tsotsi was orally questioned and supplied certain answers. During this question and answer session, it became apparent that a meeting took place at Brown's house, during the period when Tsotsi was being manipulated by the suspects. According to Tsotsi, Gupta and Essa were present at that meeting with Brown, which allegation Brown attempted to deny.

12

It is clear to me now, and must be clear to the whole country, that the suspects acted with a common purpose in creating an enabling environment so that Gupta family businesses could 'capture' Eskom for their own nefarious reasons, including fraud and corruption on a massive scale. It must be noted that Duduzane Zuma (son of Zuma) was a shareholder and director of certain of the Gupta companies and therefore benefitted considerably from such criminal conspiracy by the suspects. The relationship between Zuma, his son and the Gupta's provides the compelling motive.

13

Furthermore, as is clear from paragraph 4.8, Linnell was introduced to Tsotsi as a lawyer. This alone would be a criminal offence, as Linnell is NOT a registered lawyer in South Africa, although he may have been one in Rhodesia, whilst helping to prop up the illegal regime of Ian Smith.

14

In respect of the testimony made by Zola Tsotsi to parliament, including the typed note he presented (Annexure 'SJT-4'), I formally request the police to obtain a detailed sworn statement from Tsotsi, dealing with the following additional points of clarity:

14.1

Setting out precisely who initiated the meeting referred to in paragraph 4.4, where the meeting took place and at what time.

14.2

Of paragraph 4.5, how was Tsotsi approached by Tony Gupta, where and what time did they meet. How long did the meeting last and when approached for the meeting, what was stated as the reason for the meeting. Also to explain when Tsotsi first met with Tony Gupta, or any other Gupta, where, how, when and why?

14.3

Of paragraph 4.6, at what time did Zuma call Tsotsi, and what was the originating and receiving number? Ditto of the acting Director General.

14.4

Of Paragraph 4.7, what date did Myeni call Tsotsi, what was the originating and receiving telephone numbers. How did Myeni come to be in contact with him, ie where did she get his number from?

14.5

Of paragraph 4.8, how did Tsotsi travel to Durban, flights details etc., what address did he meet Myeni, Thalente, Linnell and Zuma. Did Linnell give him a business card? What time did he arrive at and leave the address in Durban.

14.6

The relevant board meeting and People & Governance Committee meetings should also be obtained in an evidential manner.

14.7

The relevant e-mails, between the suspects and Tsotsi should also be obtained in a forensically verifiable manner. Additional sworn statements should be obtained by other directors (witnesses) at Eskom.

SUMMARY

15

It is therefore clear that the suspects, acting with a common purpose, did unlawfully and intentionally intimidate and manipulate Tsotsi and in so doing brought about the unlawful suspension and subsequent removal of some, from their posts, of certain executives of Eskom.

16

Subsequent to the removal of the named executives at Eskom, Mr Brian Molefe and Mr Anoj Singh and Mr Ben Ngubane, took full autocratic control of Eskom and proceeded to criminally strip the assets of Eskom, to the benefit of the Gupta controlled companies, and other companies linked thereto. Duduzane Zuma personally benefitted from such unlawful asset stripping.

17

The creation of the enabling environment for the wholesale looting of Eskom, was created by the suspects named above acting as a 'criminal enterprise' and in common purpose with each other. Accordingly all of the suspects should be charged, not only with racketeering, but also of the theft of Eskom's assets, alternatively as accessories before the event, in respect of the theft.

18

I therefore request a thorough investigation into the conduct of the suspects. For the purposes of registering a Rand value to the crimes that have been committed against Eskom, I am using the purchase price of Optimum Coal of R2,150,000,000 (R2.15Bn).

19

It is clear that the *modus operandi* of the suspects, was to use intimidatory and criminally manipulative tactics to coerce Tsotsi into doing their bidding, by unlawfully removing Eskom executives, so that Messrs Singh and Molefe, who had successfully fleeced Transnet of Billions of Rand, could move from Transnet to Eskom and carry out a similar exercise there. Had they not been caught, both Molefe and Singh would have left Eskom as a skeleton, like they did with Transnet and moved onto the next State Owned Enterprise to strip it to the bone.

20

It is my contention that were it not for the criminal conduct of the suspects, in creating the enabling environment, Molefe, Singh and in turn, the Guptas and Duduzane Zuma, could not have pulled off their crimes. The suspects therefore stand to be charged, not only with the corruption and racketeering charges, but with being an accessory before the fact of all the crimes committed against Eskom. Additionally, Linnell should be charged with falsely holding himself out to be an attorney and carrying out work of a nature that requires him to be registered with PSIRA, without being in possession of such registration.

FURTHER CHARGES OF CORRUPTION & RACKETEERING

21

In addition to the above charges of corruption and racketeering against the suspects, I further request additional investigations into the alleged conduct of the current State Security Minister, Mr Bongani Bongo **'Bongo'** and the current chairman of Eskom Mr Zethembe Khoza **'Khoza'**. This additional investigation is most important and relates to the following allegations, which have surfaced recently in the media:

21.1

The 'evidence leader' in the parliamentary enquiry into Eskom, is a certain Advocate Ntuthuzelo Vanara **'Vanara'**. It is his responsibility to lead the evidence to the parliamentary enquiry. As such he is a key member of the enquiry.

21.2

Bongo is alleged to have repeatedly telephoned Vanara between 2017-10-04 and 2017-10-10 and pursued with him with an 'open-cheque' bribe to de-rail the parliamentary enquiry. The derailing process includes suggesting that Vanara should book off sick. Investigation needs to establish whether Bongo genuinely acted for and on behalf of the Eskom board as he claims, or whether he actually acted on behalf of Zuma, who appointed him to that ministerial position.

22

Prior to me signing this statement, I have carefully read through it and am satisfied that the facts are correctly and accurately recorded. The following questions were put to me in person by the commissioner of oaths and I entered the answers thereto in my own handwriting:

'*Do you know and understand the contents of this statement*?' Yes

'*Do you have any objection to taking the prescribed oath?*' No

'*Do you consider the prescribed oath binding on your conscience?*' Yes

SARAH-JANE TRENT

I certify that the deponent has acknowledged that she knows and understands the contents of this statement which was sworn to before me and the deponents signature was placed thereon in my presence at **JOHANNESBURG** on this ~~**TWENTY SEVENTH**~~ 04 day of ~~**NOVEMBER 2017**~~ December

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
GALLO MANOR
04 DEC 2017
KLIENTE DIENSSENTRUM
GALLO MANOR
SUID-AFRIKAANSE POLISIEDIENS
Commissioner of Oaths

GALLO MANOR on 2017-12-04 om 08 22
(HANDTEKENING) KOMMISSARIS VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS
PHUTI SAMUEL MOSHUPYE
VOLLE VOORNAME EN VAN IN DRUKSKRIF
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS
NO 2 SUMMIT ROAD
BESIGHEIDSADRES (STRAATADRES)
BUSINESS ADDRESS (STREET ADDRESS)
MORNINGSIDE, SANDTON
CONSTABLE
SA POLISIEDIENS
SA POLICE SERVICE

ANNEXURE 'SJT-1'

http://www.presscouncil.org.za/Ruling/View/dudu-myeni-vs-zululand-fever-2267

Dudu Myeni vs. Zululand Fever

Wed, Feb 29, 2012

Ruling by the Deputy Press Ombudsman

This ruling is based on the written submissions of Ms D. Myeni and the Zululand Fever newspaper.

Complaint

Ms Dudu Myeni, the former CEO of Mhlatuze Water (MW), complains about a story in the Zululand Fever, published on July 1, 2011 and headlined Former CEO lashes out at MW chairperson via parliament – Myeni continues to compromise the integrity of the President [Zuma] and [thinks] that she is 'unstoppable, untouchable and immune'. She complains in her personal capacity and as the chairperson of the MW Board.

Myeni complains that:
• the word "embattled" does not appear in a letter that the story is based on;
• the journalist sensationalizes former CEO of MW Silas Mbedzi's letter;
• the sub-heading can be interpreted as fact and not opinion, and that the balance of the story does not support it;
• the inclusion of Mbedzi's statement that she (Myeni) held anyone at ransom to get what she wanted is subjective, comment and unsubstantiated;
• the journalist probably did not get comment from the "numerous other persons and/or entities mentioned in the report";
• she was not given enough time to respond to the newspaper's questions;
• the statement that spokesperson and advisor Nick Linnell failed to respond to questions within a week after numerous requests by the newspaper is disingenuous; and
• the story, when seen as a whole, the story presents allegations as facts.

Analysis

The story, written by Jonathan Erasmus, says that Myeni is abusing her relationship with President Jacob Zuma in order to "get her own way" regarding the "embattled" water provider called Mhlathuze Water. This information is reportedly based on Mbedzi's 12 page written reply to various allegations against himself, which he addressed to the chairperson of the National Portfolio Committee on Water, Mr Johnny De Lange. In the process, he makes several allegations against Myeni. The story says Mbedzi wrote that Myeni, who is also the chairperson of the Jacob Zuma Foundation, sought "power, privilege and immunity" by "name dropping" her relationship with Zuma, "who she is believed to be close to". She reportedly also used Zuma's office to overturn ministerial decisions, attempted to suppress a forensic investigation into MW and sought protection from the ANC North Coast Regional Executive.

I shall now consider the merits of the complaint:

'Embattled' absent

The intro to the story calls MW "embattled".

Myeni complains that this term does not appear in Mbedzi's letter upon which the report is based. She says that nowhere does the story provide any support for this conclusion, other than the untested allegations of a journalist "who is clearly an interested party". She says: "The term is derogatory and unfair in context and underscores the perception that the report is biased."

SJT

The newspaper does not respond to this part of the complaint.

I do not know if the MW is "embattled" or not and neither is it my task to find out. My only question is whether the newspaper was justified in calling it such.

Given the serious nature of the allegations against the MW as contained in Mbedzi's letter that the story reports on, I would think that the word "embattled" was indeed justified.

Letter sensationalized

Myeni says that the tone of Mbedzi's letter is that of one who is personally aggrieved and who is "offloading". She argues that Erasmus should therefore have been more cautious, enquiring and objective in his reporting – and yet the journalist "sensationalizes Mbedzi's opinions".

The newspaper does not respond to this part of the complaint.

Even if it was true that Mbedzi was personally aggrieved and was "offloading", the newspaper still was justified to publish the contents of his letter.

"Sensationalism" can be described as a type of editorial bias in which events and topics in news stories and pieces are over-hyped to increase viewership or readership numbers.
When comparing the content of Mbedzi's letter (to de Lange) to the story itself, there is nothing to suggest that this was sensationalist reportage.

Sub-heading

The sub-headline reads: Myeni continues to compromise the integrity of the President [Zuma] and [thinks] that she is 'unstoppable, untouchable and immune'.

Myeni complains that while the sub-heading is an accurate extract from Mbedzi's letter, it is clearly his opinion and not a fact. She argues: "Although reported in quotations marks the comment to an ordinary reader carries a factual connotation." She adds that the balance of the story does not support this comment.

The newspaper does not respond to this part of the complaint.

Myeni is correct – the sub-heading is an accurate extract from Mbedzi's letter and it is presented as his opinion and not as a fact. However, it is not true that the balance of the story does not support this comment. The intro already alleges that she was abusing her relationship with Zuma to get her own way; it later mentions that she was seeking power, privilege and immunity by "name dropping" her relationship with Zuma; it ends off by saying that she seemingly held everyone at ransom to get what she wants and that, for her, it is about power, privilege and the immunity.

These examples substantiate the sub-headline and therefore meets the requirements of the Press Code.

Subjective comment unsubstantiated

The story says: "She (Myeni) seems to hold everyone at ransom to attain her objectives. For Dudu it is about power, privilege and the immunity that goes with these."

Myeni complains that the inclusion of Mbedzi's opinion is subjective, comment and unsubstantiated, which makes it derogatory, unfair and unbalanced. She adds that the journalist knew about the libelous nature of the accusations as he himself acknowledges this in an email to her in which he says: "They (the accusations) could border on defamation against both yourself and the National President." She argues that the onus was therefore on the newspaper to corroborate the allegations before reporting them.

The newspaper does not respond to this part of the complaint.

This part of the complaint is frivolous. Mbedzi is free to express his views, which were within the boundaries of the SA Constitution and law, and the newspaper is free to publish those opinions.

No comment from other subjects

Myeni questions whether Erasmus obtained comment from the "numerous other persons and/or entities" mentioned in the story to verify the allegations and to get the necessary balance.

The newspaper does not respond to this part of the complaint.

However, the purpose of the story was not to establish if these allegations were true or not, but to make public the fact of these allegations.

Not given enough time to respond

Myeni complains that the newspaper did not give her enough time to respond.

She said the journalist wrote to her on June 21, 2011 at 20:42. This meant, she argues, that she was effectively contacted on June 22. She says that the request for a reply was for the Thursday edition and that that deadline was the very same day (June 22). She concludes that this was an unreasonable request, as she needed more time to respond because it would have required some consideration and consultation.

She says that there was an agreement between Linnell and the journalist not to publish without comment.

Myeni outlines further correspondence between Linell and Erasmus:
• 14:27, June 28 – Erasmus requests when a response may be forthcoming;
• 17:51, June 28 – Linnell undertakes to respond by Thursday 30;
• 20:25, June 28 – the journalist says he requires a response by 16:00 on Wednesday 29;
• 20:52, June 28 – Linnell rejects the deadline and undertakes to provide a response by midday June 30;
• 09:25, June 29 – the journalist says that there was a agreement to meet the next publication date, stating that the story would be published with or without his comment;
• 14:30, June 29 – Linnell rejects the deadline, cautions the journalist about publication without comment, and references the complexity of the required response;
• 17:53, June 29 – the journalist says that the letter will be published without his comment; and
• 18:16, June 29 – the editor says that her advisors support publishing.

The Fever says that both Myeni and Linnell were notified of the story and that they were given ample time to reply. The newspaper says it encouraged them to do so "and yet neither was willing to respond to the actual accusations in the article". It says that Linnell instead appeared to be using stalling tactics in the form of thinly veiled threats. It argues that the fact that Myeni did not respond to its questions is "a reflection on her, not (on) the integrity of the Zululand Fever".

The newspaper also says that the matter was in the public interest, adding that it remains willing to interview Myeni face-to-face and to publish her views.

My task is to establish if the newspaper:
• undertook not to publish before it could get comment; and
• gave Myeni enough time to respond.

There are two references to a possible agreement in the documentation at my disposal. In the first case Linnell, on June 22, said: "I believe I have your undertaking not to publish the contents of the letter without first obtaining comment from Mhlathuze Water…"

I note that Erasmus did not respond to this statement.

On June 29 the journalist wrote: "Our agreement was that the response would be ready for our next publication."

Based on the evidence at my disposal, I have no reason to believe that the journalist went back on his word – there is no evidence place that he gave his word not to publish without Linnell's comment in the first place.

This leaves me with the question if Myeni had enough time to respond. For this, I need to take the amount of time as well as the complexity of the matter into account.

Firstly, Erasmus put his questions to Myeni in an email dated June 21, whilst the story was published on July 1. This gave MW six full working days in which to respond. This seems long enough a time.

So then: Was the matter was so complicated that 6 days (and an extra two weekend days, which may have been utilized) were not enough to come up with a considered response?

This leads me to the questions that Erasmus posed. In his email, the journalist first summarized eight key points contained in Mbedzi's letter. This clearly was done to make a response easier. Then the journalist asked four questions. The last of these questions would have kept MW busy longer than the others. It read: "Of the entire report, what do you dispute…?"

Now the focus shifts to the 12-page letter.

After having taken a thorough look at this document, I am convinced that a considered response would have taken quite some time – Mbedzi's document raised several issues that demanded some thorough investigation.

I also take into account the seriousness of the allegations against Myeni – the more serious they were, the more attention they deserved. And they were serious, all right.

However, when I weigh up all of these factors, I believe that the time that has elapsed from June 21 to June 29 should have afforded MW ample time to finalise its response. I therefore do not blame the newspaper for publishing without its comment.

'Failed to respond'

The story ends by stating: "He (Linnell) failed to respond to the questions within a week after numerous requests by the Fever."

Myeni complains that this is disingenuous, as it does not convey the documented communication between the parties. She argues: "An amplification of why he had 'failed' to respond would have placed an entirely different and objective context to the matter."

The newspaper does not respond to this part of the complaint.

Based on my argumentation above, I believe the sentence in dispute was justified – even though Linnell did indicate to the journalist that he did not have enough time to respond.

In context, allegations presented as facts

Myeni says that the context of the allegations and the urgency for publication (or the lack thereof) are also relevant. She says that the minister's reply to Parliament was eight months prior to publication and that Mbedzi's allegations had been well aired in the newspaper over the last year. She argues that there was therefore "no pressingly urgent public interest that would outweigh the benefit of the journalist having the facts that would inform a balanced and fair report and importantly mitigate the risk of what he termed 'defamation against both yourself and the National President'."

ST

She adds that, taking the story as a whole, there is a ring of "truth or fact" in Mbedzi's allegations.

The newspaper does not respond to this part of the complaint.

I disagree with Myeni on this point. After having read the story several times, I believe that:
• it was balanced enough in that it does not confuse allegations with fact – and it presents the allegations as such; and
• the time that was afforded to MW was enough to negate the argument that there was no urgency in this matter – the decision to publish cannot be left in the hands of the public.

General

It is worrisome that the Fever responded to only one part of the complaint. This creates the impression that the newspaper did not take either the complaint/complainant or this office seriously enough.

Finding

The complaint is dismissed in its entirety.

Sanction

There is no sanction.

I am recommending, though, that Myeni takes up the newspaper's offer to publish her views (with equal prominence).

Appeal

Please note that our Complaints Procedures lay down that within seven days of receipt of this decision, anyone of the parties may apply for leave to appeal to the Chairperson of the SA Press Appeals Panel, Judge Ralph Zulman, fully setting out the grounds of appeal. He can be reached at khanyim@ombudsman.org.za.

Johan Retief
Deputy Press Ombudsman

COMMISSION OF INQUIRY INTO STATE CAPTURE

ANNEXURE 'SJT-2'

http://city-press.news24.com/News/SAAs-R167K-a-month-adviser-20150809

SAA's R167K a month adviser

Susan Comrie2015-08-09 17:30

SAA chairperson Dudu Myeni. Picture: Muntu Vilakazi/City Press

Undeterred by the airline's financial crisis, board chair Dudu Myeni hired Nick Linnell, whose exact role seems unclear. But it seems he's become SAA's Mr Fix-It

Despite national airline SAA being in severe financial trouble, chairperson Dudu Myeni's former spokesperson and adviser was brought on board at an average cost to the airline of R167 000 a month.

Nick Linnell, a former lawyer from Zimbabwe turned business consultant, was hired by SAA last year as an adviser to its board.

Linnell previously worked for Myeni as her spokesperson and adviser at the Mhlathuze Water Board, where Myeni has a long and tumultuous stint as chairperson.

In March, he was tapped by Eskom's then chairperson, Zola Tsotsi, to lead an external inquiry into the financial chaos at the parastatal. But after Tsotsi's departure, Eskom's board replaced Linnell because his proposed appointment had not gone through an open tender process.

It appears Linnell was initially hired by SAA to lead the investigation against former CEO Monwabisi Kalawe, but invoices seen by City Press suggest he has become SAA's Mr Fix-It, reviewing forensic reports, writing media statements, drafting letters to ministers and even lobbying police for a "high-level investigation" into forensic consultant Paul O'Sullivan.

Various invoices and billing memorandums indicate that between December and April, Linnell's Cape Town-based company, The Project Office, billed SAA for 517 hours of work at an average cost of R1 596 an hour.

He also claimed back R4 784.34 for hotel accommodation, R3 683 for airport parking and R5 382.20 for phone calls and printing. His total bill came to R835 276.54.

But Linnell's exact role at SAA remains unclear. Linnell told City Press that due to client confidentiality, he was "not at liberty to share details of specific work done".

Numerous entries show he has billed SAA for drafting press releases and replying to media queries. This is despite the fact that SAA already employs spokesperson Tlali Tlali on a salary of more than R100 000 a month.

Although Linnell is not registered as a lawyer or an auditor, he also appears to have spent many hours reviewing forensic reports, legal opinions and affidavits, building case files and liaising with law firm ENSafrica.

In response, Linnell said: "I am not a practising attorney and don't suggest so. Any professional services that we require, be they accounting or legal, are provided by one or more of the large professional firms that we use routinely."

However, SAA already pays for the services of two of ENSafrica's most experienced lawyers, Steven Powell (director of forensics) and George van Niekerk (director of dispute resolution).

City Press sent SAA a list of detailed questions about Linnell's role last week, but the airline failed to comment.

STP

However, an insider with insight into the SAA board insisted that, despite the cost, Linnell's appointment was good value for SAA because he was often the only person able to get through to Myeni and was helping to repair damaged relationships as well as give the chaotic board some direction.

The documents suggest that under the umbrella of the Kalawe investigation, SAA started paying Linnell to investigate O'Sullivan.

In an email to several state agencies, O'Sullivan accused Myeni of stashing millions of euros – supposedly the proceeds of corrupt deals – in foreign bank accounts. When O'Sullivan realised the bank statements were forgeries, he withdrew the allegations and apologised.

Despite SAA lawyers reaching an agreement with O'Sullivan, Myeni opened a criminal case against him for forgery and uttering. Invoices show that, since March, SAA has been paying for both Linnell and ENSafrica's work on Myeni's case against O'Sullivan.

Invoices show that Linnell billed SAA for various services, including "meeting with ENS team [regarding O'Sullivan] information and strategy", "discussions to secure high-level Hawks inquiry into [O'Sullivan] matter", "contact with Hawks officers [regarding O'Sullivan] matter", and "reviewing judgments on [O'Sullivan] and background checks".

Approached for comment, O'Sullivan said: "If she wants to get lawyers and go after me, she should be paying for it out of her own pocket."

Job cuts

Earlier this year, SAA announced that, despite numerous bailouts and guarantees, the airline's precarious financial position meant that it would need to cut up to 10% of its staff.

On Thursday, several trade unions went to the labour court to try to prevent SAA from retrenching any employees until they disclosed detailed information about the airline's finances.

Zenzo Mahlangu, general secretary of the SA Transport and Allied Workers' Union (Satawu), said: "All we see among them is spying against this one, spying against that one, this one taping that one – which is not actually improving the situation at SAA."

Instead of cutting the jobs of low-paid workers, some of whom earn about R5 000 a month, Satawu believes the focus of cost cuts should be in senior management.

"Hiring a consultant in our view is an acknowledgment of deficiencies in terms of capabilities within," Mahlangu said.

"In our view, SAA's problems lie within senior management and middle management. We think they have been sleeping for too long – they've got to a point where they think sleeping is acceptable."

COMMISSION OF INQUIRY INTO STATE CAPTURE

ANNEXURE 'SJT-3'

http://www.destinyman.com/2015/04/07/tsotsis-man-dumped-as-eskom-board-appoints-new-inquiry-head/

Tsotsi's man dumped as Eskom board appoints new inquiry head

April 7, 2015

Nick Linnell, the man behind the investigation into Eskom's inner workings has been dumped in the latest twist of boardroom dramas that have unfolded at the power utility in recent weeks

According to a *Business Day* report, Eskom's board has rejected the appointment of Linnell – the business turnaround consultant selected by former Eskom chairperson Zola Tsotsi – to conduct an independent inquiry into operations at the company.

Eskom spokesperson Khulu Phasiwe said the board did not believe that Tsotsi followed correct procedure when he selected Linnell.

"There is nothing wrong with him [Linnell] or his company," Phasiwe told *Fin24*. "The former chairperson had unilaterally appointed Linnell and did not follow proper corporate procedures."

President Jacob Zuma had allegedly instructed Tsotsi to implement the inquiry and to use Linnell as its head, *Business Day* reported on Tuesday.

According to the report Linnell, who headed up the inquiry into South African Airways (SAA) CEO Monwabisi Kalawe, has close ties with Zuma's close friend Dudu Myeni, who is the SAA chairperson.

Tsotsi stepped down on 31 March as chairperson, after the board sought his removal for alleged interference and for following incorrect procedure in implementing the inquiry.

He announced the inquiry on 12 March after suspending four senior executives, including CEO Tshediso Matona.

The inquiry's goal, which still remains the same, was to shed light on the poor performance of Eskom's generation plant, delays in bringing the new generation plant on stream, high costs of primary energy and cash flow challenges.

Phasiwe said the board had now followed the correct tender procedure and had chosen a company to conduct the inquiry.

An announcement about that selection should be made very soon, he said. Everything else about the inquiry and the suspension of the four senior executives remains in place.

Matona's urgent application to be re-instated was turned down by Labour Court Judge Benita Witcher last month and struck off the roll, leaving it to the Commission for Conciliation, Mediation and Arbitration to make a conclusive determination on whether Matona's suspension was fair or not.

–News24Wire

SJT

21 November 2017

ANNEXURE 'SJT-4'

Statement to Portfolio Committee on Public Enterprises

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

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

1. The TNA Contract

1.1 On my arrival at Eskom in 2011, there was an existing TNA contract which was in progress. It was due to expire in about June 2014. At the time of its expiry, Collin Matjila was Acting Chief Executive.

1.2 Mr Matjila acceded to the request that the contract be renewed. In so doing, he failed to apply a provision in the delegation of authority that enjoined him to deal with sponsorship through a Committee that was put in place to deal with such matters thus by-passing the process and acting outside of his delegation of authority. The finance Director among others in his management

SJT

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

1.3 Mr Matjila disputed this position and proceeded to sign the contract. A whistle blower reported this action to the chairperson of the Audit and Risk Committee, stating that the acting CE had flouted procurement regulations. The ARC chairperson then brought the matter to the attention of the Board which duly delegated the ARC to institute an audit inquiry into the matter.

1.4 The ARC appointed Sizwe Ntsaluba Goboda who produced a report with a finding that Mr Matjila had interpreted his delegation of Authority incorrectly by using a wrong process to award the TNA contract, thereby infringing the provisions of the PFMA in that his authorised expenditure would then be irregular.

1.5 Mr Matjila then requested the Board to seek a legal opinion in this matter, to which the Board agreed.

1.6 The legal opinion was provided by the firm of Ledwaba Mazwai Attorneys who upheld the SNG findings that Mr Matjila had acted outside of his delegated authority and recommended that the Board discipline the Acting CE At this point, Mr Matjila was no longer with the company as the substantive CE Mr Matona was then in office, so the Board could not institute disciplinary action after the fact. Further, the lawyers advised that cancellation of the contract would result in expensive litigation and serious losses to the company. They also afforded the Board advice that meant accepting the contract, i.e, ratifying it meant accepting responsibility for Mr Matjila's breach. After deliberations the Board accepted this advice as an irregular expenditure finding was too ghastly to contemplate. The board then resolved to let the contract run the remaining few months of the extension.

2. IT Procurement

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

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

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

3. The Duvha Boiler

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

4. Suspension of 4 Executives

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

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

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

STP

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

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

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

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

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

4.7 The totality of these events had generated some apprehension in me about things to come. Hardly a week later, I was called by Dudu Myeni. She said that I should avail myself for an audience with the President, and declined to discuss any details over the phone.

4.8 On or about 7 March 2015, I arrived at the Durban Presidential residence and was met by Dudu Myeni, her son Talent, and a certain Mr Nick Lennell, who was introduced to me as a lawyer. Ms Myeni then proceeded to outline the purpose of the meeting, namely, that the situation of Eskom's financial stress and poor technical performance warrants that an inquiry into the company be instituted. She further elaborated that, in the course of the said enquiry, 3 executives namely, Acting CE Tsediso Matona, Group Executive for Group Capital Dan Marokane, and Group Executive for Commercial Matshela Koko, are to be suspended.

4.9 I found this matter altogether shocking and proceeded to question the need for suspending these executives as I saw this as a recipe for inducing instability in the company. She retorted that even the War Room was experiencing frustration with the decline in performance of the Company, and that the enquiry was essential. In her view, the suspension of the executives will not create difficulties because it will be explained that they are not accused of wrongdoing, but are being asked to allow space for the enquiry to proceed unencumbered by their presence.

4.10 Shortly hereafter the President entered. After some pleasantries, he requested to know what was up for discussion, whereupon Ms Myeni repeated what she had previously stated. The President then enquired if I knew who the executives are who were to be suspended, to which I responded that I would prefer that I consult the HR Rules of the company to check if there is provision

5 TH

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

4.11 I convened a Board meeting on 09 March 2015 where I presented the proposed resolution. The Board expressed its discomfort with this approach and instead proposed that the Minister be invited to engage on this matter with the Board.

4.12 The Board meeting with the Minister in attendance was convened on 11 March 2015.The Minister gave her support for the inquiry as well as for the suspensions of the 3 executives. The Board then resolved to proceed with both the inquiry and suspensions of the 3 executives. It also mandated the Audit and Risk Committee (ARC) to prepare the Terms of Reference for the inquiry, as well as the People and Governance Committee (P&G) to effect the suspensions.

4.13 At the inception of the P&G Committee meeting following the Board meeting, 2 astonishing events occurred. Firstly, Dr. Ben Ngubane stated that the name of the Financial Director must be added to the list of executives to be suspended. I immediately raised furious objections. For one, this executive's name was not among the names approved by the Board. More importantly, suspending the FD is going to generate shock waves even internationally especially with our investors and lenders because the FD is seen as the custodian of their investments. Dr. Ngubane responded that the Minister had instructed that the FD's name be added. I immediately called the Minister to raise my concerns and objection, but she rebuffed me.

4.14 The second astonishing event had to do with the appointment of the executives who had to act for those suspended. Hardly an hour after the end of the Board meeting which decided on the suspensions, Ms Chwayita Mabude was announcing the names in the P&G of the executives who were going to act. I immediately protested that nobody in the Committee, Ms

ST

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

4.15 Mr. Lennell assisted P&G in drafting the suspension letters, which were then individually handed out. I was at pains to assure all the executives that had there been any provision for their recusal other than suspension, we would have preferred to apply it, and also that their suspension does not mean they have been found guilty of any wrongdoing.

4.16 The following morning, 12 March 2015 at 10h00, I addressed a press conference wherein I announced the suspension of the 4 executives and the Company's intention to institute an inquiry.

4.17 The afternoon of the same day I was to have the most unpleasant and humiliating experience in all my tenure as Chairman. The head of Eskom Treasury informed me that our investors and lenders from across the world will be calling in to ask for an explanation of the actions of suspending the executives. Indeed I was on line with around 52 individuals trying to defend what essentially was an indefensible position.

4.18 Hardly a week went by and I was faced with having to defend myself against accusations from several board members that I was not consulting the Board in the preparatory work on the inquiry. The Board engaged a law firm to trump up charges against me that I am not fit to be a director of the Company. On 23 March, in the dead of night, I was given an ultimatum by the Board to resign or be charged with lack of fitness to be a director. I resigned under duress.

4.19 The termination of the services of the executives who left Eskom occurred after I had left.

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

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

Thank you.

COMMISSION OF INQUIRY INTO STATE CAPTURE

U16-NHL-126

PARLIAMENTARY MONITORING GROUP

Eskom Inquiry: Zola Tsotsi

Public Enterprises

22 November 2017

Chairperson: Ms D Rantho (ANC)

Audio
Eskom Inquiry: Zola Tsotsi 2
Eskom Inquiry: Zola Tsotsi 3
Eskom Inquiry: Zola Tsotsi 1

Documents
Zola Tsotsi statement

Meeting Summary

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

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

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

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

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

Meeting report

Witness: Mr Zola Tsotsi, former Eskom Board Chairperson
The Chairperson read the oath for the witness before the Committee.

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

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

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

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

Dr Z Luyenge (ANC) agreed with Mr Gungubele.

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

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

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

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

U16-NHL-127

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

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

Dr Luyenge supported Ms Mazzone's proposal.

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

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

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

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

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

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

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

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

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

The Chairperson asked the evidence leader to proceed with the meeting

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

Mr Tsotsi: Correct.

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

Mr Tsotsi read the paragraph.

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

Mr Tsotsi: Yes, I do.

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

Mr Tsotsi: Yes.

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

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

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

Mr Tsotsi: Some of them would be indeed.

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

U16-NHL-128

Mr Tsotsi: Some of them.

Adv Vanara: Can you identify the relevant documents?

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

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

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

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

Mr Tsotsi: I am comfortable proceeding.

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

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

Mr Tsotsi: That is correct.

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

Mr Tsotsi: That is correct.

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

Mr Tsotsi: That is correct.

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

Mr Tsotsi: Correct

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

Mr Tsotsi: Not quite.

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

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

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

Mr Tsotsi: That is correct.

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

Mr Tsotsi: Correct.

U16-NHL-129

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

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

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

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

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

Mr Tsotsi: Correct.

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

Mr Tsotsi: That is correct.

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

Mr Tsotsi: Yes, the meeting continued.

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

Mr Tsotsi: Yes, that is correct.

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

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

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

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

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

Mr Tsotsi: That is correct.

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

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

U16-NHL-130

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

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

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

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

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

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

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

Mr Tsotsi: Yes, I am aware.

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

Mr Tsotsi: No, it was not a surprise

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

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

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

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

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

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

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

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

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

Mr Tsotsi: I certainly apologise.

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

Mr Tsotsi: I am talking about Minister Lynne Brown.

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

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

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

Mr Tsotsi: We were here in Cape Town.

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

Mr Tsotsi: I do not know.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms Myeni. Is that correct?

Mr Tsotsi: Yes, it's correct.

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

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

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

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

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

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

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

Mr Tsotsi: Yes.

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

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

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

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

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

Mr Tsotsi: Yes, that is correct.

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

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

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

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

Adv Vanara: No, further questions.

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

U16-NHL-133

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

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

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

Ms Mazzone asked why he was called to this meeting.

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

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

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

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

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

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

Mr Tsotsi: My hands were tied.

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

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

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

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

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

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

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

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

Ms Mazzone: Did you want to assist him?

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

U16-NHL-134

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

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

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

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

Mr Tsotsi: It was Ms Matsietsi Mokholo.

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

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

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

Mr Tsotsi: That is correct.

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

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

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

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

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

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

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

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

Ms Mazzone: What was that event?

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

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

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

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

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

Ms Mazzone: Thank you.

U16-NHL-135

Members questions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr Tsotsi: He was appointed after I had left.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

U16-NHL-138

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

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

Mr Tsotsi: No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

U16-NHL-140

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

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

Mr Tsotsi: Correct.

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

Mr Tsotsi: That is a fair conclusion to reach.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

U16-NHL-141

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

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

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

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

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

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

Mr Tsotsi: Oh, yes, definitely.

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

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

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

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

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

Mr Tsotsi: This would have been December 2014.

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

Mr Tsotsi: It was her.

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

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

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

Mr Tsotsi: That is correct.

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

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

U16-NHL-142

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

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

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

Mr Tsotsi: You are correct.

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

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

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

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

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

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

Mr Gungubele: Do you know a Mr Malesela Sekhasimbe?

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

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

Mr Tsotsi: I think that is ridiculous.

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

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

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

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

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

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

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

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

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

The meeting was adjourned.

21 November 2017

ANNEXURE 'SJT-4'

Statement to Portfolio Committee on Public Enterprises

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

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

1. The TNA Contract

1.1 On my arrival at Eskom in 2011, there was an existing TNA contract which was in progress. It was due to expire in about June 2014. At the time of its expiry, Collin Matjila was Acting Chief Executive.

1.2 Mr Matjila acceded to the request that the contract be renewed. In so doing, he failed to apply a provision in the delegation of authority that enjoined him to deal with sponsorship through a Committee that was put in place to deal with such matters thus by-passing the process and acting outside of his delegation of authority. The finance Director among others in his management

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

1.3 Mr Matjila disputed this position and proceeded to sign the contract. A whistle blower reported this action to the chairperson of the Audit and Risk Committee, stating that the acting CE had flouted procurement regulations. The ARC chairperson then brought the matter to the attention of the Board which duly delegated the ARC to institute an audit inquiry into the matter.

1.4 The ARC appointed Sizwe Ntsaluba Goboda who produced a report with a finding that Mr Matjila had interpreted his delegation of Authority incorrectly by using a wrong process to award the TNA contract, thereby infringing the provisions of the PFMA in that his authorised expenditure would then be irregular.

1.5 Mr Matjila then requested the Board to seek a legal opinion in this matter, to which the Board agreed.

1.6 The legal opinion was provided by the firm of Ledwaba Mazwai Attorneys who upheld the SNG findings that Mr Matjila had acted outside of his delegated authority and recommended that the Board discipline the Acting CE At this point, Mr Matjila was no longer with the company as the substantive CE Mr Matona was then in office, so the Board could not institute disciplinary action after the fact. Further, the lawyers advised that cancellation of the contract would result in expensive litigation and serious losses to the company. They also afforded the Board advice that meant accepting the contract, i.e, ratifying it meant accepting responsibility for Mr Matjila's breach. After deliberations the Board accepted this advice as an irregular expenditure finding was too ghastly to contemplate. The board then resolved to let the contract run the remaining few months of the extension.

2. IT Procurement

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

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

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

3. The Duvha Boiler

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

4. Suspension of 4 Executives

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

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

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

STP

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

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

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

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

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

4.7 The totality of these events had generated some apprehension in me about things to come. Hardly a week later, I was called by Dudu Myeni. She said that I should avail myself for an audience with the President, and declined to discuss any details over the phone.

4.8 On or about 7 March 2015, I arrived at the Durban Presidential residence and was met by Dudu Myeni, her son Talent, and a certain Mr Nick Lennell, who was introduced to me as a lawyer. Ms Myeni then proceeded to outline the purpose of the meeting, namely, that the situation of Eskom's financial stress and poor technical performance warrants that an inquiry into the company be instituted. She further elaborated that, in the course of the said enquiry, 3 executives namely, Acting CE Tsediso Matona, Group Executive for Group Capital Dan Marokane, and Group Executive for Commercial Matshela Koko, are to be suspended.

4.9 I found this matter altogether shocking and proceeded to question the need for suspending these executives as I saw this as a recipe for inducing instability in the company. She retorted that even the War Room was experiencing frustration with the decline in performance of the Company, and that the enquiry was essential. In her view, the suspension of the executives will not create difficulties because it will be explained that they are not accused of wrongdoing, but are being asked to allow space for the enquiry to proceed unencumbered by their presence.

4.10 Shortly hereafter the President entered. After some pleasantries, he requested to know what was up for discussion, whereupon Ms Myeni repeated what she had previously stated. The President then enquired if I knew who the executives are who were to be suspended, to which I responded that I would prefer that I consult the HR Rules of the company to check if there is provision

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

4.11 I convened a Board meeting on 09 March 2015 where I presented the proposed resolution. The Board expressed its discomfort with this approach and instead proposed that the Minister be invited to engage on this matter with the Board.

4.12 The Board meeting with the Minister in attendance was convened on 11 March 2015.The Minister gave her support for the inquiry as well as for the suspensions of the 3 executives. The Board then resolved to proceed with both the inquiry and suspensions of the 3 executives. It also mandated the Audit and Risk Committee (ARC) to prepare the Terms of Reference for the inquiry, as well as the People and Governance Committee (P&G) to effect the suspensions.

4.13 At the inception of the P&G Committee meeting following the Board meeting, 2 astonishing events occurred. Firstly, Dr. Ben Ngubane stated that the name of the Financial Director must be added to the list of executives to be suspended. I immediately raised furious objections. For one, this executive's name was not among the names approved by the Board. More importantly, suspending the FD is going to generate shock waves even internationally especially with our investors and lenders because the FD is seen as the custodian of their investments. Dr. Ngubane responded that the Minister had instructed that the FD's name be added. I immediately called the Minister to raise my concerns and objection, but she rebuffed me.

4.14 The second astonishing event had to do with the appointment of the executives who had to act for those suspended. Hardly an hour after the end of the Board meeting which decided on the suspensions, Ms Chwayita Mabude was announcing the names in the P&G of the executives who were going to act. I immediately protested that nobody in the Committee, Ms

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

4.15 Mr. Lennell assisted P&G in drafting the suspension letters, which were then individually handed out. I was at pains to assure all the executives that had there been any provision for their recusal other than suspension, we would have preferred to apply it, and also that their suspension does not mean they have been found guilty of any wrongdoing.

4.16 The following morning, 12 March 2015 at 10h00, I addressed a press conference wherein I announced the suspension of the 4 executives and the Company's intention to institute an inquiry.

4.17 The afternoon of the same day I was to have the most unpleasant and humiliating experience in all my tenure as Chairman. The head of Eskom Treasury informed me that our investors and lenders from across the world will be calling in to ask for an explanation of the actions of suspending the executives. Indeed I was on line with around 52 individuals trying to defend what essentially was an indefensible position.

4.18 Hardly a week went by and I was faced with having to defend myself against accusations from several board members that I was not consulting the Board in the preparatory work on the inquiry. The Board engaged a law firm to trump up charges against me that I am not fit to be a director of the Company. On 23 March, in the dead of night, I was given an ultimatum by the Board to resign or be charged with lack of fitness to be a director. I resigned under duress.

4.19 The termination of the services of the executives who left Eskom occurred after I had left.

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

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

Thank you.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

AFFIDAVIT

I, the undersigned

ANDILE ZOLA TSOTSI

Do hereby state under oath in English:

1.

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

My contact details are:
Cell: 083 654 2778 / 065 842 4216
E-mail: zola.tsotsi@gmail.com

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

2.

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

3.

3.1. I began my working career in 1974 with UOP based in Chicago, Illinois, USA. UOP is a Process Engineering company specializing in the engineering and commissioning of petroleum and petrochemical processes. After 9 years, I resigned and started Afritek Consulting in 1983 in Lesotho, an engineering company to consult in the then upcoming Lesotho Highland Water Project Phase 1. Following the democratic elections in Lesotho in 1993, I was appointed the Director General of the Ministry of Natural Resources. I resigned in 1995 to return to South Africa where I was appointed Environmental Affairs Manager in Eskom. I also served as Corporate Strategy Manager until I took early retirement in 2004 to start up a renewable energy company called Maisha Energy.

3.2. I started serving on the Board of my own company as Executive Chairman in 1983. During my stint with the Lesotho government, I was appointed Chairman of Lesotho Electricity Corporation, Water and Sewerage Authority, and Lesotho Highlands Development Authority. In 2004, the Lesotho government set up the Electricity Regulator called Lesotho Electricity Authority and I was invited to become its first Chairman. On completion of this role, I was appointed Chairman of Eskom Holdings in 2011. All the chairmanship appointments in the State Owned Entities were non-executive.

4.

4.1. I was appointed to the Board of Directors of Eskom Holdings (Pty) Ltd in July 2011. At the time of the said appointment, Mr. Malusi Gigaba ("Gigaba") was the Minister of Public Enterprises.

4.2. I was approached by Mr. Siyabonga Mahlangu ('Mr Mahalangu") who was then the Advisor to the Minister. He inquired if I would be interested in serving on the Board of Eskom, whereupon I responded in the affirmative after I had considered the matter over some days. I duly submitted my CV on his request and after a few months, I met with the Minister for an interview following which I was offered to chair

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

4.3. By the time of the end of the first term of the Board, Minister Lynne Brown ("Brown") had succeeded Gigaba as Minister.

4.4. The Ministry had put out an advert in the newspaper asking interested individuals to apply for non-executive director positions on the Eskom Board. I duly submitted and was informed in writing that my application was successful and that my second tenure would commence on 11 December 2014. I was re-appointed as Chairman.

4.5. I was not informed as to why Ms Chwayita Mabude and I were the only ones from the out-going Board re-appointed. I had no knowledge of who had re-applied.

5.

Relationship with the Ministers

5.1. I found former Minister Gigaba in office on my arrival. He was Minister for the majority of the duration of my first term on the board. He left in May 2014 and my first term ended in December 2014. I had got to know Minister Gigaba during the time of his service in the Youth League of the ANC.

5.2. Minister Brown arrived shortly after the departure of Minister Gigaba. I had not known or met Minister Brown prior to her arrival.

5.3. I found Minister Gigaba quite an easy going person and rather knowledgeable about Eskom. I had set up monthly reporting meetings with him and these interactions were productive. I recall some of the occasions when we went into different communities during the 49M campaign just how well he represented our commitment to educating our people about the optimal use of electricity and how

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

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

6.

Relationship with the Guptas

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

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

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

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

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

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

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

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

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

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

7.

Events around the SONA of 2015

7.1. A day or two before the State of the Nation Address ("SONA") of February52015, I was summoned by Minister Brown to her office. The substance of our conversation was as follows: *"Chairman, I have received complaints from management and Board members that you are interfering in management. Please refrain from doing so, because if you don't, I shall have to find someone else to do your job!"* My response was *"Most Board members hardly know what I look like, let alone not having worked with me yet. As for management, if scrutinizing their behavior and decisions and calling them to account constitutes interference with management, then I will happily continue doing so. If you had acceded to my request that we have regular briefing sessions, even this meeting would not have been necessary."*

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

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

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

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

8.

Responsibilities of the Chairman

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

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

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

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

9.

Responsibilities of the Board

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

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

10.

Board meetings

10.1. Of the Board meetings that fall within the period January to March 2015, the only meeting that was scheduled was the 26 February meeting. The reason was because there are only 6 scheduled Board meetings per annum, and this was the first for the year.

10.2. The induction meeting occurs only when a new Board comes into being. It is not classified as a Board meeting as it has no statutory and fiduciary status. consequently, no decisions binding on the company can be taken in this meeting. These induction meetings are organized by the Shareholder.

10.3. The Board meetings convened for the 9 and 11 March 2015 are in fact classified as Special or Emergency Board meetings. The company prescripts stipulate that there must be a minimum of 7 days' notice for Board meetings. These two were convened at shorter notice.

11.

1st Board meeting – 26 February 2015

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

11.2. I was receiving a phone from President Zuma for the first time.

11.3. In regard to the postponement of the meeting, I would have expected to have been informed by the Minister in her capacity as the Shareholder Representative with whom the Board has a fiduciary relationship because she has the legal capacity to make this decision.

11.4. Board meetings have different categories. There are the Ordinary Board Meetings which are scheduled throughout the year. The draft schedule for these meetings is circulated to Board members towards the end of the preceding year for their comment. Once dates are firmed up, the final schedule is signed off by the Chairman and the published in the formal meeting roster of the company. None of these meetings may be cancelled because each one is designed to deal with specific aspects of the business which have to be addressed at specific times. Examples would be the Shareholder Compact, Corporate Plan, Integrated Report, Auditing of Financial Statements, Annual General Meeting, MYPD (Tariff) Application etc. These meetings can however be postponed on the understanding that they will be rescheduled. Postponement can either be canvassed among Board members for good reason, or may be effected by the Chairman under plausible circumstances, or may be requested by the Minister.

11.5. Then there are Extra-ordinary Board meetings, which usually far exceed the Ordinary Board meetings in frequency. When one takes into consideration the size of the business, one has to appreciate that the complexity thereof is proportional to the size. There is pressure for continuous decision making at the highest level. These meetings can be postponed or cancelled in consultation with Board members, or by the Chairman with good reason.

11.6. Another categories of meetings are Special and Emergency Board Meetings. The former are usually convened at the request of Shareholder's Representative (Minister) and generally address one issue of particular concern. Emergency

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

11.7. All these kinds of meetings can be postponed by the Minister. It is unclear as to whether the Minister has the obligation to give reasons for postponement of Board meetings.

11.8. Shortly after I had spoken with President Zuma, I received a call from the Acting Director General Matsietsi Mokholo who informed me that the Minister has asked that I postpone the Board meeting. I inquired from her as to the reasons for the postponement. She informed me that she was not given any.

11.9. Immediately after this call, I instructed my office to send out the notice of postponement to all Board members.

11.10. This instruction to postpone the meeting was the first ever in the course of my tenure as Chairman.

11.11. In my telephone conversation with President Zuma, the President did not give me any reason for the postponement of the meeting.

11.12. I instructed my office to inform Board members of the postponement.

11.13. Whilst it was the President who communicated the need to have the meeting postponed, the actual postponement of the meeting was on the instructions of Acting DG who informed me that the Minister had asked for the postponement. Hence the communiqué to the Board members spoke of the postponement of the meeting by the Minister.

12.

Meeting at President's residence in Durban

12.1. A day or two before the 7th March 2015, I received a phone call from Ms Dudu Myeni ("Ms Myeni") who informed me that the President would like and audience with me on 7th March 1015 at his Durban residence.

12.2. I asked what the purpose of the meeting is, whereupon she declined to discuss the matter over the phone.

12.3. My understanding at the conclusion of the telephone conversation was that the meeting is being requested by President Zuma.

12.4. Ms Myeni was at that time the Chairperson of SAA. My understanding of Ms Myeni's role is that of a messenger for the President, not the convener of the meeting.

12.5. On my arrival at the Presidential Residence in Morningside, Durban, I found Ms Myeni and her son Talent. Soon thereafter a gentleman named Nick Linnell arrived.

12.6. We immediately began a discussion of what was going to be presented to the President. This discussion was led by Dudu Myeni. She explained that the situation of Eskom's financial stress and poor technical performance warranted that an inquiry into the company be instituted. She further elaborated that, in the course of the said inquiry, 3 executives, namely, Chief Executive Tshediso Matona, Group Executive for Commercial Matshela Koko, and Group Executive for Group Capital Dan Marokane are to be suspended.

12.7. I found this matter altogether shocking and proceeded to question the need for suspending these executives as I saw this as a recipe for inducing instability in the company. She retorted that even the War room was experiencing frustration with the deteriorating performance of the Company, and that the inquiry was essential.

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

12.8. After some pleasantries, the President inquired what was up for discussion, whereupon Ms Myeni began by saying that the performance of Eskom financially and technically is deteriorating to the extent that there is a serious concern that the company could fail to meet its obligation to supply electricity to the nation.

12.9. She pointed to the discussions that are going on in the War Room on the Company's poor performance, saying that even the War Room is very dissatisfied with its performance.

12.10. She then arrived at the conclusion that there needs to be an external inquiry into the performance of the company. She further proposed that 3 executives be suspended to make sure they do not impede this inquiry.

12.11. I responded by saying the idea of an inquiry was one I had always expressed even before the advent of the new Board. However, I disputed the suggestion of suspensions.

12.12. The President then inquired as to whether I knew which executives were to be suspended, whereupon I responded that I knew as Dudu had mentioned them in the discussion prior to this meeting. His response gave me the impression that he had been privy to this discussion.

12.13. Dudu Myeni had informed me on my arrival that Nick Linnell is a lawyer who she had commissioned to advise her at SAA and would be available to do the same for

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

12.14. I made the observation that it would be preferable if another way of recusal of the executives was applied as suspensions will likely bring instability into the organization and anxiety among investors. I committed to look into the company Human Resources rules for this purpose.

12.15. The President then suggested that I take this proposal to be looked at by the Board. He will in the meantime inform the Minister of these developments.

12.16. Ms Myeni seemed to have intimate knowledge of what was discussed in the War Room, though I did not know how she came about this knowledge.

12.17. The War Room was attended by Ministers and officials of a number of Ministries as well as Eskom executives.

12.18. From Eskom the attendees of the War Room were selected by the Executive Committee of management.

12.19. Matters discussed at the War Room were kept private and confidential

12.20. There was never any discussion as to who should be suspended. This decision was made somewhere by others before I became involved.

12.21. The individuals chosen for suspension were the Chief Executive Tshediso Matona, Group Capital Head Dan Marokane, and Technology and Commercial Head Matshela Koko.

12.22. My assessment is that each attendee had an interest in the creation of the Eskom inquiry with the exception of Talent who did not speak throughout.

13.

Interaction with Mr Linnell

13.1. I was introduced to Nick Linnell by Ms Myeni at the residence of the President in Morningside, Durban. He was said to be a lawyer.

13.2. Ms Myeni informed me that Mr. Linnell had assisted her before at SAA with issues she needed to be solved, and that he will be in a position to assist us at Eskom. I assumed that this is the reason that Nick Linnell was invited to the meeting.

13.3. At the end of the meeting with the President, Nick suggested that he would prepare a memorandum on the process to be followed, and an associated resolution for the Board.

13.4. Prior to this meeting, I had never met Nick Linnell.

13.5. Mr. Linnell and I worked closely once I had the opportunity to present the idea of the inquiry to the Board. He decided to travel directly to Johannesburg from Durban instead of going home to Cape Town first. On the morning of the Special Board meeting on 9 March, he was available on standby at my request should he be required to brief the meeting. On the Wednesday 11th March Board meeting he was present and responded to some questions on the Resolution he had prepared which had been circulated during the Monday 9th meeting.

13.6. Mr. Linnell continued to provide advice throughout the time of the work towards the suspension of the executives and beyond until I resigned. He stressed the importance of credibility in addressing this matter

13.7. Mr. Linnell first produced the memorandum which was setting out the rationale for the inquiry and the attendant resolution for the Board. He also produced and shared the letters of suspension of the executives, the press release and a draft Terms of Reference for the inquiry.

13.8. I did not give Mr. Linnell any mandate.

13.9. When he appeared before the Board, he was requested by some Board members to assist the People and Governance and Audit and Risk Sub-Committees.

14.

Board meeting of 9th March 2015

14.1. The Board meeting of 9 March was convened in response to the visit I had to the President's residence as I have described.

14.2. Given that the President had asked that I canvass this proposal for an Inquiry with the Board, I decided to call a Special Board meeting to test the Board's appetite for this proposal.

14.3. At the Special Board meeting of 9 March 2015, I informed the Board that I had been summoned to the President's residence for a meeting wherein the proposal for an Inquiry into the state of affairs of the company was made.

14.4. At the meeting doubt was cast on the quality of information that was coming from Eskom to the War Room.

14.5. The Board is being requested to consider instituting this Inquiry such that it is unfettered by management and other stakeholders.

14.6. I also presented the resolution that was prepared by Nick Linnell.

14.7. In the course of the discussion by the Board, I proposed that the Board invite the Minister for her to give the Board guidance on this matter.

14.8. Mr. Linnell had prepared a Memorandum which I had circulated to Board members in advance of the meeting. This document was presented and discussed at the meeting.

14.9. Mr. Linnell had offered to prepare the resolutions and I requested him to go ahead with the work so that I have something to present to the Board.

14.10. At the end of the Board meeting, it was concluded that the Minister be invited to engage with the Board on this matter.

14.11. To the best of my recollection, I contacted the Minister at the conclusion of the Board meeting.

14.12. The request for the Board to meet with the Minister meant that it was at the convenience of the Minister that the meeting will take place. Consequently, the meeting was agreed for the 11th March to accommodate the Minister's schedule.

15.

Board meeting of the 11th March 2015

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

15.2. Mr. Linnell spoke on the resolutions which stemmed from the memorandum he had developed. The resolutions were circulated to Board members in the meeting of 9 March 2015.

15.3. Mr. Linnell was requested by me to introduce the idea of the inquiry to the Board. Board members asked a number of questions for clarity.

15.4. It is also at this meeting that the Board requested Nick to work with the 2 Sub-Committees that were mandated to pursue the Inquiry matter.

15.5. The Minister joined the Board meeting of 11 March by invitation from the Board. She was already aware of the idea of an Inquiry and she supported it. She gave the Board the authorization to proceed with it. (The minutes of this meeting are missing)

15.6. The Minister mandated the Board to carry out the suspensions of the executive. She even added the name of the Financial Director who was not part of the original 3 executives identified in the meeting at the President's residence. She further mandated the Board to carry out the Inquiry.

15.7. The Board deliberated on how the inquiry should proceed. It agreed on the need to have the executives whose area of responsibility would be inquired into be set aside for the duration of the inquiry.

15.8. The limitation of the human resources rules meant that the executives would have to be under precautionary suspension as there was no other method of recusal available.

15.9. The individuals who were to be suspended were identified as the Chief Executive Mr. Matona, Group Capital Executive Mr. Marokane, Technology and Commercial Executive Mr. Koko, and Financial Director Tsholofelo Molefe.

15.10. The Audit and Risk Committee was mandated to be responsible for setting up the terms of reference of the inquiry, and the People and Governance Committee would manage the process of suspensions.

15.11. The People and Governance Committee was to look into who would act in the positions of the suspended executives.

15.12. In order to mitigate any negative impact the suspensions may have on the Company; the inquiry was set to be completed in 3 months from inception.

15.13. It was agreed that the Terms of Reference which would form the basis for the inquiry should be developed by the Audit and Risk Committee.

15.14. When the Terms of Reference were being decided upon and subsequently drawn up, I was no longer involved and left whist this process was in progress.

15.15. The basis of the suspensions of all the executives was the same. The idea was that none of them were to be able to gain unfettered access to the company for the duration of the inquiry to ensure that the work of the inquiry is not interfered with.

15.16. The executives were individually called to appear before the People and Governance Committee and informed of the suspensions.

15.17. The letters of suspension were read out to them. I assured each one that their suspensions were not occasioned by any preconceived wrong doing on their part.

15.18. The executives were not given more than the time of their appearance before the committee to deliberate on the suspensions.

15.19. I arrived at the People & Governance Sub-Committee shortly after it had started and on my arrival I found Ms Chwayita Mabuda Chairing the meeting. She pronounced the names of the executives who were going to act. There was no discussion as to which executives were suitable to act. At some point Ms Klein took over the proceedings. I was asked to handle the suspension presentations to the executives.

15.20. I objected to the inclusion of the name of the FD to the list of executives to be suspended as I felt this would create a problem with our investors and lenders. In so doing, I was exercising my fiduciary obligations in the interest of the Company. However, I was outvoted by my fellow Board members.

15.21. It was Dr, Ngubane who responded that the name was provided by the Minister whereupon I decided to call the Minister to register my objection.

15.22. The Minister insisted that the name of the FD be included.

15.23. I objected to the name of Khoza as acting Chief Executive as he was a Board member given the experience from the previous board of appointing a Board member to the Acting CE's position. He himself stated that he did not feel up to the responsibility.

15.24. Notwithstanding anything, it appeared that these names were cast in stone and no amount of objection was going to change the list.

15.25. The executives designated to act were Khoza as CEO, Nonkululeko Veleti as FD, Abram Masango as Group Capital Executive and Edwin Mabalane as Technology and Commercial Executive.

15.26. It was clear that the People and Governance Committee played no role in the selection of the executives who were to act.

15.27. There appear to be some errors and omissions in the minutes of this meeting. I am sited as having chaired the meeting. My recollection is that the meeting was chaired by Chwayita Mabude. Further, the minutes make no mention of the pronouncement of the executives who were going to act, including my objections.

16.

Acting positions

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

17.

Dentons investigation

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

18.

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

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

18.2. Response: I traced the history of Nick Linnell's activities from the time of the 9 March Board meeting, the support he gave to both the Board and the ARC and P & G Sub-Committees. P & G declined to deal with the matter of Mr. Linnell's appointment but instead preferred that the Board handle it. Mr. Linnell could only be considered employed by the Board if he had a written letter of appointment or contract signed by the Chairman, or had received some remuneration or compensation for the work he had done for the Board.

18.3. Charge 2: The consultant commenced with his work to the knowledge of the Director and without the Board of Directors being informed that the work had commenced within the Company. The Director was aware that no contract of engagement for the Consultant had been concluded, thus exposing the Company to non-compliance with applicable statutes and procedures.

18.4. Response: Mr. Linnell was merely assisting the Board pro bono. Commencing work is only possible if it is triggered by some action of engagement by myself or the Board. Incidentally, by the same token, Mr. Kumalo, a Board member, organized a media specialist Mr. Happy Ntshingila to review a media statement that had been produced by the P & G.

18.5. Charge 3: The Director authorized the commissioning of a media statement in relation to an inquiry into the affairs of the Company with the assistance of the Consultant without the knowledge and consent of the Board. The media statement consequently fell into the public domain. The media statement contained numerous inaccuracies and misinformation which may lead to the company facing potential legal action from third parties named therein.

18.6. Response: I informed Mr. Linnell that the Minister of DPE had called me to request that I correct the misconception in the public domain that I would be leading the Inquiry. This was necessary for the integrity of the Inquiry. I requested Mr. Linnell

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

18.7. Charge 4: The Company is in the process of establishing the Inquiry and the Director's actions put the integrity of the process and the Inquiry itself at risk. The Director's conduct has undermined the reputation of the Board.

18.8. Response: The idea of the Inquiry had been accepted by the Board. At no stage did the Board not know what was happening. A number of the steps the Board took were as a result of the advice of Mr. Linnell. I consulted the Board on this matter as a result of the instruction from the Minister.

18.9. Charge 5: The Director's actions did not meet the minimum requirements of the standard of care expected of him as a director of the Company and a member of the Board.

18.10. Response: I am of the view that the Inquiry was necessary in the public interest to indicate to the public that the Board was looking into the affairs of the Company. My letter of 26 March provide3d specificity around my action.

19.

My resignation at Eskom

19.1. Following the Board meeting of 30 March 2015 where charges against me were proffered, there was an In-Committee meeting wherein the Board took a decision to remove me as a Director.

19.2. I was approached subsequently by a delegation of the Board consisting of Mr. Khumalo and Dr. Ngubane. They informed me of the Board's decision, and persuaded me to accept it and that we would jointly draft a press statement confirming mutual agreement of an amicable separation, whereupon I decided to consult with my legal team.

19.3. Notwithstanding that my legal counsel concluded that the Board had a weak case against me, I decided not pursue the matter any further. I reasoned that because the Company was by then in a precarious position, it would be in the interest of the Company for me not to exacerbate the situation by thrusting it into a legal battle for my own personal gain.

19.4. I returned to the Board In-Committee meeting whereupon I tendered my resignation.

19.5. I stated that, as a director of the Company, I am entitled to payment of my legal defense as this was a Company matter, to which the Board concurred.

19.6. I asked that I be paid the balance of my term as Director, as I had 3 months left of it. The Board responded that remuneration of Directors is the competence of the Minister. They would recommend it but the Minister would have to approve.

19.7. I asked that retain the Company cell phone and tablet with the understanding that I would pay for their use. The Board agreed to this proposal.

19.8. A few days later after I had left Eskom, I was approached by a media organization for an interview. In the interview, I alluded to the fact that I believed that Minister Lynne Brown had a hand in my departure from Eskom.

19.9. Shortly thereafter, Dr. Ngubane called me to inform me that he had passed on my request for payment to the Minister. He further stated that, if I did not retract my statement I made about the Minister, I would not get paid.

19.10. Indeed, a week or so later, he called for us to meet, whereupon he showed me a one sentence letter from the Minister addressed to him saying that my request for payment had been declined.

19.11. Since the release into the public domain of the Gupta emails, it has come to my attention that reference was made to communication between Dr. Ngubane and a certain Mr. Howa who was then the editor of the New Age newspaper. It stated that Mr. Howa would assist Dr. Ngubane in drafting a media statement detailing my departure from the Eskom Board. This communication took place some 10 days before the matter of my resignation from the Board was discussed.

20.

Salim Essa

20.1. My first encounter with Mr. Salim Essa was at one of the TNA Breakfasts sometime around mid-2014. He was introduced to me by Tony Gupta as one of his business associates.

20.2. On one occasion thereafter, a company called Regiments had made an unsolicited offer to Eskom to raise much needed funds for Eskom via a methodology called

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

20.3. The other occasion was when the new Board came into being where I was required to place Board members in Sub-Committees of the Board. Salim Essa sent me his configuration and asked that I pass it on to the Minister as my submission.

20.4. I quietly ignored his submission and sent mine to the Minister, whereupon the Minister responded with the exact submission I had received from Salim Essa.

20.5. I kept going back and forth with this process of chopping and changing the allocations with the Minister, until she called me to a meeting. At the meeting was Salim Essa and Tony Gupta. She merely informed me that the Board allocations will be the way she had sent them to me. This she did in the presence of these 2 gentlemen.

20.6. I do not know if Mr. Essa had any involvement in my resignation from the Board.

20.7. Mr Essa was never present at any of the meetings I had with Tony Gupta.

21.

<u>The appointment of Mr Matjila as Interim CE</u>

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

21.2. The Board further decided to propose Dr. Steve Lennon to act in the position.

21.3. The reason for the choice of Dr. Lennon was because he had extensive experience of Eskom's business and that he had stated that he would not be contesting the position.

21.4. The Board duly mandated me to seek the concurrence of Minister Gigaba on the acting position by Dr. Lennon. The Minister initially agreed to the proposal.

21.5. Shortly before Brian Dames was to leave at end of March 2014, Minister Gigaba berated me over the phone for the choice of Dr. Lennon, saying that appointing a white man would prejudice the ANC's chances of attracting voters for the general election due in a few months.

21.6. The Minister informed me that he had decided to propose that Colin Matjila should act in the position of CE.

22.

T-SYSTEMS

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

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

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

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

Zola Tsotsi — Date: 13/02/20

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

7158813-1 CSG
C.P. Boyce.

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
MIC
13 FEB 2020
MTHATHA CENTRAL SAPS
AMAPOLISA ASEMZANTSI AFRIKA

TO	**:**	Acting Chairman: Portfolio Committee of Public Enterprise Parliament of the Republic of South Africa, Cape Town Attention: **Hon DZ Rantho, MP** Email: dmocumi@parliament.gov.za
FROM	**:**	**Ms. Dudu Myeni**
DATE	**:**	05 March 2018

BY EMAIL

STATEMENT TO THE PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISES

1. PURPOSE

1.1. This document is a response to the "Invitation" letter directed to me from the Portfolio Committee on Public Enterprises (hereinafter to be referred to as the "Portfolio Committee" or "Committee") dated 21 February 2018.

1.2. This document is also a formal submission of my Statement (hereinafter to be referred to as the "Statement") to Portfolio Committee on Public Enterprises in response to the allegations made against me by a former Chairperson of Eskom Board.

2. BRIEF INTRODUCTION AND BACKGROUND

2.1. My inability to appear before the Committee as originally envisaged for 28 February 2018 was communicated to your Committee Secretary through a formal letter, which apparently did not get received by the Committee Secretary. Sending an SMS was because I realized that the email was stuck on the outbox, and it was late, to find any internet outlet opened. I do apologize for sending an SMS to the Committee Secretary.

2.2. The Statement addresses the allegations as per the transcripts and Statement made by former Eskom Chairman, Mr Zola Tsotsi (hereinafter to be referred to as "Mr Tsotsi" or "Tsotsi").

2.3. The Statement will demonstrate that I had, at all material times, conducted myself with an unquestionable integrity and not in a manner that Mr Tsotsi had sought to impugn my dignity through his unfounded allegations.

STATEMENT TO THE PORTFOLIO COMMITTEE ON PUBLIC ENTERPRISE

1. I would like, at the outset, to express my profound gratitude to the Portfolio Committee of Public Enterprises for affording me the opportunity to respond to the allegations made against me. I appreciate this opportunity as it affords me sufficient space to put matters into context in order to clear my name on the allegations by Mr Zola Tsotsi, which allegations, contained in Mr Tsotsi Statement. I will demonstrate in this Statement that Mr Tsotsi's allegations have not been substantiated and that he was reckless and his Statement is a fabrication. I will rely on my memory as I have not received minutes of meetings, or written directives from the Former President, or the list referred to, of Names of Executives handed to Mr Tsotsi by me at the Durban meeting as alleged.

2. My immediate reaction, when I received from your esteemed Office, the Statement filed by Mr Tsotsi as well as the transcripts of his testimony, was that he undertook the task of appearing before your Committee as extemporaneous, without serious reflection on the issues he would ventilate and he did not consider the ramifications of doing so. His Statement is, in my deduction, a fabrication, contempt to the Committee. He was, in his entire appearance reckless, in my view.

3. I wish to firstly place on record, that I take umbrage about the manner in which Mr Tsotsi had chosen to use his appearance in Parliament to make allegations which are untrue and wholly unfounded. I hence wish to express my utmost dismay and disappointment at his utterances.

I submit that the Statement he filed before your Committee is unsubstantiated with a conspicuous omission of objective facts, and without evidence to adduce, holding that his Statement should be declared as injurious, untrue, and vexatious. Nowhere in his Statement is he making reference of any objective evidence to prove his allegations.

His utterances are misleading to the public and indeed one tends to question his motive. The decisions he alleges were taken, per my instruction are too serious, as such, am shocked that he would simply forget his role and responsibilities, as a matured, experienced and seasoned Chairperson of the Board of the largest SOE.

4. Secondly I also want to state categorically to the esteemed Committee that I had at no stage called Mr Tsotsi requesting a meeting, contrary to his futile assertions. His Statement is fatally flawed and is not assisting to provide evidential proof of my request to the meeting in question. I want to put it on record that Mr Tsotsi is the one who was desperate to meet me and not the other way round. The truth is that it was he (Mr Tsotsi) who tried desperately to get a meeting with me using a third party. It is also factually true that it was a result of Mr Tsotsi's insistence that I eventually acceded to his meeting request, which eventually took place in Durban. This meeting was not the first meeting, and this is not mentioned anywhere in his statement. Again the date of the said meeting in Durban per his submission is not accurate. What is really the motive?

5. I further wish to place it on record that former President JG Zuma had at no stage ever instructed me to fire any person whether at SAA or anywhere else, contrary to Mr Tsotsi's nugatory claim that Mr Zuma issued such instructions. That omitted instruction by the former President does not exclude Eskom. At the level of the Former President, one would expect a written directive to the Minister of Chairman of the Board. Also important to state is that I never ever expressed a wish (let alone a demand) to Mr Tsotsi or anyone to dismiss any person from their employment, either at SAA where I was a chairperson of the Board or anywhere else outside of the SAA, including employees – past and present – at Eskom. When Mr Tsotsi made this allegation, he should have provided you with hard evidence to prove that former President issued such an instruction regarding dismissals or suspension of executives at Eskom. Let Mr Tsotsi objectively prove this allegation.

6. The allegation expressed by Mr Tsotsi that I was engaged in a plan or process aimed at causing some executives fired at Eskom is not only untrue, ludicrous but such an allegation is bordered on nothing other than his hubris. I have had no role of any kind at Eskom, as it is a factual position that I neither worked at this SOE nor was I ever a member of its Board. It is thus my submission to the Committee that sense should prevail in the mind of any reasonably thinking person to understand that in my capacity as the then Chairperson of another Board, being the South African Airways, I would not possess any authority to get involved into and/or exert any influence into the affairs of any State Owned Entity, including Eskom.

I believe it should impress on any reasonable person to deduce that my previous role at SAA and the presumption of my role in Eskom in terms of causing some executives to leave, are legally immiscible and incongruous. Why would Mr Tsotsi agree to such instructions? What was being hidden here? Does this mean that Mr Tsotsi became a Chairman of the Board of Eskom without understanding the roles and responsibilities of a Chairman, or at least a Director? Can we simply believe that anyone at his position could simply be instructed, while having no role in an entity such as Eskom? Why did Mr Tsotsi be naïve and get misled? The allegation that I had attempted to interfere in internal processes of Eskom is therefore fatally preposterous and is perhaps made with malicious motive by Mr Tsotsi.

7. The allegation that I gave Mr Tsotsi a *list of names* of Eskom executives which he should dismiss is utterly false. It should thus be inconceivable to believe that a person of the calibre of Mr Zola Tsotsi who is an experienced professional could allow someone to instruct him to fire executives in a company over which he presides as Chairperson. This claim is absurd and thus begs a question as to what in fact Mr Tsotsi is concealing to the Committee. The names mentioned are people I had never met before, except for the then former DG of Public Enterprises who was at Eskom.

8. I maintain that I have no knowledge of the Executives mentioned in the Mr Tsotsi Statement nor would I be privy to any acts of wrongdoings these individuals might have allegedly committed within Eskom.

It would have been easier for me if I had been given minutes and the said list list in question which is alleged to have been compiled by me. I should also mention that the two matters which was worrying Mr. Tsotsi was his ousting by the Board, and the "Load Shedding". In his statement he is conspicuously silent on these two matters.

9. The substantive basis of my meeting with Mr Zola Tsotsi, former Chairperson of Eskom are summarized as follows:-

(a) As I mentioned above, Mr Tsotsi requested to meet me, seeking an advice and guidance around the legal and governance issues at Eskom.

(b) He insisted that he wanted to act fast to remove some executives at Eskom, failing which he said he feared that the board would remove him. However it did not come out clearly why the Board would want to get rid of him. He subsequently resigned, but he did not state the reasons why he resigned.

(c) The position I articulated to Mr Tsotsi was that no Board Chairman could be removed without reasons, if he had not done anything wrong. Secondly, no Chairman of the Board can act alone on such serious matters, which would affect executives or any matter affecting the company. I still maintain that position.

I pointed out to him that Boards and Board Chairpersons should operate within the regulatory framework in terms of company policies that ought to be followed at all times. The board needed to be taken into confidence, and ultimately, has to take a resolution on all matters, within the confines and limitation of the company policy framework. I mentioned to him that decisions of such nature would require sound and solid legal advice.

(d) Mr Tsotsi asked me whether I had a legal adviser in my previous capacity as the SAA Board Chairperson, I told him that my legal advisor would tell him the same thing. At this meeting, there was no legal advisor, and this Statement of Mr Tsotsi does not mention this, by mistake or deliberately. He insisted that I introduce him to my legal advisor which I subsequently did. My advice was further confirmed by the Legal Advisor, and that he had no powers to hire and fire people willy-nilly, and he could not appoint even the legal advisor without the Board approval. At this meeting I did mention to Mr Tsotsi that he has to advise the Minister of what he was planning to do. All this was done genuinely, without knowing that it was perhaps a “set up”. Who knows?

(e) I was shocked when i read a Statement before the inquiry where Mr Tsotsi stated that he was summoned by the former Chairperson of SAA and given instructions and that the former President JG Zuma was in the meeting. It's a misleading statement and totally untrue, as I mentioned already. Mr Tsotsi should provide at least the *minutes* of such a meeting where the President was

participating, issuing verbal instructions, and by-passing the Shareholder Minister and the Board, something unheard of.

10. I hereby submit to the Committee by putting it on record that Mr Tsotsi had been apparently facing numerous problems, as alleged, in his previous role as the Chairperson of Eskom. He has deliberately deflected from his problems by using both my name and that of former President to *conceal* his deep seated problems. This raises this pertinent question: Why did Mr Tsotsi resign from Eskom? I submit that the statement given to the Portfolio committee by Mr Tsotsi is inaccurate and misleading to the public.

11. On the internal Eskom matters, I respectfully deny any knowledge on my part, as alleged about Eskom's managerial, financial or operational issues. With the benefit of hindsight, Mr Zola Tsotsi must declare in public why he was worried about load shedding, and why he did not explain to the Committee why he decided to resign his position at Eskom. Why did the board want to remove him?

12. It might help that Mr Tsotsi declares his personal involvement in Eskom's business so that he does not join the chorus of those wishing to implicate some people to cover up their own corruption by hiding behind certain names, like former President Zuma has become obloquy (a badly spoken person) in the modern day South Africa.

13. THE FACTUAL INACCURACIES OF STATEMENT BY MR ZOLA TSOTSI ABOUT MEETING WITH ME

i. First it is factually true that Mr Tsotsi met me, at his request as stated above, in Durban, but not in the presence of my son as he alleges. I met him in the presence of the person who was advising us legally. I introduced Mr Tsotsi to Mr Linell.

ii. Secondly it is factually untrue that I was leading the meeting. I did not outline any purpose of the meeting as alleged by Mr Tsotsi. He had wanted me to introduce him to a legal advisor who happens to be Mr Linell. I had already briefed Mr Linell why we had to meet the Chairperson of Eskom. It turned out that most of the things, points I raised to Mr Tsotsi was correct according to Mr Linell. There were certainly no short cuts especially if you were worried about being removed and also if you had things to hide.

iii. Thirdly the Former President was not part of my meeting with Mr Tsotsi at any point. The President greeted us in the room where we were. The burden of proving that the former President was part of the meeting rests on Mr Tsotsi who should provide the *minutes* or evidence of the Former President's involvement in that meeting. He can also empower me on pleasantries he refers to on the side of the Former President.

iv. Fourthly I need to stress that my being at the Former President's Official Residence in Durban was as per a prior commitment for a meeting on a different matter, which had nothing to do with Eskom or SAA.

v. Furthermore it is not true that I have had a prior knowledge of financial performance and operational matters of ESKOM other than the information Mr Tsotsi voluntarily shared with me, including but not limited to “Load Shedding.” The claim by Mr Tsotsi that I spoke about a War Room of ESKOM is totally untrue.

vi. I should further state that the most pressing issue was not about ESKOM but was about Mr Tsotsi himself. Prior to that meeting, he had shared with me his concern that the Board wanted to get rid of him, and that some executives at Eskom should be dismissed. He therefore needed help (of legal nature) urgently.

vii. I need to reiterate that I do not know ESKOM executives, nor did I know any of their acts of alleged wrong doing. I was there to advise him as a colleague at his behest, and hence I introduced him to a legal adviser at that meeting in Durban.

14. CONCLUSION

In concluding I wish to apologize for being unable to appear before the Committee on 28 February.

I would like to assure the Hon Acting Chairperson that I respect the Members of the Portfolio Committee and Parliament. I had, at all material times, conducted myself with an unquestionable integrity and not in a manner that Mr Tsotsi had sought to impugn my dignity through his unfounded allegations.

I hope that this Statement will be welcomed by the esteemed Committee

Ms D Myeni

_____

05 March 2018

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

MINUTES OF THE ESKOM BOARD MEETING AND WORKSHOP B14-2014/15 HELD ON 9 MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 10H00

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Board Chairman
Mr NT Baloyi	Member
Ms N Carrim	Member (Tele-conference)
Mr Z W Khoza	Member
Mr R Kumalo	Member
Ms C Mabude	Member
Mr T Matona	Chief Executive
Ms T Molefe	Finance Director
Dr P Naidoo	Member
Ms V Naidoo	Member
Dr BS Ngubane	Member (Tele-conference)
Mr MV Pamensky	Member (Tele-conference)

APOLOGIES

Ms V J Klein	Member

BY INVITATION

Mr F Ndou	Acting Divisional Executive: Office of the Chairman

IN ATTENDANCE

Mr L Dlamini	Senior General Manager: Office of the Chairman
Mr M Phukubje	Company Secretary
Mr N Tsholanku	Senior General Manager: Regulation and Legal
Mr W Venner	Committee Secretary

1. OPENING AND WELCOME

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

2. APOLOGIES

There were no apologies noted.

3. QUORUM

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

4. DECLARATIONS OF INTEREST

There were no declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

The agenda was approved.

7. STRATEGIC ISSUES

7.1 External and Independent Enquiry

A Memorandum detailing the current status of events around Eskom was tabled for information, details of which had been circulated to members. The memorandum included resolutions around the establishment of an External and Independent Board of Enquiry for Eskom, at the request of the Presidency.

The Chairman reported that the Presidency had expressed a concern that the impact of Eskom and power on the country was being understated. In this regard it was felt that the Board had to be certain that it received accurate information from management for all issues and initiatives. Once the Board had the information it would have to make decisive resolutions.

He had been requested to request the Board to authorise and mandate an independent, external enquiry to establish the facts of the current difficulties. This enquiry would have to be unfettered by management and the Board and other policy stakeholders. It must be seen to be credible and objective and have a mandate to be penetrating and unhindered.

The Chairman took members through each of the resolutions proposed as follows:

1. "That this Board resolves that there are exceptional circumstances demanding the necessity for an urgent meeting of the Board of Directors. Ordinarily notice of at least 7 days is required. Due to these exceptional circumstances (recorded in the memorandum) this Board resolves to accept short notice and to receive and consider the notice and resolutions of this meeting.
2. That this Board resolves that an external and independent enquiry be set up to investigate and determine the facts relating to the current technical, commercial and

structural status and any acts and/or omissions that have contributed to the current deficiency of generating and distribution capacity of Eskom.

3. That the Board resolves to appoint a Board subcommittee comprising Zola Tsotsi, Chairperson of the Board, Ms Chwayita Mabude, Chairperson of Audit and Risk Committee and Zethembe Khoza, Chairperson of People and Governance Committee, mandated with delegated authority of the Board to determine the terms of reference of the enquiry; the selection, mandating and contracting of the independent investigators; and the oversight of the enquiry. The subcommittee shall have the Board's delegated authority to take all such steps and measures as the subcommittee deems necessary to ensure the unfettered fulfilment of this mandate, as the board itself would have such power and authority, and further, without limitation, to ensure that the environment within the Company does not hinder or create a perception of hindering the enquiry and to take all such necessary steps to ensure such.
4. That the Board authorises the Chairperson in consultation with the Minister and the Minister of Finance to approve expenditure sufficient and necessary to fund this enquiry.
5. That this enquiry shall be required to present its final report to the Board, the Minister and the Presidency no later than the 30th June 2015.
6. That the subcommittee shall have the authority to deviate from the requirements of Eskom's Procurement Policies and Procedures as is necessary given the target to complete the investigation within 3 months (urgency) and to appoint such persons or entities to conduct the enquiry that are independent of Eskom and free of any influence or suspicion of influence of any party that might have any effect on the enquiry, save that the subcommittee shall if required provide reasons to the Ministry of Finance for any such deviations."

It was recommended that Resolution 4 should refer to the Finance Director and not the Minister of Finance. The Chairman reported that an independent resource had been identified already by the Presidency for Resolution 6. He reported further that the Presidency had done all the legal and governance work to facilitate this resolution and he had a document in that regard.

A member stated that he was not comfortable with making major decisions based only on a two page document and there had been no opportunity to discuss the issue in an In-committee session. He was also against approving resolution 6. Furthermore the Board had not had an opportunity to discuss the entire issue in an in-committee session or discuss the policies around procurement and tenders. The Board was being asked to approve the implementation of a sub-committee with wide ranging powers and he felt that he could not agree with this request.

Another member stated that he was concerned that this enquiry would take 3 months and would also take up time from both Board and management which would deviate the focus from their normal duties. This may also result in causing initiatives that were on track no

longer being so because of the deviation in focus. He stated further that the Board had received a significant amount of information from management. One positive point to note was that the CE and FD had not been long in their positions and therefore their participation had been very positive.

A member stated that the Board required facts but to date had not had a proper Board meeting. In this regard the Board should make a call but if the shareholder made the decision around this committee, he was comfortable. However then it would not be necessary for the Board to make a decision thereafter. He also stated that Board would have to understand how this would affect the critical issues between the Board and the War Room, while at the same time the Board would be dealing with load shedding. He was therefore of the same opinion as Dr Ngubane that he could not approve the resolutions.

The FD stated that it would be necessary to unpack the scope of work before implementing the sub-committee. It would also mean having to look for cash to pay for the sub-committee as well as justify the funding. The instruction around funding would have to be given in writing in order to protect the Board.

A member was of the opinion that this should have been a directive to the Board from the Presidency or the DPE. In this regard the resolution should state that the enquiry was a request from the Presidency.

Another member stated that the Board should meet with the Minister of Public Enterprises ("Minister of PE") to understand what her expectations were from this enquiry. It was agreed further that clarity was required as to whether the Board would continue with its normal duties while the enquiry was underway, as to date no reason had been given as to why the Board meeting of 26 February 2015 had been cancelled by the Minister of PE. Clarity was also required in respect of the Board's obligations to the War Room.

It was reported that the Audit and Risk Committee had emphasised that the Board needed to review the sitting process of the War Room as there was no alliance or alignment between the Board and the War Room. Members wanted to ascertain the Shareholder's view around this issue because at present the Board had still not held a Board meeting and would need to understand the scope of work and how the committee would function. A concern was raised that the committee could usurp the Board's powers.

It was noted further that the War Room had been established as a result of a Cabinet decision and answered to Cabinet and had the authority to implement solutions to the electricity crisis. Therefore there was some confusion as to what was expected out of this committee as it would also report to Cabinet. Furthermore the War Room also had a plan to implement a Board of enquiry to look at the maintenance of generation plant. It was noted further that deviations from procurement processes were allowable when warranted and justifiable. But it would be necessary to understand why the Presidency required this deviation for this committee.

The Chairman stated that in regard to the nature of what the Board was being requested to approve, it would be prudent to expect a direct communication from the Shareholder around this issue in writing. Therefore the Chairman undertook to discuss the feelings of members that the request for the establishment of an External and Independent Board of Enquiry for Eskom should be formalised by the Shareholder either in writing or at a formal meeting. Once this had been formalised the Board would decide how it would be implemented. It was agreed further that the Board was supportive in principal of the request but that there had to be alignment between Board, the War Room and clarity was required around the Terms of Reference, the scope, objective and expected achievement of the Board of Enquiry. This would inform how the Board would respond.

The Chairman reminded members that at the Board induction it had been recommended that the Board should meet with the Minister of PE more often. He noted further that he was also concerned that the Board meeting of 26 February 2015 had been cancelled and still needed to take place. A member stated that Board committee meetings were proceeding but without a formal Board meeting the committees were effectively operating without a mandate.

The Company Secretary advised members of the statutory requirement around the Corporate Plan. An extension for submission had been requested for submission of the Corporate Plan from the Shareholder but there was uncertainty as to whether this would be approved by government. The FD noted further that the risk around the borrowing programme had to be noted by the Board before it could be submitted to the Shareholder for further submission to National Treasury for approval and this was required before 1 April 2015.

The Chairman reported that a previous letter to the Minister of PE had stated that following a request by members that more frequent meetings should be held between the Board and the Minister of PE. It was recommended that another letter be sent advising of the deadlines around regulatory submissions to the Shareholder and National Treasury.

After some discussion it was agreed that the Board would advise the Minister of PE that they wanted to proceed with the formal Board meeting and would request that it not be cancelled by the Shareholder.

Resolved that:

1. the request for the establishment of an External and Independent Board of Enquiry for Eskom is noted;
2. the Board should engage with the Minister of Public Enterprises around the following issues before the establishment of the Board of Enquiry;
   2.1. obtain clarity around the Terms of Reference, the scope, objective and expected achievement of the Board of Enquiry;

2.2. the Resolution should refer to the Finance Director and not the Minister of Finance around approval of expenditure sufficient and necessary to fund this enquiry;

2.3 obtain clarity as to whether the Board would continue with its normal duties while the enquiry was underway;

2.4. obtain clarity in respect of the Board's obligations to the War Room;

2.5. ascertain the Shareholder's view around the sitting process of the War Room

9. CLOSURE

There being no further matters for discussion, the Chairman declared the meeting closed at 11h15.

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

CHAIRMAN: _____ **DATE:** 18/11/16

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

MINUTES OF THE ESKOM BOARD IN-COMMITTEE MEETING HELD ON 11 MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 12H00

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Chairman of the Board
Dr B Ngubane	Member
Ms V Naidoo	Member
Ms N Carrim	Member (Left early)
Ms V Klein	Member
Ms C Mabude	Member
Mr Z Khoza	Member
Mr N Baloyi	Member

APOLOGIES

None

IN ATTENDANCE

Mr M Phukubje	Company Secretary
Mr N Tsholanku	GM: Legal & Regulatory
Mr N Linnell	External Consultant

1. OPENING AND WELCOME

The Chairman opened the meeting and welcomed all those present.

2. APOLOGIES

Apologies as indicated above were noted.

3. QUORUM

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

4. DECLARATIONS OF INTEREST

There were no other declarations of interest pertaining to items on the Agenda.

5. SAFETY AND EVACUATION PROCEDURE

The safety and evacuation process to be followed in the event of an emergency was presented and noted.

6. APPROVAL OF THE AGENDA

There was only one item on the agenda, which was to discuss the issues which arose at the meeting with the Minister of Public Enterprises.

7.1 BOARD IN-COMMITTEE SESSION

A number of issues were raised in the In Committee session, being as follows:

- It was proposed that the P& G Committee initiate a process and that the ARC be responsible for the ultimate forensic element of the inquiry;
- It was agreed, confirmed and resolved that the ARC be the custodian of the process and to engage with other committees where it was necessary to do so.
- The Chairman highlighted the view that it may be necessary for employees whose areas are implicated to be requested to step aside whilst the inquiry was proceeding. A question was asked about what effect this would have on the operations of the business. Members also discussed the possible impact on continuity this approach would have on the company's business activities.
- It was noted that there had been a trust deficit and that people who may be to blame would not want the truth to be found and findings to be made. The Chairman outlined a number of misdemeanours allegedly committed by some executives. It was pointed out that these issues needed to be investigated forensically but that the executives who are responsible for those areas not be around during the inquiry.
- A member pointed out that a fact finding exercise should be undertaken before actual suspensions are implemented and this was to avoid acting against possibly innocent executives. If Eskom acts hastily then it will find itself in the spot and having to fight cases in the Labour Court, so the Board needed to exercise great caution.
- The executives identified initially as being likely to be requested to step aside are the GE: Commercial and Technology, GE: Group Capital, FD and the CE. It was pointed out that it would be advisable to have sub-committees discussing the matters first and then ensuring that proper processes were followed. The Chairman reported that a lot of groundwork has been done and a report can be given to Board members at a later stage. The most important thing is that the inquiry is done and that it should be done soon. A Member pointed out that it would be worrisome, especially in the market, for Eskom to suspend the FD and the CE at the same time. That would not be ideal. It was stated that the FD had an issue around her as she had allegedly met with tenderers during a tender process.

- It was noted that the inquiry is not about individuals but rather was intended to focus on areas of responsibility. That was the rationale for letting those responsible for the said areas go on leave for the duration of the inquiry.

- It was proposed that the relevant Board Committees deliberate on the matters and issues and then revert with recommendations to the Board.

- It was then resolved that the inquiry should proceed, that the executives concerned should be put on leave and that the ARC and the P&G should work on the ToRs.

- The P&G Committee was then mandated to look into who should act in the absence of the executives who would be on leave and make the necessary decisions.

- It was agreed that the Corporate Plan and the Borrowing Programme be deferred.

- It was also resolved that management must investigate the issue of the bugging of the Boardroom as well as information leaks and come up with a report to be presented to the Board.

RESOLVED that:

- An inquiry be instituted into the affairs of Eskom and that the duration of the inquiry shall be three months;

- The ARC take custodianship of the inquiry and P&G Committee and other committees assist where necessary and report to the Board. The ARC is mandated to draft the Terms of Reference, with the assistance of the P&G Committee;

- The executives whose areas will be investigated be put on suspension for the duration of the inquiry;

- The Corporate Plan and the Borrowing Programme be deferred until further notice; and

- Management must institute an investigation into the bugging of the Boardroom and report to the Board on their findings and recommendations;

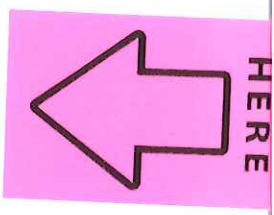
10. CLOSURE

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

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

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

CHAIRMAN: _____ **DATE:** 15/11/16



COMMISSION OF INQUIRY INTO STATE CAPTURE

"VK8"

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

MINUTES OF THE ESKOM BOARD MEETING WITH MINISTER OF PUBLIC ENTERPRISES HELD ON 11 MARCH 2015 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK FROM 10H00

STRICTLY CONFIDENTIAL

PRESENT

Mr Z A Tsotsi	Chairman of the Board
Mr T Matona	Chief Executive
Ms C Mabude	Member
Ms V Naidoo	Member
Ms V Klein	Member
Ms N Carrim	Member
Mr P Naidoo	Member
Mr M Pamensky	Member
Ms T Molefe	Finance Director
Mr N Baloyi	Member
Dr B Ngubane	Member
Mr Z Khoza	Member
Mr R Kumalo	Member

APOLOGIES

None

IN ATTENDANCE

Ms L Brown	Minister of Public Enterprises
Ms M Mokholo	Director-General DPE (Acting)
Mr M Phukubje	Company Secretary

BOARD IN-COMMITTEE SESSION

After introductions and formalities, the Minister raised the issue of the location of a bugging device which was found in the Huvo Nkulu Boardroom at Eskom Megawatt Park. She also noted the fact that no investigation into the matter had been initiated and pointed out that it is a very serious matter over which action should have been taken.

The CE responded by explaining that the matter was being dealt with and that a number of new procedures had been introduced in order to stem the possible repetition of a similar matter. It was standard procedure that the boardroom is "swept" for the existence of recording and transmitting devices a day before a meeting

as well as a day after the meeting. He further reported that he is still awaiting a report from the service providers about the origins and the exact nature of the device.
The Minister stated that the matter needs to be investigated urgently and that it should be accorded the necessary urgency, which she is not detecting from the actions taken thus far.

(At this point the CE and the FD were excused from the meeting: 10h34)

The Minister continued and stated that she has no right to instruct the Board on any matter regarding the conduct of Eskom's business. She stated further that the meeting is an informal one and then proceeded to note a number of negative developments in the South African economy such as the fall of the Rand, Standard & Poor's two-year review leeway period granted to the country, the growth of the economy at pedestrian rates and the possible effect of a downgrade of the sovereign credit rating.

She also noted that she was aware of the fact that the Board may feel that it has fallen by the wayside given the activities of the War Room. The last War Room engagement had indicated that even information which was provided by Eskom was unreliable, for example, the War Room had been provided with two financial report within the space of a month indicating vastly different financial scenarios for Eskom. One of the reports painted a dire picture and the other indicated that Eskom was profitable and financially healthy.

It was also noted that around February 2015 during the period when the State of the Nation was due to take place, there was a lot of load shedding but that at the moment things appear to be going well in that regard. With regard to the Voluntary Severance Packages, the War Room made it clear that Eskom cannot be allowed to proceed, as this would amount to a serious loss of skills for the company. There was a contradictory article in the newspapers about Eskom intending to retrench over 1000 white engineers. This is not the role of Eskom but it leads to contradictory messages being sent out to the public.

The Board of Eskom knows what would happen in Eskom if it were a private company. It is the wish of the DPE that there should be a forensic enquiry so that there is proper information around the main issues which affect the business of Eskom. It will not be an easy one because both Eskom and the DPE will be attacked about it. It was noted that this is an unusual appeal from a shareholder.

The Minister also expressed her concern about the interest rates which Eskom negotiated and agreed to in the market. There is also the issue of inequality of the coal price purchases, with some companies being paid more than others. There is also the issue of mismanagement of the load shedding process. The issue of the purchase of diesel "on the hoof" is also another concerning matter which requires attention.
It was noted that the country has an obligation to ensure that the economy is shared in a sustainable manner, with the majority of the population also benefitting. Fortunately, it was noted further, the appointment of the Board did not bring about any problems and the process went smoothly.

The Audit and Risk Committee may go out and procure the services of an independent, credible forensic investigator to undertake the inquiry and not someone who has done work before for Eskom or whose independence may be in doubt.

During the discussion phase of the meeting, the following questions were asked by Board members:

- What are the reasons for cancellation of the Board meeting of 26 February 2015?
- The CE has confirmed that there will be an investigation to be conducted in the War Room, Is that still proceeding, in light of the possibility of having another one in Eskom?

- What can be done about the alignment between Nersa, DPE and DOE in enhancing the efficiencies for Eskom?;

- Can there be an exploration of a possible executive role for non-executive directors as the current model is inadequate in addressing the problems which beset Eskom;

- Is it possible for committee chairpersons to become members of the War Room to allow for a flow of information between the War Room and the Board?

- Is Minister comfortable with the composition of the Board Committees as they currently stand?; and

- The Board would like clarity on the issue of the municipal debt, particularly as it has a statutory responsibility to collect outstanding debts owing to the company.

During the discussion following the questions, it was clarified as follows:

- The Board confirmed that a letter had been sent to the Minister for her consideration regarding the municipal debt and how to address it. The Minister stated that she will look into the contents of the letter and respond. It was explained that in terminating supply to municipalities, various factors would need to be taken into account.

- Executive who are responsible for areas which will be the focus of the investigation must step aside for the duration of the inquiry in order not to impede it;

- The issue of directors' liability may need to be reviewed in light of some of the risks which are coming up e.g. environmental risk;

- With regard to the War Room and the Board subcommittees, the Minister undertook to respond to the queries in a few days' time;

- The Minister raised a concern that the reports on Duvha and Majuba have not been provided and that the DPE is therefore in the dark as to what is happening there.

- With regard to the investigation, it was submitted that it should not be a long drawn-out exercise and a report 9even if it is a preliminary one) must be given within 3 months;

- Board representation in the War Room can be done by means of only one member- not all the chairpersons of committees;

- It was noted that there is a need for a political response to the statement that Eskom is retrenching 1000 white engineers and the Minister undertook to address it;
- On the War Room investigation, it was explained that that is a technical investigation and that there will still need to be a broader one;
- Eskom was urged to engage with its fellow state-owned entities in order to maximize its benefits and efficiencies as very often there will be ways of working together for mutual benefit;
- Cost overruns at Medupi, philosophy maintenance and the reserve margin need to be looked into; and
- It was noted that there is a high likelihood that the Corporate Plan does not address the critical issues confronting Eskom.

10. CLOSURE

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

Eskom	MINUTES OF THE ESKOM HOLDINGS PEOPLE & GOVERNANCE COMMITTEE	Unique Identifier	221-209
		Document Type	CCGTE
		Revision	0
		Effective Date	July 2015
		Office of the Company Secretary Department	

MINUTES OF THE PEOPLE AND GOVERNANCE COMMITTEE MEETING NO 07/2014/15 HELD IN THE HUVO NKULU BOARDROOM, MEGAWATT PARK ON 11 MARCH 2015 AT 14:58

STRICTLY CONFIDENTIAL

PRESENT

MEMBERS

Mr Z Khoza	Chairman
Ms N Carrim	Board Member (left meeting early)
Ms C Mabude	Member
Dr P Naidoo	Board Member
Ms D Naidoo	Board Member
Mr N Baloyi	Board Member
Mr Z Tsotsi	Member
Ms V Klein	Member

IN ATTENDANCE

Mr N Tsholanku	GM: Legal and Regulatory
Mr M Phukubje	Company Secretary
Mr N Linnell	External Consultant

APOLOGIES

No apologies were noted

1. OPENING AND WELCOME

The Chairman welcomed all members and officials present and declared the meeting open.

2. APOLOGIES

There were no apologies.

3. QUORUM

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

4. DISCUSSION OF ITEMS ARISING FROM BOARD'S DECISION TO INSTITUTE INDEPENDENT INQUIRY

P&G applied their minds to the current impact that the executives would have on the inquiry. The executives identified were:

1. Mr T Matona
2. Ms T Molefe
3. Mr M Koko
4. Mr D Marokane

It was agreed that the Chairman of the Board would lead the discussion and chair the meeting as he was familiar with most of the issue to be discussed. The Chairman started the meeting by confirming that the Board had made the decision for the enquiry to continue.

Mr Linnell introduced himself and gave a brief background of his skills by stating that he was a non-practising attorney who now runs a consulting firm. He is from Cape Town and he understands the environment of SOC's, having performed similar work in other SOC's previously. He proceeded to outline the important elements of carrying out such an inquiry, stating that impartiality was an extremely important aspect of any inquiry. He also stated that it would be important to ensure that service providers with the requisite levels of skill and competency are appointed to undertake the exercise.

The committee agreed that it would appoint a specialist communications advisor in terms of Eskom's procurement process, to ensure that the Board's communications strategy around the inquiry and matters related thereto were managed properly.

Each of the executives were then called into the meeting and notified of the Board's decision. They were also handed suspension letters which were signed by the Chairman of the Board and each of the executives. The purpose of the inquiry was explained, as well as why the Board felt the need for the executive to vacate their position. Each executive was given an opportunity to give reasons why they did not believe the decision to be the best course of business.

Mr T Matona
(No record was kept of this discussion.)

Ms T Molefe
She was advised that the Board had arrived at a decision to institute an inquiry into the affairs of Eskom. The Board had mandated the P&G Committee to implement the Board's mandate. A number of areas would be looked into by the inquiry.

In order for the inquiry to proceed unhindered, it had been decided that executives in whose areas the inquiry will be focusing would be requested to step aside for the duration of the inquiry. It was stated that there is no apportionment of guilt on anyone's part. It was explained further that the committee had decided to put her on precautionary suspension while the inquiry was proceeding She was requested to make input and she stated that the Board needs to do what it

believes is in the interests of Eskom but she cannot comment on whether it was right or wrong She stated that she did not know what transpired during the engagement with the Minister. The letter was then handed to her and she signed it.

Mr M Koko

Mr Koko stepped into the meeting and the Chairman gave him the background of what had happened that morning, including the fact that a decision had been made by the Board to institute an independent fact-finding inquiry into the affairs of Eskom

The focus of the inquiry was explained and the specific areas of focus outlined him, these being maintenance, commercial processes, technology inputs and the new build programme as well as finance. The inquiry will focus on these areas and come up with recommendations on how best to improve these. It was explained that the executives leading these areas would be put on precautionary suspension for the duration of the inquiry, which will run for a period of approximately three months.

It had therefore become necessary to give him a notice of suspension and he was advised that he was entitled to give a view on whether the suspension was justified or not. He was then requested to make his input. He confirmed whether he understood the Chairman to be saying that the executives for the areas pointed out must make way for the inquiry to proceed in an unfettered manner and this was confirmed. He then stated that the executive in Eskom responsible for maintenance was Mr Thava Govender and he should be the one sitting before the committee. He asked why then was it him sitting in front of the committee. He also would like to understand for the areas are not being brought to face the committee

It was explained to him that there were problems in his area and it had been decided to request him to step aside so that there would be an unhindered inquiry into that area. He stated that while he understands and agrees, he still wants to understand why the other executives were not being given the same notices of suspension.

He was told that he should not concern himself with what was happening in the other areas of the business. He then entered into a dialogue with the Chairman and asked whether it meant that those other areas are not areas of concern for the organization. The Chairman explained to him that the committee was addressing him and that it was not for him to concern himself with matters which were not for him to be concerned about. He then stated that he is not different from other executives who were not being requested to step aside and further that he should therefore not be made to step aside.

It was proposed that his concerns and inputs have been noted and he then stated that for reasons of equity, he would like to be treated on an equitable basis like the other executives (such as Dr. Lennon, Mr. Govender and Mr Ntsokolo). Apart from the submissions he had made, he had nothing further to add. It was made clear to him this was not judgment against him personally. He would like to reserve his rights because he does not know where this process will end.

(Mr. Koko was requested to step outside to allow the committee to deliberate)

Upon his return he was advised that the Board had deliberated and made its decision and that its position had not changed. He was informed that his presence during the inquiry would not be ideal and the committee had decided to give him a notice of suspension. He stated that the nature of the inquiry had nothing to do with maintenance or technology and this was noted. The letter of suspension was then handed to him to read and he wanted to clarify that the period of the inquiry would be three months and this was confirmed. He then signed and accepted the letter.

11. CLOSURE

There being no further matters for discussion the Chairman declared the meeting closed at 16h25.

SIGNED AS A CORRECT RECORD OF THE PROCEEDINGS

CHAIRMAN **DATE** 01/12/2017

COMMISSION OF INQUIRY INTO STATE CAPTURE

ESKOM

BOARD MEETING

11 MARCH 2015

Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

COMMISSION OF INQUIRY INTO STATE CAPTURE

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible***, the aforegoing is a ***VERBATIM*** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

ESKOM

BOARD MEETING

11 MARCH 2015

DATE OF HEARING:	11 MARCH 2015
TRANSCRIBERS:	V FAASEN
TRANSCRIBED ON:	30 AUGUST 2020

COMMISSION OF INQUIRY INTO STATE CAPTURE

Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME

[09:04]

CHAIRPERSON: Once again I think I must say thank you very much to the members of the Board for their quick response to this meeting. It was called at rather short notice. Also, a feature of this meeting will be a visit to the board by the Minister this morning. The Minister will be here at ten o'clock and hopefully she will spend a reasonable amount of time with us.

What the board had asked me to do the last time with that was make certain that we can carry on with the presence of the board and that indeed is the case and that is why I thought it prudent that we should go back and resume the meeting that we had postponed on the 26th and try and get that presence done.

What we then propose to do was, given the time constraints, considering the fact that the Minister will spend some of our time with us that let us work through the urgent business, the business that requires the board's decision, the business that is that time barred in terms of requirements by the shareholder. Let us get that business done, at least, and therefore, we will hold over the balance of the mundane part of the meeting, the minutes and this type of thing, consideration of the reports to the next time around when we decide when next we can meet because I

do not believe it will be possible for us to finish all of the entire agenda in one day but certainly we will get through an important part of it hence you will see that as compared to the original agenda we are only going up to 9 of the agenda.

There is a small matter of the cell phones that we discussed the last time. I think I want to be guided by the board, do we need a board resolution on this issue to say shall we resolve that we shall not cell phones in the board meeting just so this is a standard procedure. Can we resolve that that is what we will do?

[3.11]

MALE VOICE: Where can we leave them, Chair?

[3.13]

CHAIRPERSON: Okay, so we are agreed on that, there is a box going around. Hopefully they will not be too far if you need to make a call. Okay, thank you, Wayne. Then apologies for this meeting.

[5.06]

MALE VOICE: Ms Carrim is on her way, I think she is running a bit late. Nazia.

[9.15]

CHAIRPERSON: Okay, Nazia is on her way but otherwise we are all here. Okay. And so were are a quorum, so – I do not know if there are declarations of interests for this meeting by anybody? Okay, that is done, that is fine.

Hopefully we can adopt the agenda as I mentioned earlier, would that be fair? Incidentally, I think on the side of the executives they may not all be here. They might not have notified them in time about this meeting but hopefully Chief(?) those who are going to be part of the presentation if they need to be, will be available.

[6.17]

MALE VOICE: Ja.

[6.18]

CHAIRPERSON: Okay.

[6.19]

MALE VOICE: Based on the agenda, Chairman, from the executives' sides will be covered on the – on a corporate plan. Freddy will take us through that very quickly and then on the borrowing programme, the Financial Director was here on the Eskom debt strategy cover is here and then I will talk to the MOU between Eskom and its strategy(?) fund, I will be assisted by head of legal, the layout and so on, so I think we should be covered.

It may be that once they have got ratification that they can attend the meeting the other executives will come.

[7.22]

CHAIRPERSON: Okay, thank you very much. Let us go on then to item 7. I just have a few issues really and let me start with the housekeeping issues which have to do

with what I believe will be the best way for us to work.

I think, if you recall, at the beginning, in the first induction we had, I made reference to the need for us to have the right kind of communication with the office of the company secretary. Now it has come to my attention through him, obviously, that at times there were communication problems which occurred whereby board members were needing certain things and ended up communicating with his people, including drivers, and he himself was out of the room in terms of what is supposed to have happened.

Now these things may appear small but I think at the end of the day it can be very uncomfortable for board members if you do not - you know, if you are not getting a particular service. So I think I want to urge members to please direct all your concerns directly to the company secretary and let him sort out the responsibilities because if we do not do that, he ends up not knowing what is going on and then people make decisions and he finds that he is having to correct those things because people are not communicating to him about what is happening. So I think when it comes to your concerns please just direct them directly to him.

The other issue which I also mentioned earlier was, you know, the communication with the executives.

Obviously board members will communicate with executives for various reasons but there comes a time, you know, you have to use your judgment here because what I said was that the Chief Executive needs to be in the loop about the things that, you know, that go on in his office basically and sometimes executives will take advantage of the fact that they have relationships with board members and will begin to even make decisions without the knowledge of the Chief Executive and so you may find that it does not work well and consequently he finds that he has to now start patching up things after the fact because, you know, people have done things sometimes in his name without his knowledge.

So I think it would be just nice courtesy, whenever you see the need, to ensure that the Chief Executive knows what is going on, just to let him know that look, I need to have discussions with so and so and so on.

As I say, this may be actually a small matter but, you know, progressively it can get complicated over a period of time so I think it is important for us, as a board, to protect his position when it comes to that.

Okay. Right, just a few things then from my side beyond that, as I said, the minister is coming in to see us this morning and this was part and parcel of what we had requested when we had the induction with her downstairs

last time, we met with her. So I think we would then be in a position to address whatever issues that we need, we need to address with her. And when I get word that she is coming, as I am aware, I would have to excuse myself and go and bring her into the meeting.

Okay. I do not know if I mentioned the one visit to the board – I am sure I did do it, did I?

[12.13]

MALE VOICE: Yes, you did.

[12.16]

CHAIRPERSON: Oh, okay, alright. So the board is fully aware of the visit. So that is fine.

[12.22]

MALE VOICE: Chairman, may I – excuse me for the interruption. I think it was one of the subcommittees that was aware.

[12.28]

FEMALE VOICE: Ja, the social and ethic.

[12.31]

CHAIRPERSON: Oh, yes. Oh, okay, sorry about that. Ja. No, what happens is that on every occasion and organisation called the World Association of Nuclear Operators visits us in respect of Koeberg, obviously, and they come and do an assessment of how the plant is operating. Now, as you are well-aware, the nuclear industry is very highly regulated, extremely highly

regulated and everything is absolutely pinpoint I think Steve can certainly give us the, you know, background but this visit is one of those visits that they make and have to satisfy themselves that not only is it management the board is also fully aware of the situation or the nuclear operation so they interviewed me as team of them, I think there were five guys.

[13.52]

MALE VOICE: It was a total of about ten of them, Chair.

[13.53]

CHAIRPERSON: Ja.

[13.54]

MALE VOICE: But they broke up into different groups.

[13.56]

CHAIRPERSON: Ja. Just elaborate briefly, Steve, on the purpose of ...[intervenes]

[13:59]

STEVE: So, Chair, this review was a corporate review, WANA, World Associated Nuclear Operators, they – Eskom is an active participant in WANA. They do peer reviews which they do and they have done several peer reviews at Koeberg itself which is basically a very operational one, it looks at the operations of the plant and big focus on nuclear safety, of course.

This corporate review was about looking at the relationship between the nuclear operations which, in our

case, is only Koeberg and then the corporate functions. Corporate functions both in terms of the nuclear operating unit so within generation and then the other corporate functions, so things like sustainability and commercial and finance, etcetera, and also the governance processes that we have in place. So there they looked at the role of the Nuclear Management Committee which is a subcommittee of Exco, the role of Exco, the role of board sustainability which acts as the nuclear oversight committee for board, the role of board and then the role of individuals in that process as well.

So it was – and the team itself comprises representatives from WANA and then from peer utilities, so power companies that operate nuclear, often with a similar structure to ours and then we had colleagues from Mexico, from the US. Who else was it? Mexico, US...

[15:31]

MALE VOICE: India.

[15:32]

STEVE: India. Generally it was a very high-powered team, very experienced and in fact I thought they did a very comprehensive job came up with two areas that they highlighted as strengths and they came up with four areas that they call AFIs, areas for improvement, that will be – that was just in the initial feedback that they gave us, that will be formalised in a report and then through our

government structures, through the management committee, we will come up then with a formal response that will be aimed at maximizing the strengths that have and dealing with the areas for improvement and there will be a regular process to deal with that.

[16:21]

FEMALE VOICE: Can you give us the [indistinct] of the AFI?

[16:24]

MALE VOICE: And the strengths.

[16:25]

STEVE: Sorry?

[16:26]

MALE VOICE: What were the strengths in the AFI?

[16:27]

STEVE: The strengths were – and I am going to have to remember. The strengths were the leadership development elements, the training. What was the other strength? The areas for improvement related to very clear levels of accountability are required. I cannot recall the rest and they just gave us verbal feedback so unfortunately, I have not got the rest here.

[16:58]

CHAIRPERSON: I think once the report is back ...[intervenes]

[16:59]

STEVE: Feedback formally once...

[17:02]

CHAIRPERSON: Once they have given us the report we will share it with board members.

[17:06]

FEMALE VOICE: Did they interview [indistinct]

[17:08]

CHAIRPERSON: Excuse me?

[17:09]

FEMALE VOICE: They interview or [indistinct].

[17:12]

FEMALE VOICE: I am not sure.

[17:12]

FEMALE VOICE: Can I respond, Chair? No, they did not and I must tell you I felt that it was an opportunity lost because it was in my diary and a day before the time I was told it is not necessary so – but that is something I am going to be taking up because I believe that it is an opportunity lost because my understanding of the scope of that report or the interview was to test leadership readiness and in the sustainability in assess(?) meeting I actually raised concern around the fact that I did not think that we had done adequate work around getting leadership ready for the review, so I will be taking that up but you are right, it was an opportunity lost.

[17:52]

CHAIRPERSON: No, I am sorry, I assumed because I was aware that [inaudible – speaking simultaneously]

[17:55]

STEVE: I do not know how that happened, Chair.

[17:56]

CHAIRPERSON: I assumed that they did ...[intervenes]

[17:58]

FEMALE VOICE(VENITTA KLEIN): No, a day before the time, it is not necessary so...

[18:02]

CHAIRPERSON: H'm, not acceptable.

[18:03]

FEMAILE VOICE: Not good.

[18:05]

CHAIRPERSON: I think we will have to look into that.

[18:06]

STEVE: We will fix that up, Chair, I do not – I was not aware of that, I do not know how that happened, we will pick it up.

[18:12]

CHAIRPERSON: Okay. I think the last thing for me – thank you, Steve, thanks – has got to do with, you know, the board members have raised concerns about availability of documents prior to meetings. I have raised the issue with the secretariat and I think they had a staffing problem, from what I understood, and now unlock that stuff and problem and hopefully with the people that they now have

additionally they will be able to jack up their response.

I think also the fact that we had intermittent meetings to ensure] process also impacted on the ability to turn documents around and make them available but in the past I know that they have been able to provide documentation adequately as per the standard requirements of normal seven days prior to meetings so I think once we – you know, our [indistinct] has picked up, I am certain that they will be able to respond so I think I would like to allay the fears of board members that going forward we should be able to do the right thing. Okay, I think that is really all that I want to say for now.

[19:44]

STEVE: Sorry, Chair.

[19:45]

CHAIRPERSON: Sorry?

[19:46]

STEVE: I have just checked my notes, I can give quick feedback on the AFIs, I have got them here, if you want me to, from the WANA review.

[19:53]

CHAIRPERSON: Oh, okay, yes?

[19:54]

STEVE: Apologies, Chair. So the strengths were transmission and the relationship the nuclear safety attitude and transmission which we were very pleased

about because it something we worked on very hard in the leadership training.

The areas from improvement was human resources and in particular HR interventions that are entered into without considering the impact on nuclear safety and they looked at things such as the issues relating to overtime, the nuclear operators and those kinds of things.

The second one was major projects and they are concerned about major projects and the risk they present to Koeberg and they indicated that there is a variety of major projects that are happening at the moment that have all been delayed for a variety of reasons.

The ones they spoke about was obviously the steam generator replacement, future fuel, the dry casts, the PTR tanks, the replacement reactor heads and they said all of these in themselves are major projects that are working to very tight timelines and they are very concerned at our ability to execute all of those projects within those timelines.

And then oversight and standards which is compliance with good operating standards and there there was very specific - it is quite an operational finding, that one.

And then teamwork and alignment through the different structures which is linked to the HR one making

sure that decisions that are made in governance structures consider nuclear safety and those were the four AFIs.

[21:32]

CHAIRPERSON: Okay, thank you. Alright. Wayne, can you help with the screen there?

[21:41]

FEMALE VOICE(MS KLEIN): Chair, sorry, if I may, and this is with due respect now. You know, I am very happy that you have spoken about all the issues as you see it which are of concern to yourselves, secretariat and Exco but, Chair, I have got a concern that what has been raised, a number of, then in fact, we – I, myself, let me talk for myself, would write an email based on a concern that I have which relates to the business and I get no response and this is when one feels the need, given the significance of what you understand this matter to be, in the interests of the organisation, you start trying to find answers. Can I maybe get a response from you or Exco as to why responses to board mails are just not answered because that is key thing in terms of the board's fiduciary duty in terms of trying to help and support the company that we know is in distress right now.

[22:42]

CHAIRPERSON: Okay, are you asking me specifically or are you asking...?

[22:47]

FEMALE VOICE (Ms Klein): It is a broader question than this. Just to – I mean, I have written a number of mails to you specifically relating to the work of Eskom and I have not had an answer and I speak for myself. I do not know if there is anybody else but, you know, so it is good for us to from the one side understand how we are going to drive this business better to support or to understand Maisela(?) and secretariat and to understand Exco not for us to get involved in a operational sense but I guess from my side I get involved with trying to connect with Exco if I do not get this answers to pertinent mails in terms of business questions.

[23:22]

CHAIRPERSON: Yes. I think the answer is simply that you must get responses when you have written emails.

[23:26]

FEMALE VOICE: We do not.

[23:27]

CHAIRPERSON: So we are at fault, we are not responding adequately. Including myself.

[23:29]

FEMALE VOICE: There is some significant questions asked and just even simple acknowledgement of – acknowledge receipt and we are working on it would satisfy me to know that it is getting some level of airtime but if you get just nothing it is like you are talking to a big black

hole, it creates a major problem from a governance perspective.

[23:50]

FEMALE VOICE: Mr Chair, I also have the same issue and I think you made it clear to us at the beginning that you would like emails directed by you. So I think that is – the interest here is that, you know, I have not approached Exco directly, I went through either the company secretary or - so it is important that, you know, you get sort of some feedback to indicate that and that is how we dealt with ...[intervenes]

[24:09]

CHAIRPERSON: Ja, that is true.

[24:10]

FEMALE VOICE: Ja.

[24:11]

CHAIRPERSON: No, I acknowledge that. I tell you, I have – look, I am certainly not going to build an excuse out of it but I am very bad at emails because I get over 200 emails a day and I just do not have the capability of going through them. I have actually asked my team to help me screen my emails but I do not know how busy they get that they cannot help me get those emails but...

[24:42]

MALE VOICE: Chairman, we generally do, I was not aware that there is an issue that was still outstanding. I – let us

take it onboard, let us not – because sometimes the emails come and then there is a conversation and one sometimes assumes that issues have been dealt with in that com(?) but let us acknowledge receipt and let us put it in black and white.

[25:16]

CHAIRPERSON: Yes, ja, I think so. Okay, any other issue whilst we – the subject, can we park it and move on? Okay, we are going to go to item 8. I am feeling pretty hot but I had no power since last night in my house so my shirt is not ironed so I am very scared to take my jacket off. But I will be brave and take my jacket off because I am feeling terrible about it.

[25:46]

MALE VOICE: You must be [indistinct]. Chair.

[25:49]

CHAIRPERSON: Okay.

[25:51]

MALE VOICE: Deal with Eskom, Chair.

[25:55]

MALE VOICE: Okay, thanks, Chairman, and thanks board members, there was a document that was sent with the original pack which was just a board overview of the work that myself and the executives have been doing in the company.

[26:21]

CHAIRPERSON: Yes.

[26:23]

CHIEF EXECUTIVE: So I am going to take that document as read. Given that we are having an unabridged agenda, the Minister may come anytime so I am not going to touch on all the points, all the key points in this document. It is a fairly detailed document. It seeks to reflect on my tenure since the beginning of October when I started here at Eskom, just some of the initiatives that I have undertaken in the organisation to try to get it to move forward.

The first area that was a major concern, even published in the media, was the executive instability, management instability. Prior to my arrival here there were a series of resignations, a number of people were in acting positions and there was just general uncertainty at the top and so within a month having observed the executives, I made some appointments. I confirmed Dan Marokane in his position as Group Executive for Group Capital. I subsequently initiated a process to recruit the group technology in commercial and Matshele was appointed.

This was, of course, in accordance with the mandate with the delegation of authority which requires me to work closely with the people in governance.

We also moved immediately, as executive – I also appointed Elsie Acting Group Executive for human

resources which was a position that Mongezi was previously a group executive for transmission held jointly, I thought it was too much on one person and, you know, to have a proper focus on HR but I did that ...[intervenes]

[28:41]

FEMALE VOICE: Sorry, [indistinct], you appointed as Group HR or Acting?

[28:45]

CHIEF EXECUTIVE: Acting, yes, Acting. Acting because at that time there was already underway a process, a recruitment process for that position, we could not conclude it with the previous board, current board has taken it up and we should be making that appointment any time soon. The Chairman has set up a panel so we should be making that appointment soon.

We swapped Mongezi from transmission to generation and Thava Govender took over transmission and customer services.

We developed a turnaround plan based on work that had been going on which had been done by management in the previous board.

We updated this - affirmed basic approaches, basic analysis of the situation in that plan and I presented elements of that in the board induction but we also had opportunity to present that to the Deputy President when we engaged with her – with him, sorry, when he visited

Eskom. We had that meeting at the National Control Centre.

I have also been engaging with labour. I met all the key general secretaries of the key unions in the organisation, labour keys(?) they are called, for us. I have also been interacting in government and in government I will come back, talk about the war room.

I have also been meeting staff, engaging with staff to the extent possible the time that I spent here, I went to visit a few power plants, addressed staff and in this regard, as you will have heard since then, the morale, staff morale is a big thing.

I think what has emerged in the period as the most difficult challenge for all of us, as management, executives, and I think the board also, is the challenge of the performance of the electricity system. What triggered it was the collapse of a silo at Majuba which reduced available supply by quite a significant number and triggering, therefore, load shedding. We had a period of load shedding.

As this happened, the whole issue of plant health, plant maintenance issues, all of that popped up and became the focus and that triggered the war room. That is what triggered the war room. which was motivated by the intention of government to work with Eskom.

Government acknowledged that the situation of Eskom is not of Eskom's own making. Historically, policy decisions or indecisions that have put the company in a very difficult position and based on that they said we – this is a national issue, it is more than an Eskom issue and of course the rest is history with regard to how the war room has been performing and I will speak to that in a moment but the generation performance has – between it and financial sustainability, our top most pains as a company.

So we, in the context of the war room, worked on the generation turnaround, a maintenance plan. All of these plans including the financial issues, we have been sharing that information with the war room, we have been sharing that information with the war room. We have submitted and incredible amount of information that was requested in the context of the war room to enable government to understand the company, to understand our issues with a little bit more, you know, depth, so that then we can work together on submissions.

I believe we have achieved that objective, I believe we have achieved that objective. I know expect that government having understood will now say, from our point of view this is the way to go, this is the direction that they believe we should follow, these are the expectations they have of Eskom and of us as a collective, executives and

the board. I am expecting that we should get to that point in time.

In fact, there was a memo that was being prepared to precisely canvass those issues so that the government can then give us direction. But for our part we have got our plans and the point, as I requested, at the last meeting of the Deputy President to say we have submitted information, all of our issues are here, if there is any area we have not covered, tell us so, we are happy to cover that area but we need to get down to do the work, working, to get down, to do the work, working to get down to do the work under the guidance of the board.

We spent quite a lot of time in the IFC on the financial health of the company. This is an extremely financially distressed company bordering on a non-going concern.

[34:22]

FEMALE VOICE: Chair, sorry, the CE has mentioned that they expect guidance from us, we are not getting information flow as it is supposed to be – or between the war room and the [indistinct – dropping voice]. So how is that going to happen or are we going to discuss it later?

[35:06]

FEMALE VOICE: If I may? I think that was the intention for the second part of this meeting. So the CE is giving his report and then we are going to go through the war room

updates, my understanding. But if I may just say that the Chair has just had to step away because the Minister has arrived so I guess it would all be dependent on – I would want to believe that engaging with the Minister if there is enough time that we continue this till we get complete update from the CE as well as what is happening in the war room right now and its impact on us as the board.

[35:37]

CHAIRPERSON: Ja.

[35:38]

UNIDENTIFIED LADY SPEAKER: Does that help?

[35:39]

MALE VOICE: Yes.

[35:40]

CHIEF EXECUTIVE: Okay, thanks. Ja, so the – I was on the financial situation, Eskom is financially challenged. Again, we have – arising from the engagement in the IFC, I have also with the war room requested that we have managed to identify the key challenges, financial challenges and perhaps options and in summary, without spending too much in that regard, Eskom has now increased funding requirements, our liquidity situation is at risk, we liquidity challenges, in other words, which needs urgent attention.

We have 3 billion promised equity, we hope it comes in time but also other initiatives were undertaking

with the regulator on the revenue side.

Part of what financial turnaround involves, savings programmes, BPP, it is being presented the IFC as well and I am sure board members are aware of it, we have spoken about it a few times in these forums. So again, I will not spend too much time because I think the issues have been canvassed. We need an opportunity to get – have a deep dive, if we would be available to do so as executives.

The PP targets, the savings targets will be met but they have been serious leakages and those leakages have to do with rising primary energy cost, mainly diesel or GCT(?) and then of course municipal debt which we spoke about.

Another area of leakage in the savings is voluntary severance package. The staff reduction package which we have suspended because some risk with regard to loss of skills. The intention is to revise it and put back something else because in the HR area, manpower area, we need – there are opportunities for savings which we will have to pursue.

We undertook a foreign borrowing road show a few weeks ago, the outcome of that still have to be shared with the board and engage with that. The one area which I would like to highlight on group capital and perhaps I can

stop because I am assuming that members opportunity to read the document but I am happy to answer any part of the document that was circulated. It is on the bill programme.

The board did undertake a visit to Medupi, they saw the amazing achievement, engineering, the construction achievement at unit 6 and the entire project actually represents and we finally after several postponements, postponements of that date of conclusion we were able to synchronise the first unit of Medupi which, in the life of Eskom is a big – it is a big event.

We really need to celebrate that milestone because it is significant in many ways, it is the first time Eskom puts new power, fresh power into the grid in 20 years and it is part of 17 gigawatts additional capacity. You know, for Eskom employees and the people working on the project it is such a morale booster and I do believe we have to make a big deal about it. We allowed the Minister having – she had expressed desire that whenever that whenever big milestones she would like to be part of it, to also, you know, share in that success and we were told that there would be a media briefing. I was supposed to be today led by the Minister but that was cancelled. She is coming here, so the Deputy President will do it but that did not happen.

The cabinet meeting of last week did acknowledge this achievement. In a statement the cabinet already [indistinct] Eskom for this achievement.

The rest of the presentation details, other projects, Sere, which members of the board will be aware of is another achievement which I believe we under-communicated again having referred to the department that wanted to lead in that regard and so I am going to leave it there, Chair, and say I have I have painted(?) the highlights in a quick overview, if there are any specific questions on the rest of the report of the Chief Executive, I will gladly [indistinct – dropping voice]

[41:18]

FEMALE VOICE: Thank you very much CEO. If there are any questions, we are happy to take those while we are waiting on the Minister to arrive. Any questions from the board, comments, inputs? Norman?

[41:32]

NORMAN: Yes, thanks, Chair. Actually, I am trying to reflect on the 280 billion, will that monies exclude salaries and other bit, the operational work, or it includes it?

[42:02]

CHIEF EXECUTIVE: Are you asking about the Capex?

[42:04]

NORMAN: Ja.

[42:05]

CHIEF EXECUTIVE: No, it excludes human resources, it is just – it is for project costs.

[42:14]

FEMALE VOICE: So any costs relating to employees that are working on the project would be capitalised and form part of the Capex and expenditure?

[42:24]

CHIEF EXECUTIVE: Actually, I am trying to find out whether Intratel, how much came we say we have in our bank accounts or in our financial...

[42:38]

FEMALE VOICE: So at this point in time I think maybe the first thing to say is normally we would like to keep a buffer, liquidity buffer of R20 billion, it is adequate to allow us at least to run for four months while we go to the local market with a commercial paper in terms of process but currently where we are sitting we are way below that, I think we are currently sitting at about R4.9 billion and the reason for that is that we were expecting two loan amounts that have not come through now and due to the lenders really assessing our situations in terms of the terms and conditions and saying you are actually more risky than we thought so we would like to assess the terms.

So we had to phase it out, we were supposed to get it by end of March and we have had to phase it out as a result of that. We have been in engagement with PIC.

Last week myself and the Chief Executive went to the PIC to assess us, to help us from that perspective but also asked to see Eskom's credit profile issues around the load shedding, its impact, so we are preparing that for them and we will be going back to them in the next two weeks.

[43:59]

MALE VOICE: Chair, I think that is extremely important.

[44:13]

FEMALE VOICE: Ja.

[44:14]

MALE VOICE: And that is why people [indistinct] so you understand the going-concern on liquidity. Even financial institutions are coming now with conditions, or concerns. So I just want the board to note specifically the financial strain that we are in, that is why I keep on emphasising that position we find ourselves in.

[44:21]

FEMALE VOICE: And just to add, Chair, again, in November/December we actually saw our commercial – our bonds being dumped in the market following the Moody downgrade that took place in November but also African Investment Bank limited SADAC, that we saw happening, most investors were uncomfortable to really take up our bonds or even, you know, take the commercial paper from our perspective.

So it has been difficult. I think December, if we

did not go to the PIC, to National Treasury, we were ready for an overdraft but we managed to get short term bridging finance to pick it up and we ...[intervenes]

[45:03]

MALE VOICE: So what rate did we pay? What was the interest rate roughly?

[45:07]

FEMALE VOICE: It is prime, it is about 6 – it was 6.85. Sorry, it was about 6.85.

[45:14]

FEMALE VOICE: Can I maybe make a comment? I think this was a point that - I am not sure about anybody else but I certainly would want to just deliberate a little bit further and I would want to hold it over as part of our discussions after when the Minister has left, if that is okay with everybody? It looks like there are other people with input as well. Alright? I will take further comments, inputs, Doctor?

[45:33]

DR NGUBANE: Thanks, Chairperson, the issue of primary energy cost, I think are a concern to some of us, we saw the article in the Sunday Times saying Eskom was entering a crazy [indistinct – dropping voice]

we would like to know exactly how pricing is set for primary end. For instance, Glenco gets R40 per CV whereas other

suppliers get R13. What is the differential, why such a big differential? Can it be justified, you know, and so on.

And also, the cost obviously of diesel with OACG. We need a comprehensive analysis for us on how the costs are broken down and what is the standard pricing, what is the average, etcetera.

[46:25]

FEMALE VOICE: Thanks for that, Doctor, who is going to take that one? I do not know that we will be able to fully cover it, particularly with the analysis that I think is required, but can we have a high-level response at this stage?

[46:35]

CHIEF EXECUTIVE: I am going to ask, Chair, as the group executive for commercial who sources coal and by the way, this is an area that the whole room has focused on, [indistinct – dropping voice] the dynamic changes in the coal supply, the coal supply space that is complicating our financials. So the different tiers, price tiers, depending on the nature of the contract, actually can give a big overview, [indistinct – dropping voice]

[47:10]

FEMALE VOICE: Okay.

[47:12]

UNIDENTIFIED SPEAKER: Chair, I think you are right, we will not do justice to it, can you – it is common cause that

we have got three different contracts.

[47:19]

MALE VOICE: Sorry, Chairperson, I was not expecting an answer.

[47:22]

MALE VOICE: Oh, okay, alright.

[47:23]

FEMALE VOICE: So you do not need high level [indistinct], okay.

[47:24]

MALE VOICE: Alright.

[47:25]

FEMALE VOICE: Let us agree a way forward then that in terms of this, it is either going to be deliberated at another time or we get the set information with the detail info attached to it at different times. CFO, do you want to...?

[47:38]

CFO: Ja, I just wanted to say to you we are trying to arrange a board workshop for the committee for the board members to do deep dives on maintenance, I think it was requested [inaudible – speaking simultaneously]

[47:48]

MALE VOICE: We have got the details but I think, Chairman, looking, so just to highlight the subject.

[47:51]

MALE VOICE: So what I will do because we have this information readily available.

[47:57]

MALE VOICE: Correct.

[47:59]

CHAIRPERSON: At least the board must have the benefit of that information, highlight it.

[48:07]

FEMALE VOICE: Thanks, Matshela(?). thank you very much. Any additional comments, questions, inputs? It does not seem so. Can we then move on? You see, I am just not sure how much time have we got left. Madisela, have you got any idea of how far they are? Because I know that the Minister is already on her way up.

[48:27]

MR PHUKUBJE: No idea, Chair, I can – sorry, Chair?

[48:33]

MALE VOICE: Chair, just on that point. Sorry, after you?

[48:34]

MR PHUKUBJE: No, done my thing.

[48:37]

CHAIRPERSON: Just in terms of deep dive under the board recovery and build a subcommittee, we have captured four immediate focus areas.

The first one is Kusile.

The second one is Medupi.

The third one is Primary Energy.

And fourth one is financial sustainability.

Just to give us those four big ones and then we will deal with the rest later.

[48:56]

FEMALE VOICE: Ja – but, Doctor, and then Mark.

[48:59]

DR NGUBANE: Chairperson of the board tender committee, I am deeply concerned, there are now different centres of decision-making as far as procurement is concerned. I think the board bid must make recommendations, the board tender committee and not decide on procurement contracts and so on. Otherwise I am going to get thoroughly confused as to where responsibility lies.

[49:27]

CHAIRPERSON: Fully agree.

[49:28]

FEMALE VOICE: Can I make a proposal on that point, Mark, before we get to you? I think this is from a governance perspective, some of the issues that this board needs to deliberate on with the Chairman. So if somebody – I think Wayne, you and Madisela, please just take that as a point of discussion which is key in terms of how this board functions and what decisions sits where.

If I could just add. Also, as Chairman of the sustainability social and ethics committee, I have also asked for various deep dives and just this morning we

wrote to secretariat to remind them that we have asked for the deep drives to be considered and dates to be proposed just to be told that there is various other deep dives that is also coming up all over the show. I think that has got to be properly coordinated because what is happening right now, in the absence of having the fully functional board meeting, various subcommittees are raised their needs. So I think we do need, as board, to have a little bit more – to pull this thing together.

So I would want to maybe when – after the Minister is done, for us, after the war room, if we can maybe spend some time on governance issues around how this board should operate.

[50:39]

MALE VOICE: Chair, is it possible for the board to maybe use the breakaway type for – to consolidate all these deep dives and go into detail on all the aspects that I have reported because – which is scheduled to be held in two weeks time, yes, because scheduling a special day for all of them would be a challenge, we will need a full day or at least two days to go through everything and the board breakaway is ideally structured for that. So if we can agree to – I am proposing that it be considered for use for that purpose.

[51:15]

FEMALE VOICE: I am happy with the proposal, Malisela,

on condition that it does not impact on anything else that was already planned because I would have assumed that there is a set plan for a board breakaway.

[51:29]

MALE VOICE: Ja, Chair, the board breakaway is intended to allow the board to get detail on matters. So it is definitely suited for that.

[51:41]

FEMALE VOICE: For that.

[51:42]

MALE VOICE: However, you know, maybe there are other opportunities outside of that.

[51:50]

FEMALE VOICE: Okay, I think just before I allow somebody to comment let me just ask one question, though, are all of the board members available for this breakaway?

[52:00]

MALE VOICE: I cannot confirm now, Chair, I do not have my phone.

[52:02]

FEMALE VOICE: No, I definitely am not [inaudible – laughing]

[52:08]

FEMALE VOICE: Can I – I want to make a point which has been a bit of bugbear for me and I have got to be careful,

the moment the Minister walks in, I will stop talking, but I have been at pains and I want it minuted to say this whole diary was agreed with the previous board which means when it was given to me – I talk for my colleagues now, there is many things including the board breakaway which will – it does not fit into my diary, I cannot.

So if you are not going to have a hundred percent attendance then those deep dives are just not going to work. So the response I keep on getting – and this is to the board - the response I keep on getting is the fact that secretariat have not been told that you are not available, means you are and I have asked secretariat to confirm that in writing to each of you. So the secretariat – I am sorry, I had my moment in the sun but I have already now picked up people not available.

[53:01]

MALE VOICE: But, Chair, I think in fairness we sent the calendar, we requested members to indicate to indicate their availability, all the dates were indicated on the calendar. We only got or received feedback from you on dates on which you will not be available and we have sent reminders, if I recall, nothing has come through. So, you know, we find ourselves in a difficult position where we either assume that you are available or you are not in absence of anything that is said and we took it that for

those meetings board members will be available.

[53:35]

MALE VOICE: We will still appreciate feedback because there is no use planning a meeting when no board member would be available to attend it so if we can still have feedback, I request board members. Give us feedback on your dates once again and let us coordinate our diaries properly.

[53:49]

FEMALE VOICE: Thank you, Varanshni, then Doctor, and I think Matshela(?) you also had something?

[53:53]

FEMALE VOICE: Okay, on the first part that we were talking about in terms of the breakaway, can all of these auctioned items be included? I mean, in terms of what we are talking about now. If you put them in an action list to be spoken of there.

You are definitely incorrect because I did advise you that I was not available, I followed it up with a telephone call and you said to me it was not confirmed. I am hearing for the first time now that it has been confirmed or it is in two weeks time and I am definitely not available but I did tell you that and I did speak to your verbally on it as well.

[54:24]

MALE VOICE: I do not want to enter into a ping pong

[inaudible – speaking simultaneously]

[57:26]

FEMALE VOICE: We can have this two way discussion a little bit later, alright? I have got Doctor, then I am going to give Mark a chance because you have had your hand up and then Matshela.

[57:34]

DR NGUBANE: But I think what you do in three days you can do in two days with adequate preparation. We do not really have three days free. I think almost all of us, just to go off into a *bosberaad* situation. If we prepared beforehand so we know exactly what we are going to address at the breakaway, it can happen in a shorter time.

[54:58]

FEMALE VOICE: Thank you. Alright, thanks, Doctor. Mark, Matshela and then the CEO.

[55:02]

MARK: I just want to say – mine was to say we had the time, I think we should move to the Eskom debt strategy of 9.3 and [indistinct] this conversation, but I think we have had a presentation on it and I thought it would just be quick thing to get the agenda out in connection with that Eskom strategy, Chair, if there was in between time.

[55:20]

FEMALE VOICE: Alright, we will certainly note that. Thank you, Matshela, and then the CEO.

[55:24]

DR NGUBANE: Mr Chair, I just need to assure the board that from the official side we have now taken an approach that we will use the board committee on build to make recommendation to the board tender, so that is how our documents – you will see we have done the last time, even in the last submissions ...[intervenes]

[55:42]

FEMALE VOICE: So the governance around that is in place.

[55:44]

DR NGUBANE: Is in place, ja.

[55:45]

FEMALE VOICE: Thank you very much. CEO?

[55:47]

CHIEF EXECUTIVE: No, Matshela covered me on the one issue which is that any committee has a mandate to take [indistinct] decisions other than the board [indistinct – dropping voice] If it is taken care of then it is fine. I wanted to assure the board that the purpose of the breakaway – and Dr Ngubane, you are spot on, you are making the point for the [indistinct – dropping voice]. Typically, the Eskom tradition is three days, but we do not have to take three days. We have planned an Exco breakaway, part of which will be to prepare for the breakaway, taking account all of the issues that we have

heard the board raised, so we prepared them for the two days which the board breakaway – I think we can manage because a lot of these issues we have canvassed already in the what do you call it so it can just go from, you know, very sharp objectives on the key priorities.

[56:55]

MARK: Sorry, Chair, just also one questions what Nasier(?) – so, in other words, by the time the build comes to IFC it will be approved by the board and the tender committee respectively because we do not want to receive and IFC unless it has gone through the correct channels. I just want to understand that that is the correct...

[57:12]

UNIDENTIFIED SPEAKER: No.

[57:13]

FEMALE VOICE: Other way around.

[57:14]

MALE VOICE: It is the other way around. The board tender will not deliberate on it unless it has been seen by the investment decision, you stopped(?) us. If it is an investment transaction, it is a normal maintenance then the IFC only decide. Okay, thank you.

[57:29]

FEMALE VOICE: Thank you very much. Romeo, did you have your hand up there? Alright, fine, then it looks like we may have a minute or here in between. Is that enough

time to cover the point that Mark has put on the table in terms of the debt strategy?

[57:45]

MALE VOICE: I should think so, we are not looking for extensive discussion.

[57:50]

MALE VOICE: No. Thank you, Chairman. We had presented the debt strategy previous time, we had a long discussion. We had presented the munic and the residential side and we also spoke about the Soweto. The Soweto, we did not put something on, we presented what the issues are and we said we must take more engagement and we said we will give the board time think about it. We will come back to that.

What the board requested, that we put a strategy in place around the unit debt(?) which we did put forward for the last board meeting. It was a strategy and a letter that should be drafted to the Minister to inform her of the intention, so that was part of a pack and that is the idea that we want to share today, is that strategy. I take it as read because it was in the previous board pack and subsequent to that when a previous meeting was cancelled, I did raise a concern, I spoke to the Chief Executive and I said we have to move on this issue, so that letter that was part of a pack, we did pull it out, we gave it to the Chief Executive and I believe that the Chairman has signed that

letter, it is going to – was a document to the Minister so I believe it is signed by the Chairman.

So the only thing we need now is that strategy approval so that when we next load shed, we can follow all those issues where we cut munics off and we use them off – cut about 30, 40% of the load on proportion to what they owe.

We look at the NMD, we also use them sometimes during evening peaks when we see we need maybe 3, 400 megawatts instead of using, you know, gas turbines, we use them as well. So that is basically in essence what the strategy says.

[59:19]

MARK: Now, Chair, can I just jump in?

[59:20]

FEMALE VOICE: Yes, please go ahead.

[59:22]

MARK: Because I have discussed this part with the IFC members, just so the board are familiar where – some of these munics, and I will give you example, [indistinct] Tshwane(?) is a prepaid meter. If you go and pay your prepaid account for your electricity, they do not give you electricity, they cut you off and say we are taking that money to pay for rates and taxes and then you have to go back again and buy another prepaid voucher to keep you going. There is about 20 munics that are doing that.

So they are enforcing electricity cuts to the consumer and collecting the money which should be our same policy. The only amendment that I had to the strategy was to add in that you can disconnect, which is fundamental. You know, to squeeze them and move them down, yes, is a good strategy there, but you should follow the disconnection route. The reasons are obvious, not just for the debt but for the funders around the world and for the people on the street to know and listen, we are collecting our monies.

They obviously need to take account which you had to keep key sites like hospitals and that, electricity still going, which is fine, but I am of the strong opinion that we have a fiduciary duty to collect our debt and the strategy doc needs to go one step further which is disconnection because we need that and that is the only way you are going to collect debt and if we do not get this correct, the funders from her side will increase the rate or may even not lend you any more money because they say you are not collecting your debt.

So, from my perspective, I think it was well thought of doc, it was a very good – except it needed the disconnection and I just wanted the board members to understand that they are disingenuous, these municipalities, by using the reverse on their customers

while Eskom does not switch them off. Thank you, Chair.

[01:01:05]

FEMALE VOICE: Thank you very much, Mark, do you want to respond? CEO, is there any comment you want to make there?

[01:01:10]

MALE VOICE: Chair, if I may go first? The disconnect, we have – like other munics besides the four munics in the Free State, we follow a process and then we disconnect. The issue of disconnect, I just want to clarify that, also applies to the four munics in Bloemfontein even though we had that letter, says we cannot disconnect. So I just want to clarify that point.

[01:01:28]

MARK: Sorry, Chair, which letter said we cannot disconnect?

[01:01:31]

MALE VOICE: The letter from the Minister of DP, says the four munics in Bloemfontein, we were stopped from disconnecting.

[01:01:36]

MARK: Sorry, that was from the old board.

[01:01:39]

UNIDENTIFIED SPEAKER: Yes.

[01:01:39]

MARK: You know, this is a new board and we are running

our fiduciary duties so if it gets approved today we need to follow the correct procedures to collect our money which is what you currently do today.

[01:01:51]

MALE VOICE: Okay.

[01:01:52]

FEMALE VOICE: Thank you, Varashni, and then CE? I just want to understand, are you waiting for like a sign from us or already – I mean, you have already got that. At the last meeting I think we all supported that.

[01"02:02]

MALE VOICE: We all supported but they wanted to see the strategy first and the letter.

[01:02:05]

FEMALE VOICE: Okay.

[01:02:06]

MALE VOICE: And then we said once it has gone to the board then – like we have load shedding tonight, we would implement - the system operator would be given a list of munics that they can cut off or partially reduce, that is what we would do.

[01:02:16]

MARK: At the top.

[01:02:17]

MALE VOICE: At the top, ja.

[01:02:18]

MARK: Before they go into load shedding schedules.

[01:02:19]

MALE VOICE: Before they go into load shedding. So we were waiting for the ...[intervenes]

[01:02:22]

FEMALE VOICE: Varashni, I think you need to get a response from the board how they feel. I mean, I support it one hundred percent. Mark's proposal?

[01:02:28]

FEMALE VOICE: Ja, I agree. I agree on that absolutely.

[01:02:29]

UNIDENTIFIED SPEAKER: I support it, absolutely support it.

[01:02:31]

UNIDENTIFIED LADY SPEAKER: Which is 15 years from what it was, cover(?). So what else do you need from us? This is a board resolution.

[01:02:37]

UNIDENTIFIED SPEAKER: No, nothing, we still have to come back with the Soweto issue. That is the free(?) issue we agreed on.

[01:02:40]

UNIDENTIFIED LADY SPEAKER: Okay.

[01:02:42]

UNIDENTIFIED SPEAKER: That is it.

[01:02:45]

CHAIRPERSON: Can we just see, so we have three in support. I just want to go through the board members.

[01:02:46]

CHAIRPERSON: Ja, can we just show of hands?

[01:02:50]

MALE VOICE: Everybody it looks like.

[01:02:52]

CHAIRPERSON: So we have got a comment from legal down there?

[01:02:55]

MALE VOICE: With the proviso that we should be mindful of the fact that before you disconnect there has to be a process that is followed.

[01:03:02]

UNIDENTIFIED LADY SPEAKER: Yes. Thank you very much, Neo(?).

[01:03:07]

UNIDENTIFIED LADY SPEAKER: Thank you.

[01:03:08]

UNIDENTIFIED LADY SPEAKER: Can we just take another board [indistinct]. CEO, then over to you.

[01:03:11]

CHIEF EXECUTIVE: Okay, in terms of munics using a tactic to block, to disconnect or to force people to pay their account, we need to follow it up with legal because the impact on the customer side as if the cost of electricity is too high, yet is not correct. But at the same time it affects our sales which has got nothing to do with the munic.

[01:03:42]

MALE VOICE: The process that we were alluding to earlier on does take that into account because it also involves sending out notices to people that are – or maybe potentially affected by the discontinuation of the service.

So what we normally do invariably is to go out on the newspapers that operate locally to decide where we want to disconnect and issue a notice and also invite people to have comments on the proposed discontinuation before we actually get to a point where we discontinue supply.

[01:04:23]

CHIEF EXECUTIVE: No, no, no, I think you are missing the point. I think you need to engage the munic legally whether is it right for them to use electricity as a lever to collect other rates.

[01:04:36]

UNIDENTIFIED SPEAKER: Oh, okay.

[01:04:37]

UNIDENTIFIED LADY SPEAKER: Challenge what they are doing.

[01:04:39]

UNIDENTIFIED SPEAKER: Good point.

[01:04:40]

UNIDENTIFIED LADY SPEAKER: Okay and I think that there is also – Chair, if I may, there is two views. There

are consumers buying directly from Eskom and then there are consumer buying through the Municipalities. So can we ask legal to give us a view on that, to look at – tell us legal – it is what they are doing. Neo?

[01:04:56]

MALE VOICE: We will do that, Madame Chair.

[01:04:58]

CHAIRPERSON: Okay, ASAP, because it looks that could be something that will help us. Can I just quickly propose, CEO, I am going to ask you to quickly if there is any input from you, maybe in a minute or two? Then I am just going to just take – I am going to allow everybody to do a leg stretch and be back in their chairs by half past. If we can all do that because I do not want people running in and out while the Minister is busy.

[01:05:16]

MALE VOICE: Very good.

[01:05:17]

UNIDENTIFIED LADY SPEAKER: Okay, so CEO?

[01:05:19]

CHIEF EXECUTIVE: No, when we got deliberate – first of all, I think the board has taken the correct decision which we have communicated where the issues arose in the context of the war room [indistinct – dropping voice]. We raised the fact that the board – our board, this current board, has mandated us to implement that collection policy.

[01:05:41]

UNIDENTIFIED LADY SPEAKER: Yes.

[01:05:42]

CHIEF EXECUTIVE: Of course that is a very intense debate and that debate was deadlocked. I would – because the board had concluded when we had the last discussion – I remember Mark saying we need to engage the Minister, the shareholder on this because unless we do that, you see, we are sitting with the position where, as [indistinct] has indicated, she wrote to us, said no, do not disconnect, you see?

So unless we align this position with her and justify, explain to her why we need to do this, we are going to be in the same situation, you know? We will give notice of disconnection and then we will get a letter from her. It is very, very important that we align, you know ...[intervenes]

[01:05:37]

MARK: Sorry, so what we did do – sorry, Chair, what we did do, we did send a letter. I wanted to add onto the letter. I was not sure that it went out because of it was coming to [indistinct] before that, we will disconnect, but we have a fiduciary duty up here, we are out of money. We have 4.9 billion in cash, you have seen – you have gone to raise funds, we cannot even get funds. People are asking. We are looking after this company and that is our responsibility. So when someone else comes here, they

are welcome to point their point but at the moment we have got no funds available. We need to collect this debt and I understand – and it is the Chairman's responsibility, I believe, to liaise with the shareholder and inform them and protect the board and the management's decision which is the right decision.

[01:07:23]

UNIDENTIFIED LADY SPEAKER: Can I make a proposal, given where we find ourselves, we have the Minister in the room, what would be the difficulty with positioning it today? If the board is comfortable, then we position it today because...

[01:07:37]

UNIDENTIFIED LADY SPEAKER: Absolutely.

[01:07:38]

CHAIRPERSON: Alright. Who is going to raise it with the Minister?

[01:07:40]

MARK: Sorry, Chair, it has been raised via a letter, we have done our duties and we informed them accordingly. I would not, from my opinion, want to engage more and open up a debate. The war room has had a chat, many discussions about it in the document what the war room feels and the war room has invoked certain municipality experts, we have performed out duty by doing a courtesy letter to the Minister to inform her what our intentions are

but going forward, we, as a company, need to, as our fiduciary duty, collect our debt.

[01:08:10]

UNIDENTIFIED LADY SPEAKER: Okay, just so that I am clear so that I give guidance here. We have got the Minister in the room, are we saying that we do not want to engage on the point or are we saying we are just going to sit back and wait? I needing to understand.

[01:08:20]

UNIDENTIFIED LADY SPEAKER: Perhaps we should have been informant to advice her ...[intervenes]

[01:08:22]

MARK: Sorry. We did advise via a letter, it is fully aware – I do not think it one of the agendas on the topic.

[01:08:27]

UNIDENTIFIED LADY SPEAKER: Okay.

[01:08:28]

MARK: I do not want to get into a debate at this element where the issues happened in the past. We have had our Chairman sent a letter, board has made a decision, that is my ...[intervenes]

[01:08:40]

UNIDENTIFIED LADY SPEAKER: Okay, can we just take some points, [indistinct] and then Thaba and then Varashni.

[01:08:46]

UNIDENTIFIED LADY SPEAKER: I think we need to highlight it.

[01:08:48]

UNIDENTIFIED LADY SPEAKER: I can understand why.

[01:08:49]

UNIDENTIFIED LADY SPEAKER: The reason why we need to highlight is because the paper is not as tacit as it is when you actually indicated to him and we are going to tell him – tell her and tell her all the – everything that we need to tell her around our responsibility with the energy that we have now so that she is aware so that when we write a letter back to us saying we must know that we are not going to accept it even before she writes it.

[01:09:19]

UNIDENTIFIED LADY SPEAKER: Okay. So we have got two positions. Can I just get support, are we going to raise it with the Minister? That looks like the answer is yes.

[01:09:24]

MALE VOICE: Yes.

[01:09:25]

UNIDENTIFIED LADY SPEAKER: Yes.

[01:09:26]

UNIDENTIFIED LADY SPEAKER: Yes.

[01:09:28]

UNIDENTIFIED LADY SPEAKER: Okay, alright.

[01:09:29]

UNIDENTIFIED SPEAKER: Through – via the Chair.

[01:09:30]

UNIDENTIFIED LADY SPEAKER: Ja, via the Chair. Thaba, then Varashni and then lastly we are going to go the FD and then we are going to take a loop break before the Minister comes in here now. So Thaba?

[01:09:38]

UNIDENTIFIED SPEAKER: Just check hundred percent that the letter did go off. I know the Chairman did sign, the Chief Executive, must just find out hundred percent with the Chairman.

[01:09:44]

UNIDENTIFIED LADY SPEAKER: Who can confirm?

[01:09:45]

UNIDENTIFIED SPEAKER: Neo.

[01:09:46]

UNIDENTIFIED SPEAKER: Yes, yes.

[01:09:46]

UNIDENTIFIED LADY SPEAKER: Did it go off?

[01:09:47]

UNIDENTIFIED SPEAKER: Yes, yes.

[01:09:48]

UNIDENTIFIED LADY SPEAKER: When did it go off, Neo?

[01:09:49]

UNIDENTIFIED SPEAKER: I can check.

[01:09:50]

UNIDENTIFIED LADY SPEAKER: Because if it went off yesterday it would not be fair to assume she received it.

[01:09:52]

UNIDENTIFIED SPEAKER: That is the point I am trying to make.

[01:09:54]

UNIDENTIFIED SPEAKER: No, no, no, it went off yesterday.

[01:09:55]

UNIDENTIFIED SPEAKER: Mr [indistinct] as well.

[01:09:56]

UNIDENTIFIED LADY SPEAKER: Okay. Our leg break is not going to happen.

[01:09:58]

UNIDENTIFIED SPEAKER: Not going to happen.

[01:10:00]

UNIDENTIFIED LADY SPEAKER: I apologise to the board and to everybody. You see, this is what happens when you talk too much.

[01:10:19]

UNIDENTIFIED SPEAKER: Morning, Minister.

[01:10:20]

MINISTER BROWN: Morning everybody, please sit.

[01:10:27]

UNIDENTIFIED LADY SPEAKER: Chairman, am I sitting in your house.

[01:10:30]

DR NGUBANE: No, no, no – ja, sit next to the CE, I will sit here.

NO FURTHER RECORDING ON AUDIO FILE 9.1

CONTINUING ON AUDIO FILE 9.1.1

PROCEEDINGS RESUME

[12:21]

CHAIRPERSON: ... for, and if anybody wants to interfere with that, they will stop them from doing so. So, there are some serious misdemeanours that are going on in the business, that is serious. Yes?

[00:13]

FEMALE VOICE: Mr Chair I agree with you because from even a corporate prospective and from my experience the tendency is that you do not get better result in whistle-blowing if you do not make that change and if the executives are – continue to be in the position that they were in they will suppress investigations, so I am afraid I support that, because I have seen it happen.

[00:34]

CHAIRPERSON: Oh yes, Norman sorry?

[00:36]

MR TSHOLANKU: Thanks Chair.

[00:37]

CHAIRPERSON: You are so far, I cannot see you from here.

[00:41]

MR TSHOLANKU: Ja, actually my take on this is that I don't know whether these issues that you are referring to

are issues that happened under the watch of the previous Board or this Board because, for example, I will expect that structural changes at high level are approved by the Board and if it happened under the watch of the Board, then the Board had to take some responsibility and also, my other undertaking is that before we can rush into a decision, I wish - or recommending that we gather all the facts in terms of reference so that we don't take a decision based on allegations that don't refer to – that are not relevant for certain people because we can take decisions that don't affect somebody or the person who is totally innocent and so on.

So I wanted us to, maybe, when we get into the terms of reference the decision is made on certain issues that are critical for the business, for this business, for this decision for this business within the organisation so that when we do suspend, we suspend having the facts that there is a serious issue that is in this division that needs to be looked at seriously and a person has to be set aside so that we can investigate this particular point seriously because there is a serious consequence on this specific issue.

I will not prefer that we take a blind spot to say that Executives must be set aside because they must ...[indistinct], there may be Executives that are totally

innocent and putting them on special leave or forced leave, and we'll find ourselves going to Labour Court time and again, fighting the same battles with the ...[indistinct]. So, I wish that we deal with terms of reference on issues that are critical and consequences that came out of those – these positions or those ...[indistinct] of things so that we are specific whenever we take that decision because my big worry is that we'll lose focus and we will not be able to stand firm in our decision based on – I mean each of the forensic investigations, for example, Chairperson, depending on the nature of it can be done with or without the Executives but depending on the nature of the issue that needs to be investigate, I think that will let us much better that, maybe this one no, we must not take that decision on this person *per se*, this one we can take this decision on this person.

[04:22]

CHAIRPERSON: Yes, I must make – probably make use of the term forensic implies criminal act. I would say suspending the top layer of the organisation while you investigate the causes of the present problems is probably less accusatory than us trying to find facts about what has happened.

[04:49]

MR TSHOLANKU: Yes.

[04:50]

CHAIRPERSON: Look, yes – sorry.

[04:54]

MS CHWETHA: Thanks Chair, I think the Minister has indicated a whole lot of issues that needs to be looked at and in her speech, if you noted what she was saying, it was – it is the basis for the terms of reference, so if we can use that speech as a way of putting the terms of reference and from that speech it was indicated to me, indicating the critical sections that needs to be looked at and in looking at those critical sections, just keep the leader in each section from what she was saying and if we can – if the Company Secretary can give us a summary of the first part – of the first five minutes of her speech which was more elaborate on what she wants to say to us.

Leave the rest of the discussion when we are asking questions but that speech was more elaborate and indicating the focus points – the focal points, where we need to ... [indistinct]. The problem is when we are here, the – Eskom is ...[indistinct] and we are not able to see the whole of Eskom, we're supposed to because we are at the top level where we need to be able to see everything and understand everything and the next thing – what happens, as she was indicating as well, she was saying, I tend to defend Eskom, blah, blah, blah. She is not supposed to defend Eskom, she needs to be listening and come and

attack us but she ends up ...[indistinct] because it's happened, we do the same and we do it at the disadvantage of Eskom at the advantage of the Execs but today we are being asked by the Minister and she even says, I'm using some of the words that I would never use in public to actually step back and attack Eskom and do what is right for Eskom. Attacking the suspect, put ourselves out of where we're supposed – where we defend and try and zoom and critically analyse and be able to come out with the right – correct results that we pave the way forward that we then go back and say, we have found the worms that are eating Eskom but we can't do that if we continuously defend.

[07:50]

CHAIRPERSON: Okay, I think, based on what you're saying ... [indistinct] there are four areas that Denise has spoken about. She spoke about maintenance and that is engineering, maintenance is driven by engineering. She spoke about procurement and that is commercial and she spoke about the new bill programme that's group capital and technology and she spoke about finance.

So, these are the four focal areas that she talked about and each one of those has got a specific group Executive responsible for it. So I think what the Board needs to do is to make a decision in terms of – let's

resolve about how it is, that those Executives can be placed while this is going on and I take the point that one is saying, maybe there's a forensic investigation, might subsume that we – there's a criminal issue around it, maybe we should give it a different, more appropriate title.

[09:01]

MS NAIDOO: Mr Chair, she also spoke about the fact that the load shedding, sort of occurred at different and odd times, so is that not generation?

[09:09]

CHAIRPERSON: No, no, no that's once again, don't forget load shedding is a consequence of maintenance and lack thereof so it is still engineering it's not generations.

[09:20]

MS NAIDOO: Okay.

[09:22]

FEMALE VOICE: Chairperson, look, I think as a Board we've been grappling with a whole lot of issues which, as she's correctly pointed out, she was concerned we're worrying ourselves about the rats and mice and the burning platforms not being attacked but I think as a Board, this is going to be one time when we must step up to the plate and must make hard calls because we've been saying we've been disengaged, now we're engaged.

Now, the real question becomes, do we now want to now delay this by going into sub-committee work before we

make hard calls. Sitting here today and knowing – and it doesn't have to be proven or evidential proof, the fact that our Chairman tells us – unless we believe he's lying, we cannot ignore what is being put on the table.

I think this is where we need to make hard calls with a parallel process of finding the evidence on what is being – you know, what's happening but I get a bit scared if we want to now palm off to sub committees, number one, and number two, you know people are going to be treated like criminals. You know what guys, today and in the business world public and private sector people are being set aside which is why that word is quite good, it's not suspended but its set aside while something bigger happens. This not about you or me, this is about the entire country and I think this is a Watershed moment for us as a Board but for the country. So if somebody can make a hard call to show we will leave no stone unturned to see if we can turn this thing around and we can make a mistake we are going to make some mistakes as we go, but don't forget this Board has been seen, or I certainly feel like a sitting duck from the 10th or 12th of December.

I've said it a number of times, now this is one thing I've got to challenge myself and say, given what I now know, am I still going to do that.

[11:19]

MALE VOICE: So, who are the people, so we understand so that you can give us comfort of the lower levels because one of the people you said is the FD because we had finance, I don't know if it is finance. You know we had maintenance, capital, commercial and...[intervenes].

[11:38]

MALE VOICE: The top layer, what's the top layer.

[11:40]

CHAIRPERSON: Okay, let me ask you a question... The divisions that are directly concerned is commercial and technology which is led by Matchela Gogo, it is group capital, that is a new build, that is led by Dan Marokane and technology led by Gogo Matchela, he's also responsible for maintenance and obviously finance is led by Tsholofelo, the FD. I think we just need to, you know, make a determination ourselves, as to the value of the exercise that we want to have achieved and how best that exercise can be achieved. That is really what is the core of this – this is what, I think ... [indistinct] is saying, less accusatory than us trying to find facts about what has happened.

[12:40]

MR LINNEL: I do agree with you, but I just want you to give me comfort on one area on the financial side I understand that those guys can put pressure on the people below, can the ME also do this...[intervenes].

[12:51]

CHAIRPERSON: No, I don't think so.

[12:52]

MR LINNEL: That's what...[intervenes].

[12:53]

CHAIRPERSON: I personally don't think so. The financial issues are quite different.

[12:57]

MR LINNEL: Yes.

[12:59]

CHAIRPERSON: They're quite different. Don't forget the financial crunch that Eskom is experiencing is not as a result of an operational issue, it is as a result of consumers not being given adequate tariff for us to run the operation. So the financial is in a different realm whereas the other issues has got to do with specific operational things that can and do go wrong as a consequence of whatever the consequences are which then lead to the load shedding, lead to the cost of ...[indistinct] and so on, so I think those are two different situations, okay hang on a second I thought...[intervenes].

[13:42]

FEMALE VOICE (MS CHWAWE): Thanks Chair, on the issue that the Board can just discuss everything and not allow the sub committees to discuss and report, I don't think it's proper in terms of trying to make sure that

everything ...[indistinct] and the governance is followed properly and when the sub committee discusses and comes up with a proposal to the Board it's not an investment, it's not what the Board is going to take ...[indistinct] but it's in the initiation of the discussion that when it comes to the Board and then gets confirmed by the Board, discussed further, changes being done, you know. This is not a usual- it's a critical stand that we're taking and it's going to attract a lot of media attention, it's going to attract a lot of process issues as the – one of the lawyers was emphasising, policy, policy, policy. So let's just follow the policy and bearing in mind when you are in a committee, Board members can join in the committee but cannot be part of the final decision making and then it comes back to Board but it's just process issue to make sure you follow the policy – the processes that we have agreed on as a Board.

[15:28]

CHAIRPERSON: Okay, hang on I think – either Norman or yourself were going to...

[15:35]

MALE VOICE: You can go first, I can come later on.

[15:38]

MALE VOICE: No I was just raising the issue again supporting ...[indistinct] to say, it's good to give the overhead but let's go into details on – in the groups of how

we can...[indistinct] because trying to debate it here, we're taking a lot of precautions, sometimes unnecessary. We look at – because we're going to look now at the seriousness of the case that is levelled against the individuals.

[16:09]

CHAIRPERSON: Okay.

[16:11]

NORMAN: Thanks Chair, there was a gap from the war room information coming into the Board so all of us are not aware of the issues that the Minister is coming from. I mean the issues – the accurate information from that got submitted to the war room and I'm talking about the issues of one or two months, probably when this thing started, of the war room and my caution around this is that, here's and advice from the Minister, let us take the advice seriously but not urgently because when we take it urgently we will be faced with serious consequences. I think let us get the facts of what those inaccuracies are and we determine for ourselves whether they...[indistinct] any sanctions or not because my caution around this, Chairperson, is that talking things at high level without actual facts, I gave an example that, during the structural changes that you spoke about was it endorsed by the Board, the previous Board or not because you would expect that structural changes are put by the Board.

So, if you have to suspend based on that for example, the two Executives concerned of those structural changes, had the Board endorsed it, we don't have a case when the Board has endorsed it and approved it. So I will prefer that we go into the details of issues so that when we do take a decision, we take a decision that we'll be able to defend from the Board's point of view and furthermore, you know, people do come back because of winning cases in Labour Court because there were no processes that gave them to get input into why they should not be suspended and at the same time, I mean, it also had direct implication, I mean, when people get suspended perhaps they should get...[indistinct].

So, there has to be some elements of having the actual facts that we can say, this is the reason what we are suspending you for.

[19:02]

CHAIRPERSON: Can I just explain something all of it you're talking about is long been done. Remember I said to you that this thing has not started now, the Presidency started this thing several months ago. So all of this is in place, they've done all this investigation, they can tell – if the Board insists, we can bring somebody here this afternoon who can give you all the things that I'm talking

about if that – if the Board wants to get to that level, it's fine.

[19:29]

MALE VOICE: Then it's informed.

[19:30]

CHAIRPERSON: That's not a problem but I'm just saying to you that the precaution around doing an exercise like this is something that has long been – the President actually, the President demanded an entire analysis of the governance of Eskom and I have a document this thick which was given to me which was then a Presidential analysis of what the Board can and cannot do, what the Minister can and cannot do around Eskom what the governance of issues around Eskom are, all of those things. All directed at trying to establish how you can do an investigation of this nature. So, there's been a lot of work that's been done already. On the question of urgency, remember on Monday what I said, what I said was this, we have been given up to the 30th of June to complete this exercise. Now, the fact that the Minister did not mention that is maybe because she might not have decided to go into that detail but there is no question about the urgency of this matter, it is very urgent. So, we already have a timeline in which we have to work so I just wanted to point out the fact that, yes, there is a sense of urgency that we must deal with this issue.

[21:02]

MALE VOICE: Any suggestion of culpability or criminality directed at any of the Executives will land us in the situation he's describing therefore I'm saying, no mention of the Presidency, no mention of the Minister. We as a Board are concerned with the lack of knowledge and understanding of where the problems emanate from and therefore, we instituted an investigation for information purposes. The accusation of, you did – slept with a woman or whatever, that will come later but we just want the body of information that can help this new Board understand where the problems are. Therefore, we want to give, forced holiday to certain individuals so that we can gather information without prejudice.

[22:00]

DR NGUBANE (FEMALE VOICE): Mr Chair, I agree with Norman to an extent, I understand his concerns but I also understand that this is something that needs to be done. For me that's semantics and I agree with the process we need to then – you said we've already got lawyers involved in this process, this is something that they need to do, they need to – we need to give them the instruction they need to ensure that we comply with the Labour Act we do everything in step by step, what we're supposed to do in terms of those particular Executive's contracts and whatever, so they need to put us in place and make sure

that we're in compliance with legislation but – and I think if they do, do that correctly, the right way, there can be no implications at a later stage that we didn't follow due process but I think the most important thing is that, this needs to be done but obviously the right way.

[22:47]

FEMALE VOICE (CHWANE): Chair, if I can come in, I want to concur with the doctor, we are in South Africa, in case we have forgotten, we are in South Africa and the problem in South Africa is that most things are discussed on the newspaper and I don't want us to leave this room forgetting that, in as much as we have responsibility to take...[indistinct] we have a responsibility to protect our leaders. The point that we had said here when the Minister was here to say, the Minister must be excused on some of the decisions that we need to report to her about, it's a good – it's something that we need take very seriously. The mention of the President in this Boardroom is something that we need to know that it is wrong, if it is mentioned to emphasise something we must not – not even one person must leave with the word President because we know the attack against Government through our President and for him – for us to open an attack as well at our level, that would result in him being attacked further than he is now, is not right and for us to – as the doctor says, we

need to take ownership of this process. He might have been shady, the Minister might have given us guidance but she cannot own this process, we need to own it and the manner that – the newspaper is going to outline that she arrived after this inspired her. So it means therefore that, we can't – we need to defend that, we need to always make sure that we prevent our leaders and we fail to do that, we have failed Eskom as well and we have failed the country if we are part of the people that are sabotaging, effectively, our leaders, we have failed.

[25:13]

CHAIRPERSON: Okay so, my understanding is quite clear. First of all, this exercise is to be termed an inquiry into the status quo of Eskom right, number one. Number two, this inquiry, for it to be effective requires us to ask specific Executives to take forced leave or whatever you call it, to be removed then from the situation. This is not an investigation into individuals or wrongdoing by individuals, so that the media has to get right, it is the status quo of Eskom because there are definitely situations that one has to look into, what is actually happening in the organisation and we are asking that this be done by non-Eskom entities, an independent inquiry right and then we are then saying that the specific Executives who are directly involved here would be, the group capital Executive, commercial

Executive and the Chief Executive. Well we said the FD, his situation is different it's not...[intervenes].

[26:40]

CHAIRPERSON: No, not necessarily.

[26:42]

FEMALE VOICE: It's what you said it says – you said that the financial situation is not based on, obviously the problem here but it's because of the tariffs but you know some of the sub committees that I'm involved in there is just so much of overrun of budgets in million, in billions. That lies with the FD.

[26:59]

MALE VOICE (MARK): Sorry, can I just, all I want to do is, one of my concerns is with the FD. These things have got to do with procurement and I'm hearing diesel, it doesn't involve the FD, when it comes to the FD, she pushes the button. Why I'm so protective of the FD is in this crisis I can't afford...[indistinct], I can't afford the market here that we also side-lined the FD because then they say it's money involved, who's going to run all this finances that we're doing, continue running with the markets etcetera, when we've got that, it scares me completely ...[indistinct], it wasn't mentioned by the FD, she said the financial information they get is not accurate. She wasn't saying that there is something untoward in that sense. So, it scares me when you suspend the CFO and a CEO, not

suspend, you put them on leave, it really, really scares me, I just want to put that point across because who then is responsible to sign the cheques and the money.

[28:02]

CHAIRPERSON: I support fully what Mark is saying. The expectation is that the financial integrity of Eskom is unquestioned. If we find stuff that question that, then we get to the FD later but for the moment as we have mentioned, all the senior people who need to be on leave, you know...[intervenes].

[28:24]

MALE VOICE: I can see the cost of ... [indistinct] don't occur in finance, they occur in this different parts of the company as so finance then, has to try to account for them, when in fact, they don't originate from Finance.

[28:36]

MALE VOICE: Just one-point Chair, just for clarity, Minister did talk about the bonds, the prices and the rates and whatever it is, she wants the full story about that, just for clarity?

[2:45]

CHAIRPERSON: Ja.

[28:47]

DR NGUBANE: I think, also from a like, auditing, you know, you always get your CFO's right there and the auditors, you know, they can pick up situations like that, so

I don't think she was – as much as I – maybe now I agree with what he's saying that, maybe she will not be able to influence otherwise, because a paper trail you can't miss out from an audit perspective. So, even if we've got auditors involved in this investigation, they could pick up issues even though she's around.

[29:09]

CHAIRPERSON: Yes, no I don't think that is... [indistinct].

[29:13]

MALE VOICE: Just let me raise it first, maybe you guys want to ... [indistinct], the FD is personally involved certain violation... [indistinct].

[29:15]

MALE VOICE: [Inaudible].

[29:26]

DR NGUBANE: Information on it.

[28:29]

MALE VOICE: Violation of the procurement process.

[29:30]

MALE VOICE: Such as?

[29:32]

MALE VOICE: Such as she wanted to meet the people during the tender process which was then... [indistinct].

[29:38]

MALE VOICE: Oh boy.

[29:42]

CHAIRPERSON: Is that reported?

[29:44]

MALE VOICE: Ja.

[29:45]

MALE VOICE: But Chairperson, I still say match point in terms of the market in general, this will override everything. Only when we find some wrongdoing can we go after the FD but if we don't do – if we go for her straight off, I'm telling you we issue paper, tomorrow it will be thrown away.

[30:12]

UNIDENTIFIED PERSON: Chair, we have a slightly different ... [indistinct 30.12].

[30:14]

DR NGUBANE: Ja, don't stop that investigation.

[30:15]

MR PHUKUBJE: I don't think we should look at individual, I know you've got the contents around the individuals now. I think we should look at it from a governance point of view, from an audit and risk point of view. We're looking at the total organisation, total organisation, so we're not particularly focusing on any specific area or sector, we vouch the total top layer to please the...[indistinct] while this investigation is in process so we're not finger pointing to nobody, we're not doing anything and then let the forensics go through it and in this interim period we've got acting appointments made in terms of sorting this thing out

and it's purely from a risk point of view that we're now batting this issue as we believe that the situation of Eskom in the country is serious enough for the new Board to get a handle on it, sort of generalised.

[31:10]

MALE VOICE: We must finalise this today.

[31:11]

MR PHUKUBJE: Today ja.

[31:12]

MALE VOICE: If we leave here, I mean, then we are in serious trouble.

[31:16]

MR PHUKUBJE: Ja, don't finger point to any particular individual.

[31:18]

CHAIRPERSON: No, no, no I think we're dealing with specific areas of the business, I mean, if you talk about transmission, you set somebody aside in transmission for what reason. No, no, I understand, you see we must understand, we have to be clear, people take accountability for the things that they do, from that position.

[31:38]

MR PHUBUBJE: I agree.

[31:39]

CHAIRPERSON: We mustn't soft pedal when it comes to saying, we need to investigate specific areas in the

business and for that reason the presence of the people there are going to make those investigations difficult, let's be clear about that because that is a reality. So, I don't think – I don't think setting aside the entire Executive is going to help us because there are areas that are not concerned with what we're talking about. We're very clear where we want to focus our investigation at, so I think we should be clear-cut, unequivocal and be clinical about what we need to do and we have to be and we have to be seen to be clinical about what we need to do. So, I think a step change is required, you mentioned a word, I can't remember the words you mentioned...[intervenes].

[32:25]

MALE VOICE: [Inaudible 32.25].

[32:26]

CHAIRPERSON: Yes, we have to do – we have to be very clear and bold about what we need to do, and we have to do it today.

[32:33]

MR PHUKUBJE: Can we not be diplomatic about it, that's what I'm saying, do it but do it diplomatically.

[32:36]

DR NGUBANE: That's common cause.

[37:41]

MALE VOICE: Remember when we issue the letter for the person to go on leave, you have to be specific of the area

that the person is going to be investigated on, you can't be generic. That's why I say, guys, this thing is done is specific to individual for a specific reason. We must be bold enough to make decisions, let us now start now, even here, and start waffling and waffling about certain things, we need to be bold.

[33:09]

CHAIRPERSON: I think, let's modify what you are saying. We are not investigating individuals, we are investigating the areas of the business, what is going on in those areas of the business because you see, if you are investigating individuals, then you have to suspend that individual because that individual then – there is an element of wrongdoing. I think what you are saying and what I'm hearing you are saying, is that, we are looking at specific areas of the business where we know there are difficulties. We have mentioned procurement, we've mentioned engineering, we've mentioned – so we are saying those people who are responsible for those areas, let them take forced leave whilst we are investigating those areas because you see, we believe that them being there is going to impede the investigation, let's be clear on what line we are taking.

[33:59]

MR LINNEL: You need to apply your mind now for the CEO, I understand that specifically, specific departments,

which is easy, now how do you justify or the media for the CEO, we just need to apply our minds guys.

[34:12]

MALE VOICE: I think we have deliberated on the matter.

[34:13]

DR NGUBANE: We need to make a point.

[34:14]

MALE VOICE: Let's go to the specific, let's go to the sub committees let them – this Board must sit here and reconvene later and get the recommendations from the sub committees, rather than to keep on debating there now.

[34:28]

ALL PARTIES SPEAKING AT ONCE

[34:32]

CHAIRPERSON: Ja, let's do that. I would do justice to see the Board make a decision and let the implementation be the responsibility of the sub committees. The only decision we are left with...[intervenes].

[34:42]

DR NGUBANE: How, and the process.

[34:44]

CHAIRPERSON: And how we are going to do it and which levels of the organisation we are going to focus on and hence which Executives we are going to ask to take time off.

[34:56]

MR PHUKUBJE: And how can we get maximum ... [indistinct 34.58] from a public point of view, from a customer point of view, from a country point of view, we need to emphasise that.

[35:04]

DR NGUBANE: The sub-committee must have discussions with the lawyer concerned, the strategies, legal advice and opinion on the process involved.

[35:12]

MALE VOICE: Chairperson, we endorse the suggestion put on the table, we've taken the decision, we are delegating the sub committees of people in governance and audit and risk to deal with the terms of reference and so on and so on and who takes over the acting position, you know, and then we come back and endorse that, once they've decided...[indistinct 35.37].

[35:38]

CHAIRPERSON: Okay, yes ... [indistinct 35.38].

[35:40]

DR NGUBANE: Can I just understand, I mean, because I think I was the one who raised the issue, as a Board we keep on pushing it back. Are we saying the sub committees goes now, does it now and comes back today?

[35:50]

UNIDENTIFIED SPEAKER: Now, now, now.

[35:52]

DR NGUBANE: Okay well, then I think we're all saying the same thing. I think we're just worried about timing because I mean, if we leave any time flap till next week, we're already too late. So, we're all going to go now...[intervenes].

[36:02]

MR BALOYI: Why is – why you briefing today, if I can ask, why is it such a ... [indistinct 36.05] because some of us will want to read that report that is readily available so that we understand the key critical issues that we raised. I think for us – you know, there is something that she mentioned, that to me, it sounded very strong. She said that imagine if you – the Minister comes to meet the Board and then immediately on the same day the Board has made a serious decision and how do we protect each other, the Minister, then the Board and the newspaper stories will be, the Minister instructed the Board and so on and so on and ...[indistinct 36.56] of our Board really is going to ...[indistinct 37.01]. I don't understand, why now, because yes we do have much to [indistinct 37.07] until June the three months we can – after we have read the documents and understand the issues we can still meet before the end of the month, we are meeting on the 30th and – I mean, into it somewhere meeting and some of us want to take a decision we are comfortable with, things that we can

always defend and for us, I mean, we can make a decision there on those break always and the committees would have met in their own times in this two weeks. I, really – this issue of meetings that we are creating now, to me is...[intervenes].

[37:51]

CHAIRPERSON: Mr Baloyi, I think you're focusing on something different, I don't think you are hearing what the committee is saying. The committee is saying, there is a clear need to assess the status of Eskom, there are a number of things that we need to do to look at in the organisation and we've identified the areas that we believe we need to scrutinise, what has taken place in the organisation, right. The second thing we're saying is this, we are not blaming or putting blame on individuals about what is happening in – we're not pointing fingers at people. What we are, indeed saying is this, that in order for us to expedite and be efficient about doing this inquiry, we need to ask the individuals who are heading those particular areas where we are concerned with, to take forced leave or to step aside because there is need for that investigation and inquiry to be unimpeded by their presence. It is common cause that when people come in, it doesn't matter for what reason, because a potential for culpability may be there and if you sit there as the head of the organisation of

that particular division you are seriously saying, hey there might be a problem here arising and I'm going to catch the problem. So, your instinct is to try and be as protective about what there is there as possible without you being blamed for anything. So, it is imperative, as we are saying, that these people should give the space for that inquiry to take place. Thirdly, we are sitting here as a Board, the Minister made it clear that we have to be decisive, the buck stops with this Board. Now we are sitting as a Board, we've got all the information we need to do what we have to do and we're asking ourselves to defer this thing to some other time, no we can't work like that.

[40:08]

MR BALOYI: I don't have information Chairman

[40:09].

CHAIRPERSON: What information are we looking for.

[40:10]

MR BALOYI: No, no you said we do have the reports available and I'm asking for that report so that I can see what is contained in that report and then secondly I said that the issues from the war room, the information has never been sent to the Board so that we understand those inadequacies for example and the third point that I'm concerned about is that – my understanding is that when we say we leave this with the committees then the committees will have to meet shortly within one or two

weeks, I didn't expect that they are going to meet now and then we would make a decision and so on because we don't have information Chairperson, can we get information so that we take concrete decisions that we can always defend from our side because some of us, really, we don't want to use hearsay information to make decisions, we want to see decisions that...[intervenes].

[41:17]

CHAIRPERSON: Yes Mr ... [indistinct 41.17]

[41:19]

MALE VOICE: Well, you know, I understand where Norman comes from but we are not at that stage yet to be writing people, give us reasons why you shouldn't be suspended, we are not there. All we want – we have no document, there may be a document somewhere in Government but it's not our document, it's not Eskom Board document, so that is a sign. All we want to establish is the status quo as you have said, what has happened in Eskom informing ourselves, therefore, we investigate.

[41:53]

CHAIRPERSON: We are going to get to where Norman wants us to go to.

[41:55]

FEMALE VOICE: Chairman, you know, I always think in numbers and I think we all heard the CFO this morning, she said that we normally run on a four month buffer as a

reserves, she called it 20billion, so effectively you're looking at a business of R5billion per month, running costs, if you take everything into account, that's R30million rand an hour. So, you want to know what the urgency is? With everything we've heard today this Board has got to make decisions based on a cost of R30million an hour and if we fail to do that speedily, we've got to think of the numbers that it's costing this country, I'm sorry I don't...[intervenes].

[42:35]

CHAIRPERSON: Okay I think we can safely say, at least we have got a decision that we have to now ask the two committees to expedite in terms of what – how to proceed in getting this work done.

[42:51]

MALE VOICE: And we reconvene today.

[42:52]

CHAIRPERSON: Ja okay.

[42:53]

MR LINNELL: Sorry Chair, last question, just to say it was three people that we look into?

[42:57]

CHAIRPERSON: Yes, correct. So, let's break for lunch...[intervenes]

[43:03]

UNIDENTIFIED SPEAKER: He has something to say.

[43:04]

CHAIRPERSON: Oh, you've been quiet the whole day.

[43:08]

MALE VOICE: No, just a point on governance and process. So, I agree there needs to be an investigation but I think you need to consider that Eskom is not just a parastatal that doesn't touch the independent market, there's an economy outside of Eskom which is independent of what happens in Government by the way. Eskom applies for bonds, there are agencies we're going to be looking at, we downgrade and we downgrade what's happening. So I'm appealing to all the sub committees that are going to look into this, that you need to consider – the decision is done, but you've got to be careful around the process of how this is going to be managed internally in terms of the process that we're going to follow, the governance around it because believe you me there's a ton of bricks coming our way, externally not just from the media, I'm not worried about – I'm not concerned about the general media but from people who are running the real economy, there's an economy that runs – there are people that run the real economy outside who are going to impact on Eskom and I'm talking about rating agencies, I'm talking about banks so we need to be really very careful how we manage the governance and the process. We can't, after we're done

with this, people are poking holes at the process that was followed and the governance around it.

[44:37]

CHAIRPERSON: Yes, absolutely.

[44:38]

UNIDENTIFIED SPEAKER: Yes, we must be careful ja and after we've done it, we want to see our share price go up, that's what I'm saying.

[43:44]

CHAIRPERSON: Okay can we break for lunch then.

[43:45]

UNIDENTIFIED SPEAKER: I think we'd have to...

[

ALL SPEAKERS SPEAKING AT ONCE

[44:58]

CHAIRPERSON: The resolution is to proceed with the investigation as quickly as possible and we'll give it...[indistinct 45.08] by asking the specific layer that's concerned and the Chief Executive to take forced leave so that they don't impede the investigation and then from then on terms of reference have to be prepared for the investigation and this is work that will be done by the audit and risk committee with whatever support it gets and then all of that, then gets reported back to the Board. Now, it may be that all of that cannot be completed today. So, in

reporting back to the Board it may not be feasible to do it on the turn, just like that, because of the time involved.

[45:50]

DR NGUBANE: I don't think the discussion with the people concerned should be today, we need to consult with our lawyers to make sure that they follow process and everything is complied with, HR should not do it.

[46:05]

CHAIRPERSON: Okay so what people in governance has now got to do also, is look at who are going to be acting in that and bring that back to the Board.

[46:10]

DR NGUBANE: Correct, and consult with our lawyers.

[46:14]

CHAIRPERSON: I suspect he's here already.

[46:15]

DR NGUBANE: Oh okay.

[46:17]

MALE VOICE: So, just to – on Mr Baloyi's point, I think we need to leave it to the Chairman of the audit committee and the Chairman of the people in governance to run this process. We as a Board have taken the call – have made the call, then the Minister can be informed that the Board has made this call but the execution of it and how it's going to happen, the terms of reference, who are the consultants, how much it's going to cost, what are the –

you know, both the Chairman of the people in governance and the audit and risk must then convene their committees, make the decisions and report back to the Board, I'm not sure if that's going to happen in the next few minutes.

[46:55]

CHAIRPERSON: I don't think it's going to happen

[46:56].

MALE VOICE: The decision of the Board has been taken so I don't think that we are still lurking around whether we're going to do this or not, that decision has been done. Now, it's about the modalities of how it's going to be done, that's up to the two Chairman's to...[intervenes].

[47:09]

CHAIRPERSON: Okay, can the team then come back to the Board at the time when the work has been done, has progressed, it doesn't have to. [indistinct 47.17.

[47:18]

UNIDENTIFIED SPEAKER: It doesn't have...[intervenes].

[47:23]

FEMALE VOICE: I propose that the audit and risk committee sit or a few minutes before lunch ... [indistinct 47.32] remain in the boardroom so that we can decide how to go about... [indistinct 47.40]

[47:41]

MALE VOICE: But the delegation must be, specifically mentioned in the resolution that we are delegating them.

[47:48]

CHAIRPERSON: Yes, that's something that...

[47:52]

UNIDENTIFIED SPEAKER: [Indistinct 47.52] governance I think we have to...

ALL SPEAKING AT ONCE

[47:58]

CHAIRPERSON: Ja, after lunch, not before lunch.

[48:00]

DR NGUBANE: Before lunch, we can also meet before lunch.

[48:02]

CHAIRPERSON: Okay you meet before lunch we'll meet after lunch.

[48:05]

MR LINNELL: Chair what happens to the Board meetings...[intervenes].

[48:08]

CHAIRPERSON: No, no we're coming to that.

[48:15]

MR BALOYI: Sorry Chair, let risk meet first then we will meet up with risk once we get their input.

[48:22]

MALE VOICE: Sorry Chair, I just wanted to – just one last minute... [indistinct 48.22] in this process.

[48:25]

CHAIRPERSON: The CEO, the head of group capital and the head of commercial are the three individuals we're going to ask to step aside.

[48:35]

MR BALOYI: Because I thought, maybe then the CEO and the CFO are excluded.

[48:39]

CHAIRPERSON: No, the CEO is not excluded, the CFO is excluded that's what we've decided. Okay, can I just make it...[intervenes].

[48:47]

MR BALOYI: Just one last thing from me, can I ask that, just for process, the Chairs of the two committees who have been delegated, be provided with whatever reports and documents available, at this stage?

[49:01]

CHAIRPERSON: Yes, that's fine. The rest of the Board meeting, I don't recall where we were, what we have not completed.

[49:09]

MR LINNELL: I'll fill you in Chair, we finished and we approved the debt strategy which I'd like to tell management that the Board's approved, we missed a lot of other points, we didn't get to the corporate plan which we're uncomfortable to approve now based, until we get this specific report because the Minister was saying to us,

this corporate plan, you know, I've got a lot of questions for it, she said this corporate plan it's just much of a muchness, how we know what to believe.

[49:36]

CHAIRPERSON: Okay, do we – we grant what the Minister is saying about the corporate plan that we need to go back.

[49:41]

DR NGUBANE: Ja.

[49:43]

CHAIRPERSON: So obviously we cannot deal with it, so we have to shelf it.

[49:48]

DR NGUBANE: [Indistinct 49.48] we have not received any other versions.

[49:49]

MALE VOICE: The borrowing plan – the borrowing plan as well, we're supposed to ... [indistinct 49.53].

[49:53]

CHAIRPERSON: Okay there's a corporate plan, then there's a borrowing plan, the borrowing programme, was that discussed?

[49:58]

DR NGUBANE: No, just the debt strategy but the corporate plan, the version that we got is the one that we received the day before the Board meeting. I had my meeting last week with Exco, they sent three versions after

that, we're not totally abreast with latest versions after all of us gave our comments, so if we can, maybe request that.

[50:15]

CHAIRPERSON: I presume that, what is in here would be the latest one.

[50:17]

DR NGUBANE: This is from the 26th meeting.

[50:21]

MALE VOICE: Chair, I sent, by email the latest version that was going to be presented.

[50:24]

DR NGUBANE: This morning.

[50:26]

MALE VOICE: Correct yes.

[50:27]

DR NGUBANE: We haven't seen it yet.

[50:29]

CHAIRPERSON: Okay so the only item that is left in the agenda is the borrowing programme.

[50:33]

MALE VOICE: But we can't do that before we agree on the corporate plan.

[50:38]

DR NGUBANE: Because that's against it.

[50:41]

CHAIRPERSON: Oh yes, of course. So, we have to defer this, can Board members be flexible in terms of when next we can meet?

[50:51]

ALL PARTIES: Yes.

[50:52]

DR NGUBANE: Chairman, we want to agree that but can I just maybe caveat it, you know, a lot of us have got other things that we do. The only time that you don't typically have meetings is over a weekend, so being flexible is easy but for those people who've got stuff in their diaries to be flexible is very hard. I'm not – I'm somebody who don't work over the weekends but I'm saying, we're a company in crisis can't we just do a weekend.

[51:16]

CHAIRPERSON: I don't believe in weekends, people work hard during the week, its family time during the weekends.

[51:28]

DR NGUBANE: But this is unusual.

[51:30]

CHAIRPERSON: So, we can extend our working day in the week, we can meet at 6pm if we have to.

[51:35]

DR NGUBANE: Fine with me.

[51:37]

CHAIRPERSON: [Indistinct 51.37] come back and meet.

[

DR NGUBANE: That's if you're in town.

[51:42]

MR LINNELL: Chair, can I ask one other thing? We are meant to have a IFC meeting at 2 o'clock, I'm going to postpone it and I'll probably do a teleconference with the people because there were two things on the agenda so I just want to inform my fellow IFC members that I'll arrange a teleconference because it's a very simple discussion, it's on the short-term purchase agreements.

[51:59]

CHAIRPERSON: But we are finished so you can still have your meeting.

[52:02]

DR NGUBANE: Ja but there's going to be other meetings now, HR and audit, the same individuals.

[52:08]

CHAIRPERSON: Okay fine, so we'll be flexible then in terms of the next time we convene but we must convene when we've got all the information in order to complete the corporate plan and the borrowing programme, alright.

[52:22]

MALE VOICE: Chair, can we please check, maybe with Board members if we can't schedule meetings from around four, four thirty.

[52:29]

CHAIRPERSON: Perfect.

ALL MEMBERS SPEAKING

[52:35]

FEMALE VOICE: Chairperson, as a rule I also want to have it minuted, you know, that I will make every effort to be here but guys some of us travel out of time.

[52:44]

CHAIRPERSON: Do we need the relevant Executives to be here now when we make this determination about what we need to do with the corporate plan and the borrowing programme because they're going to have to do the work, will they know – will someone be able to give them an instruction as to what it is that is required to be done in order to complete the work on the corporate side.

[53:06]

MR LINNELL: The borrowing plan?

[53:07]

CHAIRPERSON: The borrowing programme and the corporate plan because, evidently from the Minister's statement something needs to be done.

[**53:16**]

DR NGUBANE: When I met with Execs, they kept saying to me they've got to comply with the set requirements that comes from public enterprises.

[53:22]

CHAIRPERSON: Well we've written to them to say that we're going to....

ESKOM

PEOPLE AND GOVERNANCE

IN-COMMITTEE MEETING

11 MARCH 2015

Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

COMMISSION OF INQUIRY INTO STATE CAPTURE

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible***, the aforegoing is a ***VERBATIM*** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

ESKOM

PEOPLE AND GOVERNANCE

IN-COMMITTEE MEETING

11 MARCH 2015

DATE OF HEARING:	11 MARCH 2015
TRANSCRIBERS:	D STANIFORTH
TRANSCRIBED ON:	30 AUGUST 2020

COMMISSION OF INQUIRY INTO STATE CAPTURE

Gauteng Transcribers
Recording & Transcriptions

9.1.2 Board03. 11 03 2015 14.48.53 – duplicate recording of audio 0.4 P&G.11 03 2015 14.48.53

PROCEEDINGS RESUME

[14:48]

CHAIRPERSON: ...asked our Head of Legal to be here as well, just so he is fully abreast with the matters that we are dealing with and that is the aspects from this side of Eskom that he feels that they're aware of it ja ...[indistinct – dropping voice].

So Nick the purpose of what we have here Nick is basically the Board members, we had the sub-committee meetings earlier but the rest of the Board is here, and basically I explained to the Board that you had been asked to support Eskom in this whole exercise of this investigation, this inquiry so that certainly the governance issues, and taking care that this thing is done properly and it is done in a manner that cannot be challenged and cannot reflect badly on this issue.

Now the Board has made some significant decisions, and the decisions the Board has made in respect of the investigation are that; one, the investigation will proceed as soon as possible. Number two, those executives who are directly involved with the areas where the investigation will focus will be suspended, and these are ...[indistinct 00.01.53]. This was to inform also the

Chief Executive and then it is the Executive for Group Capital, the Executive for Commercial and Executive for Finance, and the reason for that is because it is important that the ability to carry out the investigation is not compromised in any kind of way.

]

FEMALE VOICE: Sorry Chair is the Executive for Finance included as well?

[

CHAIRPERSON: Oh yes, four. And that the work that needs to be done in respect of the investigation must not be compromised by the presence of these particular executives, one of the two that from the work you have done the committee would like to know and needs to be updated in terms of the potential charges that are on the table in respect of the executives, and probably exclude the FD because you were not briefed on the FD as far as I know, but certainly on the other three executives, maybe you want to take the committee through that, and also the processes that need to come into play for this to be effected which include managing the media and the public perceptions and all of those things.

Nick should we just talk around those issues then, how you see the process going forward?

[03:58]

MR LINNELL: Certainly Chair, maybe if I could start in

the reverse order, maybe ...[indistinct]

[04:07]

BOARD MEMBER: Sorry Chairperson, I think Nick should introduce himself fully to us.

[04:11]

MR LINNELL: Okay, thank you. My name is Nick Linnell, I run a consulting practice, I am an attorney by profession but now I am a business consultant, the bulk of my work is of a legal nature so I do legal commercial work, but from a consultative point of view I typically work with Boards of companies, looking at issues that they need to deal with, so as I would understand what you have been talking about here would fit into typically the sort of things I would have done.

I come from Cape Town, I have done similar work for other State Entities, State Owned Companies, I am familiar with a lot of the legislative requirements of companies which is your – it is really what so I have a legal background and I am a consultant and I do this corporate type of work and there is an element of my work which is always of a forensic nature, because whenever you're working within a corporate typically a – call it a problem or an issue which has to be dealt with and that often is – that often requires one to determine facts, and a starting point in any issue is always what are the facts, and I would imagine in this instance that is also a starting

point, what are the facts. And the facts would then guide a solution, so right now I wouldn't know if anyone has any solutions in mind because it is premature, whatever the facts turn out to be I think one assembles them in a certain way that people like yourselves will see what you want to do with them.

So that would be my background, I don't know if you want to ask me questions, or is that sufficient?

[06:21]

CHAIRPERSON: Thank you.

[06:22]

MR LINNELL: I would just add that I have a lot of profile players, wherever I work I work in companies which I am not a person you see in the press, I never publicise what I do and that is not because it is quiet, it is just my profile is get it done when I work in a company I am not the feature or the focus of what's happening, so you won't typically Googly my name and find that I work with certain entities, it is just not the way I work.

So confidentiality in what I do is always of primary importance and if I can touch on one thing, the GSS in all my experience and particularly in State owned companies the most – the biggest imperative is every single thing we do must be lawful, it must be procedurally correct and the moment we make one mistake, even if you have good intentions, the whole of it is undone simply because we did

it the wrong way, and again in my experience I don't have an instance where it is necessary to do it the wrong way

[07:30].

CHAIRPERSON: Ja.

[07:31]

MR LINNELL: You know the laws are very good laws, they give a lot of scope for doing the things that you need to do, and you can just follow due process and everyone is happier, and it allows you to focus on the things you want to focus and not things which are of a procedural nature because you've done it. So if anyone wants to ask a question or if you're happy with that then I can just carry on?

If there is anything as you go along please don't hesitate to ask or point it out.

In terms of dealing with the second part of the Chairperson's introduction there, as I understand it you've passed a resolution that you want to enquire into the activities of certain parts of the business to determine facts and I think it's always presumptive in that situation for somebody to come in and say I think we need to do this, because often the people in the organisation are often the best people to determine where the focus should lie and I would think in this case, I understand from the Chair you have got a sub-committee and I think you need a small

committee in a morning to workshop the principles and the focus areas, because a company as large and as complex as yours this investigation could take five years, but you want it done in say three months, you want the main things identified quickly so you can get on with them and if there is cause to proceed lower than the main things you then authorise a continuation below that, so I would think the first way to do this before you get into determining terms of reference *per se* one considers with the involvement of people on the inside as to where should those focus areas be and where should the limitations and the filters be, and I think that should be done taking my lead from the Chairperson that this must be done urgently, that can be done even this week or Monday, you know to be – it shouldn't take time and then that can evolve, because as one gets into it, it will identify areas that you haven't anticipated and I think that is in your own experience you will find that's typically the case, as you start looking in an area it will highlight things that you hadn't understood to be there and that will – might create some variation to your approach, so that would be the approach, I don't think you should cast it in concrete at the outset.

I think then you've got the issue in this project of who is going to do this and my understanding is basically from the shareholder, the imperative is almost beyond

anything else it must be independent, and seen to be independent, so it can't be – typically people who worked and consulted in the organisation, because [a] they will have a perceived understanding of what it is they are going to find here ...[intervenes]

[10:38]

CHAIRPERSON: Please take the cell phones out of the meeting please. We agreed the cell phones will be out of the meeting and off. When we have a board meeting, we should take the cell phones and put them out there, please.

[11:03]

MS CARRIM: May I excuse myself, my flight is at five.

[11:15]

CHAIRPERSON: Sorry about that.

[11:22]

MR LINNELL: If I then continue, I think the selection of who is going to do the work ...[intervenes]

[11:28]

MS CARRIM: Sorry, Chair I am going to excuse myself, my flight is at five.

[11:30]

CHAIRPERSON: I'm sorry, oh by the way you have a flight at five, okay, no that's fine, we will count you in the quorum of course.

[11:37]

MS CARRIM: Ja, count me thanks.

[11:49]

CHAIRPERSON: Thank you.

[11:41]

MALE VOICE: But Chairperson we have taken all the decisions.

[11:44]

CHAIRPERSON: Okay, ja, ja, ja.

[11:47]

MR LINNELL: So in terms of identifying the people, I think again that's a consultative approach because you yourselves will have an idea of in any situation you need people of capability to do this, they have to be impartial, they cannot have preconceived ideas, they can't be connected parties in any sort of way so one needs to know who might be available and out of those people who should not be involved in something like this, but primarily they must be independent, so that they produce something which you accept, because it is objectively obtained, it is ...[indistinct - coughing] and then normally when you act on whatever comes out of this the public at large sees the credibility of what you have done. There is no point in doing an exercise and when one gets the answer and they say but there is a reason why this could not be accepted, so we have to start with the premise so whatever you're going to do must end up as a credible outcome, because people will accept it, so it starts leaning itself into the

reputational risks of it, so I think one – my recommendation there would be two angles to this is obviously a technical stream of inquiry, things which can go wrong in the technical side of your game, the engineering, the chemical side of it, and then there's the commercial side which could be anything from the legal to contracting to governance and a number of other things, contracting, maintenance, that type of thing which are more – if you think of your academic world, you had the arts and you had the sciences, split down that kind of divide.

On that side I would recommend to you people that – who we have worked with extensively and we've checked them out in terms of governances here would be headed up by Edward Nathan Sonnenbergs, they have got ...[intervenes]

[13:59]

FEMALE VOICE: Who is that?

[13:51]

MR LINNELL: Edward Nathan Sonnenberg, ENS.

[13:52]

CHAIRPERSON: Oh, ENS.

[13:53]

MR LINNELL: They're kind of colloquially known as ENS. Now the reason for them is a number of fold, and I am not talking about always their legal people. When you're doing an investigation like this and I mention the word forensics

and maybe that is a misnomer, information gathering rather, they have without doubt the strongest team of commercial investigators in the country and so far as I understand they haven't got previous work with you where they have made findings which will almost say well you can't investigate your own findings, so they might have done little projects from time to but in the main they haven't really been involved in your company and I know that they have massive skills and capability of all sorts of descriptions and because ENS is arguably the largest legal firm in Africa they have a massive reputational risk if they ever do anything wrong.

So in all the years that I have worked with them, particularly in State Owned Companies I can assure you they have provided very credible work and at the end of this if you say this part of my inquiry was conducted by ENS particularly their Forensics area the people out there and the people who importantly you want to convince it is a good study will find credibility in them, so that side I would, you will have questions about that, but they would be available and I know given the urgency the Chairman meant, they are one of the few people who have the team which can work swiftly in the right areas.

You might have ideas on that and we certainly, ultimately it is your call.

[15:49]

CHAIRPERSON: I just want to check in terms of the proposal I take it your role as an independent specialist ...[indistinct – coughing] separate from ENS?

[15:55]

MR LINNELL: Oh yes, ja.

[15:56]

CHAIRPERSON: Okay thank you.

[15:57]

MR LINNELL: What I would suggest to you and I mean this is for you ultimately to decide but my thoughts, if I might, my role would be a coordinating role. I have a legal background by nature, it is an inquiring nature, I do investigative work, not the Paul O'Sullivan type work, we are not involved in that sort of stuff, commercial work, you find out the facts in a company. So that is typically what we do, so – and my company has done call it project management work for many of the big corporate here and in Europe, so we are – have a skill base of coordinating inquiries or projects, call it projects.

[16:46]

MALE VOICE: Sorry Chair, Nick alluded to using ENS, and he said he is aware that they may have not – they have not done any investigation of this nature at Eskom that may create a conflict, if I understood you correctly. There have been two major investigations at Eskom, one was done by

BNG and the other was done by ENS. I just need to understand you know the extent of the conflict that would emanate from that so that we are able to help check if you know the type of investigations that they have done to not impede on what should happen because I know for a fact that they did a big investigation with us.

[17:42]

MR LINNELL: Can I – we need to establish what did they do here today, the people who would come on this team to my knowledge they have tendered for work here but they haven't got any work here, but if they have done any work we need to have a look at that work and determine whether that raises a conflict because I think it's important that people come here with a clear mind, and if we have got a preconceived ideas because we have done some work yesterday then you start from a position of a paradigm and then to shift a paradigm is quite difficult.

So I think it is better that people – people we use on a project we come in, entirely open-minded and say the facts will speak for themselves, so I thank you for raising that an it has to be looked at.

[18:25]

CHAIRPERSON: It could have been an entirely different part of the business, nothing to do with commercial ...[intervenes]

[18:32]

MR LINNELL: We must check it.

[18:34]

MALE VOICE: Chair the BNG investigation or organisation investigation, had to deal with issues that pertained to procurement, and also certain sections of the PFMA, and I think, I am speaking under correction ENS also had a similar mandate, we just have to check the nature and the extent of those investigations.

[19:01]

MR LINNELL: No but good process.

[19:03]

MS MABUDE: Can I come in here?

[19:04]

CHAIRPERSON: Yes.

[19:06]

MS MABUDE: Audit & Risk has raised the ENS as well and BNG.

[19:13]

MR LINNELL: Sorry, I missed that.

[19:16]

MS KLEIN; The Audit & Risk sub-committees had a meeting prior to this and we were mandated to deal with this.

[19:23]

MS MABUDE: And we had mentioned the ENS and BNG and ...[indistinct] and Associates so those three as well we were looking at, but ...[intervenes]

[19:35]

MS KLEIN: It is possible

[19:37]

MR LINNELL: So it is possible.

[19:39]

MS MABUDE: But we were going to get the terms of reference and then understand the work they have done as well, and then select out of those three the companies that we are going to sit with and discuss with and then it was a company amongst the three.

[19:57]

MS NAIDOO: Sorry Nick your suggestion on ENS as a law firm is this not something that falls within the ambit of the Audit & Risk companies in the top four Audit & Risk companies, would they not specialise more in forensic as opposed to a law, a commercial law firm?

[20:14]

MR LINNELL: I think there's been a blurring between accounting firms and legal firms and today for example Edward Nathan Sonnenbergs if required would do an investigation including technical aspects within that team. So they would do investigations of chemical engineering companies of a chemical nature, so in the same way as you have tax advisors and accounting and legal firms ENS would have a team of people who would do far more than any accounting firm, but I think the point with ENS is there

is not another company out of the accounting firms or the legal firms with a capacity and skills that they have got, because they bring to bear into a situation the right people for the task.

And there is another thing which has been impressed on me from the outset here, we live in a highly politicised world, I am not talking about Eskom I am talking about our country and whenever anyone does anything particularly in a State Owned Entity one has to be very careful about – because the shareholder is the State, as to what is the fallout beyond the company, and what that means is when you do a project in a State Owned Entity confidentiality and very strict confidentiality is extremely important because leakages lead to manipulative outcomes.

So if there's a vested interest and the inquiry is heading in a certain direction which a vested interested does not like there is bound to be interference and that happens when there's leaks from the investigative team, and it is so, so important. If you start at this point where you are and you say we don't want a certain outcome one has to be very careful that you have that built in, and I don't have a brief for ENS, I don't get a single cent out of using them, the value of me using them is if people look to me to deliver I have to deliver and it's the same as if I'm

doing a trial matter for a client.

For example I am doing some this week, counsel get fed-up with me because all counsel and attorneys will go into a trial matter and to be honest it doesn't matter if they win or lose that matter. Every single legal firm which goes into a trial one will lose and one will walk out as a loser and that happens by just – it's the reality of winning and losing, there's two sides.

So in my case I cannot lose, because my client will not accept that as the outcome whereas with a firm of attorneys going to trial there will be another client tomorrow. My work depends on us doing it right and at the end of the day we deliver a success.

[23:28]

CHAIRPERSON: Sorry but we are contracting with you, and not with ENS?

[23:33]

MR LINNELL: No I would suggest sir that you would contract with me to do what I do, which would be the coordinating role, but I think you should contract with them, but your requirement of me and my scope would be to make sure they deliver but your contract would be directly with them.

[23:50]

CHAIRPERSON: Correct.

[23:51]

MR LINNELL: With whoever you use. So for example in the technical stream you have to identify the right people and I would think you start off, even the technical side, identifying a credible leader, someone who you say will inspire confidence through himself and then one works with that person, I think on the technical side you are a multi-disciplined technical company and if you just went to a technical consulting firm, and there are numbers here, including internationals, you are going to get rehash of a process package coming out and I would suggest it would be better for you on the technical side to hand-pick people under a credible – you regard yourselves as credible and knowledgeable, but again it is an issue to be discussed, but in your case that's a very important part of this and so if I could, if we can – another thing I am conscious about if you just went out into the market you stood on the corner of a street and you asked people about Eskom, everyone has got a preconceived idea and everyone has got a solution and the more you – if you segregated those people and you said the technical people stand here and the laymen stand over there, the technical people are going to have technical solutions for you than the man in the street. Everyone has got an idea what you should be doing and I think you need to choose people there who demonstrate they don't have a solution so if you're determining who to

use on the technical side and the person said I think I know what you should be doing here, he is not the right man for you. You want someone who ...[intervenes]

[25:34]

FEMALE VOICE: What are you saying? Are you saying through the right contract a company with good technical acumen around what we want to investigate and also another one who has got good commercial, or there is a company that has got best of both?

[26:00]

MR LINNELL: No I don't think so, I think you want the best in both commercial areas, you focus on that but having said that we are going to make a mistake if for example we had a commercial team looking at the arts of it, you know and tertiary standards and then the sciences over here because they have to – they are intertwined. If you're looking at tenders on the commercial side there is a technical aspect to those tenders which has to be understand, so although you have teams the coordination of those teams this side determines something that they think is relevant, this side must be able to pick it up and follow it, and you don't want to go 100 metres and find these people haven't communicated, so communication, effective communication, not sending each other notes, I am saying effective integration of those teams they have a focus, so it's not one team. I think if you have one

company to do both, they are beholden to one view.

[27:01]

MS NAIDOO: Chairperson, may I?

[27:02]

CHAIRPERSON: Yes.

[27:03]

MS NAIDOO: Ja, Nick I think it's –I think what you've shared with us is very enlightening and I know that you have in your introduction shared with us that you have done quite a bit of work for other State Owned Companies. I must admit I was expecting that you would have been physically involved with some of the detailed, with where we find ourselves right now and not hypothetically this is what you need to do, but to say I am already entrenched in the problem statement as it stands hence this is my position.

Now maybe I understood that brief incorrectly and then I will take responsibility for it but I thought that that is what you were going to bring to the table.

[27:41]

CHAIRPERSON: Just don't go ...[intervenes]

[27:42]

MR LINNELL: If I could answer that. It is a good point to answer it, the thing is there's different scores here, I would say my understanding of Eskom from the pre-research that I have had to do to be sitting here in front of you has been

extensive and it has taken some months, so I think I have an understanding but I think what I see a minute ago is the failing. If you have got someone who comes in here and thinks that what they have, their prior knowledge indicates that they have a solution then you are not going to get what you want out of this, because this is a fact gathering exercise. You want someone to come with a paradigm which says I don't know the answer. I think it is a starting point. If you've got somebody who says I have done a lot of work, I have done an industry and let me tell you I think you should start off here, there and there, you've got very skilled people in your company, you don't need an external person to come tell you often what you know and what he might have a perception is the right thing. I honestly think you need to come in here and say let's discover without preconceptions, but in terms of understanding obviously my understanding the background I have had to do a lot but I don't want to get in my mind thinking that it is any more than a background understanding.

[29:10]

MS NAIDOO: But let me push it a bit further, please indulge me. Your background study was commissioned or was it self – how do I – well were you asked to do this or did you do it out of your own volition knowing that there is going to be a piece of work that may look like this in

future?

[29:29]

MR LINNELL: Well I suppose it is both, I would think n the nature of my work if there is to be work I must understand the industries that I might work in so I think I would know a bit about many industries and many companies within those industries, so I have a general understanding of wherever I work. Have I done it purposely? Well I think your shareholder had some time ago indicated that there might be a need for this and I am required to look at that, and the fact that you got here today in a sense is more coincidental in the sense that if you didn't get here today then I wouldn't be here today.

So no one has asked me specifically to be here today ...[intervenes]

[30:11]

CHAIRPERSON: Nick can I just put this straight? Nick was asked to do this exercise, and he had to do a lot of background work because of the instruction he got to do this exercise. Now what is left is for him to be commissioned formally by Eskom to get into the teeth of what needs to be done. So he has been on board on this for quite a while. I think he is having a difficulty trying to say that.

[30:36]

MS NAIDOO: And actually I am trying to just get to

because that is what we were told.

[30:39]

CHAIRPERSON: Yes, precisely. So Nick I think what you can do, because I mean you have set the scene, just drill a little bit deeper into the specifics of the issues of the four people, probably not the four, but the three people because you don't know about the fourth.

[30:54]

MR LINNELL: Okay I think in terms of the four if you are going to do investigation of this nature and bear in mind information is gleaned from documents and people and in this – and just observation, if you have the leaders of the areas in which you are going to look at it will not be an unfettered investigation. If the Chair sits in this room and he carries some situational authority it will pervade this room and whether he does it intentionally or not that presence affect some of the discussions here because that is just the nature of human beings.

It doesn't mean he is behaving improperly, it is just the way we are as human beings, so it is well understood in similar situations that if you leave your leaders, your executive leaders *in situ* the people below them will start to say if I share this and nothing comes out of the investigation will I compromise myself, and the moment they question themselves as – it doesn't have to be reasonable, it is a subjective thing, will I compromise

myself, and if there is a risk to me compromising myself I am not going to be forthcoming and you may as well not start it, so I think to remove the people who are in positions of leadership is a necessary part to start and it sends a message to the organisation that this is going to be open and the organisation wants people to come forth and be candid, so it is important that no one thinks, I am sure you don't think in this room, but no one thinks they have done anything wrong at this point.

There are certain things that they might well have done wrong, absolutely, but that is not the reason you are asking to be suspended. The reason you are asking them to be suspended is they have situational influence which will pervade where you want to do the investigation, and certainly there are – we are all aware probably of – there's likely to be as in any organisation things which will come out and are known to yourselves where some of these guys have not behaved correctly but we are on day one and that is not proven or established, these things are just – they are gossip, and some of those gossips have foundation, but I think we as we sit here that is not the reason you are asking them to be suspended. The assumption is they have done no wrong, and if I could follow that up and say for the good of them and the good of the organisation bear in mind what happens in Eskom is a national thing, we are

not talking about a company here.

If Eskom gets scratched the nation is affected, emotionally, financially and everywhere, so if you have, if you create bad press it will unnerve people outside and this is a confidence game within the country, so I think the ideal would be to say to these executives this is the situation, we are not sitting here saying you have done any wrongdoing, it might turn out that yes you have and that might be so severe you will get dismissed. We do not know at the moment so the suspension is not that you are guilty, but if you volunteered to go on leave and we made the public understand that you as a leader had decided voluntarily to go on leave so that you open up the space to make this a credible thing it stands them in good stead in the public's eyes and in the staff, say let's assume nothing comes out of this investigation and they return, because that must be our assumption at the moment because there's no wrongdoing, we are on day one, you want them to come back without a sense of people feeling that they were – there was something which they were guilty of but it didn't get proven.

So it is ideal for them for them to go on leave with their heads held high and with no people assuming that there is an innuendo in their suspension, that is ideal, people don't often ...[intervenes]

[35:10]

BOARD MEMBER: That is not what we understand.

[35:12]

MS MABUDI: The question is there has been a debate around the issue that you are discussing now, whether it is suspension or forced leave, or voluntary leave, so it is three dimensions now, therefore there is suspension, it has got its own repercussions and how it is seen by everybody and the forced leave which has got a different view from voluntary leave.

[35:46]

MR LINNELL: If I can answer there, you're saying there's three, I think there's really two, forced leave by nature of to enforce is suspension. It is a kind of colloquial phrase we've adapted saying he is on forced leave. You know if he is forced leave it is by the compulsion of the company which means he is technically suspended and it is precautionary suspension but forced leave means please go away.

So I think we have got two situations, do you want to leave your reputations intact because even though this audio does not intend reputational damage to them at all, it is just human beings that if you suspend them someone is going to read into that something improper because we are human beings, that is how we think.

So you want to avoid that, so if they can go

voluntarily it is good for the organisation and it is good for them because there's no *skinner*, if they don't want to, I think what you have decided today is that it is essential that you have an independent and fair and thorough investigation, free of anyone's influence, improper influence, and improper is not a conscious thing, it can be a passive thing, I just sit here and I can create influence.

So if they don't want to go on leave and some people take umbrage and their egos get the better of them, then you have to go through a process and you have to say to them following due process you have got to say to them this is my reasons why I think you shouldn't be here during the investigation, can you persuade me otherwise, tell me why you think I have got the wrong starting point and let them argue, and if they can convince you that in fact they don't pose a risk then leave them in place.

Typically, that doesn't happen because if you think about it the principles of not having executives in place is a good one. You run a risk even when people are suspended as you know, other State companies, we have had many lately where a Chief Executive Officer has been suspended and forensically from the very next minute we will pick up 150 phone calls between him and the staff and emails going to their private icloud address communicating with staff, and what are they doing? They're

communicating about don't share this, please share that, don't do that, don't tell them this, so we've got to be careful but I can promise you the moment they're suspended if they communicate with your staff improperly they will be identified for doing that so it is a big risk, but human beings are human beings, it is not your human beings, it is everyone.

[38:37]

CHAIRPERSON: Well procedurally from where we are sitting, we only have one approach and that is to suspend them, because your processes in-house do not allow for the other approach. So invariably what would happen is you would send them a letter that says this is the intention, we need to have a conversation which Nick is alluding to about whether – why we should not or why we should suspend you and these are the reasons why he or she would say they shouldn't be suspended, and you then have to, the assumption is that you then have to consider those reasons and continue on it, continue to suspend, so invariably from where we're sitting procedurally there is only one process available to us.

[39:34]

MR LINNELL: You're right, there's one process, but I think the law, common sense and good business practice blends, because fundamentally we are about fairness and what is right for the company. If we do something which

impairs the dignity of that person, in fairness, or we affect the reputation of this company it damages the company. Fundamentally we put ourselves as a company at risk, so the outcome we want is not different from the process, the process must be we are entertaining a suspension, pre-suspension discussion, but the outcome of that, the best outcome of that with someone putting up their hand and saying would you mind if I stood aside because I think it would be best for me and the company and to that the Board has the authority to say I grant you special leave, you may go on full pay and benefits, on the condition that you don't communicate with anyone in the company or its suppliers during that period of time and that is a condition I let you take special leave on the condition you don't communicate.

So you have one process but there are different outcomes.

[40:54]

MS MABUDE: If I can understand now why do you have one – why can't we ask them to take voluntary leave?

[41:03]

CHAIRPERSON: Well the point I was making is from a procedural point of view, because Nick indicated when he started that you know you do these things you have to follow process.

[41:12]

MS NAIDOO: ...[Indistinct] the legislation and the Labour Act in terms of – we follow that route.

[41:16]

CHAIRPERSON: No legislation and Eskom's policies.

[41:19]

MS NAIDOO: Is it its policy?

[41:20]

CHAIRPERSON: Yes, internally you only have one process, there is nothing that talks to special leave in the process, it is either you suspend or you don't.

[41:31]

MALE VOICE: But in Labour Law is there such a thing as special leave?

[41:36]

MS NAIDOO: The contractual relationship between the other party, where the both parties agree is legally binding, so his suggestion is that we put this indirectly to them, get them to come with their suggestions and then the parties enter into that agreement, now that is a contractual agreement where the party agree to and can't later o object.

[41:55]

MR LINNELL: For example if I could agree with you, you have a disciplinary policy which is a Board policy which affects the whole company. Now the legal principle is you don't bind your successes. The Board is always

...[indistinct] it has the power to do whatever its Memorandum of Incorporation and the law allows it, the Companies Act and other laws, the Labour Act and labour regulations are one such law ja, but in terms of your disciplinary procedures that is a board policy. The board is entitled, I think it will say so in your charter and it will state it in the Companies Act and the Memorandum of Incorporation the Board can change things. You, even in your disciplinary procedures all your Board policies the Board reserves the right to change the policy and vary it and so you always left with the right to say to someone I grant you certain things.

[42:53]

MALE VOICE: It makes a lot of sense, I don't think – it is within the rules.

[42:58]

CHAIRPERSON: I understand Board Member, all I was saying is from a process point of view there is actually only avenue open for us in the process.

[43:08]

BOARD MEMBER: Sorry, I think it is going to be a resolution at this committee to do that.

[43:12]

CHAIRPERSON: Well can I suggest that we have taken a decision to suspend the people, can you then lead the committee that is dealing with these matters what is the

way forward. I mean arguing all these things whether it is voluntary or what, we have taken the decision to suspend the individuals.

[43:33]

MR LINNELL: Could I just – I think when you took that decision you probably, it is ...[indistinct] I think your decision is probably in law that you have an in principled view that suspension of the individuals is appropriate in the circumstances, but when you have a discussion with them at that point a different outcome might come, because that is fair, so you have got to say we as a sub-committee have a view that suspension is the right thing for you and the company right now, but we want you to tell us if you have any reasons why you think we shouldn't do that and at that point you actually haven't made a decision because you have left it open for that person to come back and say for reasons you haven't thought about he gives you a reason then you say that's a good point, I agree, you should remain at work and you have allowed that process and that is a good process, but I think your decision is probably saying we have reached an in-principle view that a suspension is probably the right approach, and you want that to be put to these people and for them to indicate why you are wrong.

[44:43]

CHAIRPERSON: Sure.

[44:44]

MR LINNELL: So I think that would be the balance of it, and that is probably what your decision is.

[44:50]

CHAIRPERSON: So I think the issues that the Company Secretary must record that very carefully, because what Nick is saying is that he is actually saying the Board should not suspend them as we are sitting, because there's a due process which takes you to suspension, so we should think of suspension as a means to a particular end, which will assist us in getting to where we want to be, so we just need to find a ...[indistinct] to say so, rather than saying the Board has suspended. I think suspension would be consequence of the process.

[45:30]

MS NAIDOO: It's right, following due process.

[45:32]

MALE VOICE: I think the process for the letter we should issue to a person with the intent to suspend.

[45:36]

CHAIRPERSON: Ja, what I am saying what we record here ...[intervenes]

[45:39]

MALE VOICE: [talking over] to come and do a meeting with the representative, where then this is discussed.

[45:43]

CHAIRPERSON: That is correct yes, but I am concerned about what we record. We must be very careful how we record because we can't say the Board has decided to suspend, you follow what I am saying? Because that process is part of a – it is part of a process.

[46:01]

MALE VOICE: So what are we saying Chairman, they must just go and talk to them and then decide whether in fact it is voluntary separation, I mean leave, or it is going to be suspension? I mean in other words we are coming with no decision right now.

[46:16]

CHAIRPERSON: No decision.

VARIOUS PARTIES SPEAKING SIMULTANEOUSLY

[46:19]

MR LINNELL: It is stronger than that sir.

[46:20]

MS KLEIN: Can I just have a turn. Can I just have a chance please, I mean I have done this a couple of times in the bank. It is a very simple case, there has been a decision taken to suspend. Give us a very good reason, give us your reason or convince us that this is not necessary, give us one good reason as to why this should not happen, and then the person responds, but I mean the fact that you are already sitting with a letter and they can't respond within ...[indistinct] but the decision was taken,

you can't tow-tow around that.

[46:47]

CHAIRPERSON: No, no, no ...[intervenes]

[46:49]

MR LINNELL: It is a decision in principle, you have taken a principled decision but it is not a final decision, you see it ...[intervenes]

[46:55]

MS KLEIN: You still say give us good reason why ...[intervenes]

[46:57]

CHAIRPERSON: No, no we hear that.

[46:58]

MR LINNELL: Which means it is not a decision ...[intervenes]

[46:59]

CHAIRPERSON: All I am saying, let me give you an example, if you say – if there is a record in board minutes which says the Board has decided to suspend X, Y, Z and then you start the process an individual says I would like to see what the Board minutes says, the Board minutes before you came to me and asked me if there is any reason why you shouldn't suspend me you had already suspended me, you understand what I am saying.

[47:25]

MS KLEIN: No I disagree Chairman, I disagree.

[47:28]

CHAIRPERSON: I don't know, the lawyers must tell us.

[47:30]

MALE VOICE: There is a pre-suspension notice that is usually served on an employee, and the contents of the notice say we hereby notify you that we intend to put you on precautionary suspension for the following reasons, we have reason to believe that you have possibly committed the following offences. Please revert with reasons why we should not proceed to suspend ...[intervenes]

[47:52]

CHAIRPERSON: We know that

[47:53]

MALE VOICE: Yes, what I am saying is that the Board should record that precautionary I mean suspension notices will be issued to certain members of the Executive, you resolve it ...[indistinct]

[48:08]

CHAIRPERSON: The intention to suspend.48:08]

[48:09]

BOARD MEMBER: Of course.

[48:10]

CHAIRPERSON: That is fine, that is what I am talking about.

[48:11]

BOARD MEMBER: Have you got a copy of that, that we can read?

[48:12]

BOARD MEMBER: We have one in the organisation.

[48:13]

BOARD MEMBER: Have you got?

[48:15]

BOARD MEMBER: But surely, we have heard from the lawyer that in ...[intervenes]

[48:20]

MS NAIDOO: Ja, so that must be recorded.

[48:22]

MALE VOICE: That is a formal notice.

[48:23]

CHAIRPERSON: And we have had that from Legal that here the policy and the practice is to suspend and then the people in Governance and Risk will then take on the process of telling them there is an intention to suspend you, can you come with a reason why not, but we have taken an in-principle decision that the suspension must ...[intervenes]

[48:51]

MR LINNELL: It sounds like a nuance but the whole thing is premised on fairness and the way our law works it says any time you take a decision in respect of someone you must permit the other person to have a view before you take the decision. So in everything we do and it goes further into any aspects of administrative law, whenever you do something you've got to have a view of what you

want to do, you must hear the other side, so it sounds nuanced but it – we must make sure that in our minds if the person persuade you not to do it you are open to that, and you can't – you might not conceive that possibility at the moment and it might well not be a possibility but in your mind you're saying if you can I am prepared to hear you, otherwise the whole precautionary suspension discussion is a nonsense and now it will be turned over within five minutes in a court of law, because you – it is not fair. The outcome is not ...[intervenes]

[49:52]

CHAIRPERSON: It is very simple Nick. Nick the question is very simple, I hear all of this, this is process, what are we recording as a decision? Are we saying the Board has decided to suspend or are we saying the Board has decided in principle to pursue a suspension of these individuals.

[50:16]

MR LINNELL: Ja, I think the latter type wording may be ...[intervenes]

[50:18]

CHAIRPERSON: I think that is more appropriate, the decision has been made to pursue the suspension of these individuals, because we know there is a process involved.

[50:26]

MR LINNELL: You believe, sitting here the only reason

you are going to a suspension discussion is because you believe it is necessary in the right, you're convicted, it is not as if you are unsure, you are sure that that's the right thing for the company, but what you are saying to that person is I want you before I make my final decision, I am sure, but before I make my final decision on the matter I want you – I want to give you the opportunity to persuade me that I am wrong, but that doesn't mean you as a board is wavering, you are convinced that you think it is necessary because if not you shouldn't bother to go the process, so I think I am hearing you say we are convinced it is necessary to suspend them, but I want to hear whether they can persuade me otherwise and that is the sum of it.

[51:09]

CHAIRPERSON: Sure.

[51:10]

MR LINNELL: And it is very difficult for them to persuade it because your grounds seem to be excellent.

[51:16]

CHAIRPERSON: So we then record the Board has decided to pursue the intention ...[intervenes]

[51:23]

BOARD MEMBER: The Board has taken the principled decision to suspend certain individuals following the process.

[51:29]

MR LINNELL: Ja, subject to giving them the opportunity to persuade you otherwise.

[51:34]

CHAIRPERSON: Following due process, that's another one. Okay following due process, I will be satisfied.

[51:38]

BOARD MEMBER: What we are doing is extremely serious, if we have got the slightest doubt, we should talk to ...[indistinct] but ...[intervenes]

[51:43]

MR LINNELL: Ja, I think you've got, you are agreeing in principle ...[intervenes]

[51:46]

BOARD MEMBER: You are confident of what we are doing, ja, I think that's right.

[51:47]

MR LINNELL: I think everyone is on the same side, just a question of wording, and the wording is as the Chair says is very important because as soon as people go to court the first thing, they are going to do is say can I have an extract of your minutes.

[51:58]

CHAIRPERSON: And then it says you suspended this man before you even gave him a chance to respond, so your suspension is invalid, so it is important for us to couch the words properly.

[52:06]

MR LINNELL: You know it's a funny thing labour law because at the end of the day the employer tends to win, because the employer you know you can't work for someone who doesn't want, you don't want working for you, it is just a question of what does it cost you if you make a mistake, and there is a reputational risk, you do it properly and you know – because if these people get suspended I can promise you now within five minutes they will be with their attorneys and you will have an application tomorrow.

[42:36]

BOARD MEMBER: I was just going to say that, and you've got a team, it is not one person, it is a team of four that is going to gang up and come straight to you.

[52:42]

MR LINNELL: And we spend time thinking about that, because in a sense typically when you have a suspension inquiry I am saying

have got an allegation you took money out the till, and I am going to confirm that through an investigation and I need you to be out of the way while I investigate, so you are saying I have got a specific allegation against you as an individual or you as a group, quite often you get unions who are suspended together because they collectively did something wrong.

In this case what you're saying is it is because of

your situational influence on the business in order for me to do this inquiry free from any influence because we want to do it right it would be impractical and improper for you to sit there, because it will have a negative effect, so you are not imputing anything at this stage into wrongdoing even though I am sure you could write a whole lot of things down if you wanted to. That is not where you are starting.

[53:41]

MS NAIDOO: Chair I think that is ...[indistinct] because I was a bit concerned this morning in our deliberation when we took the decision this is the route to go we actually felt that we are going to say this is not a suspension, we need you to step aside, but I think we have moved from there. This is a suspension ...[intervenes]

[53:56]

CHAIRPERSON: Yes absolutely.

[53:57]

MS NAIDOO: ...but it is based on we cannot do a proper investigation with you in the chair, so that ...[intervenes]

[54:00]

CHAIRPERSON: Yes that puts it neatly.

[54:03]

MR LINNELL: So you are not saying they are guilty of anything, they might turn out to be guilty of something, but you're saying I don't know at the moment, I am open-minded, I haven't started the investigation, you haven't

started your investigation, it is open-minded but in that process it is good for them and it is good for your company if they put their hands up and say look can I suggest this to you because what you do is you don't want to be in the Labour Court tomorrow, you are going to avoid that, I mean it costs an awful lot of money and it gets, the newspapers will never take your side.

[54:33]

CHAIRPERSON: Agreed, agreed. Nick tell me something, if we say that we want you to set – step aside under suspension because we do not believe that the investigation can be done with you present, they turn around and say but that is not correct, we don't think so, so what is it that we need, do we have to show cause in our intention to suspend or in our act of suspending that previously you have demonstrated that you can interfere with things that you know – in other words do we have to substantiate that?

[55:20]

MR LINNELL: The ...[indistinct] an interesting phrase, you don't have to prove like a court of law that the reasons are such that there is any inference of guilty, what you want to show is if you are not suspended it might impede the investigation and on a reasonable basis you have to say to us it is logical that if the boss is sitting there, his subordinates are unlikely to feel free in advancing

information and I can promise you every single court in the land will agree with that, because that is just human nature.

[55:55]

CHAIRPERSON: That is what I am interested in.

[[55:56]

MR LINNELL: So it is not as if you have to – but in your instance here you have got some information so when you get into the discussion with these particular individuals there are some known allegations, allegations, not proven, but there are allegations, you are at the beginning of a thing, where at least two of them have made decisions where they have used their authority to influence investigations.

Now you would say to them as human beings leaders typically impose their presence on investigations, it is bad, in your particular case there is this allegation that in this instance you did do this, so I am not saying more than that but there is an allegation to say that even you had a propensity to do what everyone else would do anyway. People, it is human beings, they have the propensity to try and influence the outcome one way or the other and this would just show they have done it in the past and you have got some cases of that with these people. Sorry sir.

[57:06]

MALE VOICE: Thanks Nick. Suppose that maybe there is no specific incidents to refer to, how do we persuade them to take leave ...[indistinct].

[57:24]

MR LINNELL: I think it's – as the suggestion was we start the process and you say this is a pre-suspension discussion, the Board is of this belief that you should be suspended but it wants to hear from you as to why that should not be the case, these are the reasons, and you advance the reasons, and in that process one would hope and I think skilful management of that discussion often leads people to say would you be happy with this, because they – one of the things they always come back with, I promise, they are going to say but if you suspend me people are going to think I am guilty and you are going to say we don't think you are guilty because we haven't got any grounds to think you are guilty but I agree with you people will think that and then you say to them what other way can we minimise that risk. You ask them the question what other way do you think we can minimise the risk and their answer is just one thing, that I be on special leave, and you say well I like that idea.

[58:32]

MS MABUDE: That's the one thing, either special leave or resignation.

[58:38]

MR LINNELL: Ja, very much, there is always a risk of resignation ja. They volunteer their resignation, that too is a risk.

[58:45]

MS NAIDOO: ...[Indistinct] accepted as part of that, at that stage I don't think you accept resignations.

[58:50]

MR LINNELL: You can't as an employer refuse it, you can just hold them to their contract terms, say I can resign but you say well your contract says you are on a fixed term contract for another six months you have to stay, then you get into a separate discussion about what will it cost me to let me go early, so I would, these guys are on fixed term contracts.

[59:09]

MS KLEIN: Can I maybe just add onto that, I mean we have had occasion where that has happened where you would say no as part of the investigation you may want to go but it is not in our interest to accept your resignation at this stage.

[59:19]

CHAIRPERSON: Ja, exactly.

[59:20]

MS KLEIN: Because I mean you may even have evidence that you still want to act on, but I mean even if people, because I have seen people just then staying away,

because that's another option, they just don't come to work but that doesn't mean you can't pursue them, if you do find out that they have done certain things that was wrong, you still go after them.

[59:35]

MS MABUDE: But the fact that they resign doesn't mean you can't pursue them.

[59:38]

MS NAIDOO: Correct.

[59:39]

MR LINNELL: But in a labour context it makes it difficult because if they resign and you accept it then you have got no employee/employer relationship and a disciplinary procedure is premised on that relationship, so if you terminate the relationship you can't have an employment discussion with you.

[59:57]

CHAIRPERSON: Nick can I just read what Eskom's – what is Eskom's disciplinary code? Article 4, for a suspension of an employee with pay pending disciplinary inquiry, hearing or pre-dismissal arbitration. 4.1 says:

> "When it is suspected that an employee may have committed misconduct and that his/her continued presence in the premises of the company might interfere with the disciplinary investigation the manager may decide to suspend the employee with

pay pending the outcome of the investigation."

4.4.2 says:

"Depending on the outcome of the investigation the manager may extend the suspension or impose a suspension [if the employee was not suspended] pending the outcome of the disciplinary process."

Now 4.4.3 says:

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

A. Element of dishonesty in the alleged misconduct;

B. Possibility of tampering with evidence.

C. Possibility of interfering with the investigation process; and

D. Possibility of intimidating witnesses."

[01:01:12]

MR LINNELL: Because I have obviously read, I have obviously gone through your policy before today so I am familiar and it is not the first one, you are not alleging wrongdoing here, it is 2, 3 and 4 or C and D. So we're saying if you run an investigation it is probable there will be interference with this investigation and that is the premise of it, and your policy provides that.

So what you have read out is in conformity with our discussions. In corporate – in the corporate environment

you're looking at reputational damage, it is a better outcome if the person wants to go, it is a more positive thing ...[intervenes]

[01:01:59]

MS NAIDOO: Wants to go on leave?

[01:02:00]

MR LINNELL: Go on leave, but you are resolute that in your mind sitting here it is improper for them to be in their offices while you conduct the investigation.

[01:02:10]

BOARD MEMBER: Suppose that the person is new into the portfolio that they are the Chief Executive and he doesn't see himself directly or indirectly implicated, how do you pursue that type of a person?

[01:02:30]

MR LINNELL: I thought about that, I think he has been in office about five months, and in that five months certain things have happened in this business which might be evidenced during the investigation. In other words I don't think everything which has been done wrong, if there is anything here, has been done in the far distant past, it could have been done yesterday, but there is also suggestions that the CEO has condoned things or done something even in the short space of time he has been here, so even if he had just been here for a month the same would apply.

It is quite possible when you have a CEO and particularly one who came from the policy department who was shareholder that there is issues here that have impacted this company which he was not part of as an employee but he brings a knowledge and a position of it. In other words, if the policy dictated to you by your shareholder in the past in the form or the Director General his now being paid out here and there has been something improper about that solution.

[01:03:42]

MS KLEIN: It redefines his judiciary duty.

[01:03:44]

MR LINNELL: His on record in the presses to saying in fact that one of the prime problems here is policy. The inference being the shareholder policy has manicured this company. The CEO was part of the policy maker so I am not sure what he meant when he made the press statement but the important thing is his been here for a number of months. His been here for a number of months and that puts him in a position.

The CEO is a critical person overseeing everybody. I have just even doing some work with another re-sized small and less complicated big standing company and the CEO is on suspension and it is quite clear that the CEO's thing is penetrate the business, down to the lowest levels. And if he sat there you would have impact the investigation

without any shadow of a doubt it is human behaviour. It does not mean it is him it is us all we would all behave like that.

[01:04:57]

MALE VOICE: But my main question is around if from his side he does not see anything that can implicate him directly or indirectly.

[01:05:09]

MR LINNELL: I think you are not suggesting at this stage...[intervene]

[01:05:11]

MALE VOICE: No, not ja no I am saying I would do it that way.

[01:05:15]

MR LINNELL: I think you going to see much, he have been here for five months this investigation is going through this moment back in time and we need to do this. And more importantly in your capacity you're the situational leader of this business it is important you are not sitting there because people below you they do not know. I mean as you go down the line how I think - I do not know the CEO's history. I do not know who is involved and I do not know if when he was at the department, he appointed that division manager or whatever and therefore if he is sitting there, he might see what I would say just because the CEO. So I think even if he had been here a

couple of weeks the same would apply in this case, he has been here about five months.

[01:06:01]

MS NAIDOO: If I may just add Nick our fall-back position is now he may not see it but we see it and that is where point number 4 comes in because we believe, if maybe he does not believe we believe that him being here is not going to help.

[01:06:16]

MALE VOICE: Ja.

[01:06:17]

MR LINNELL: It is very difficult for him to persuade a court that you are being unreasonable because I think courts look at human behaviours and I think the courts would say I buy the argument.

[01:06:28]

CHAIRPERSON: I think that is the main interest for us

[01:06:29]

MALE VOICE: Probably I just want to check in business just a check on us not – I am not questioning anything. We got four topics that it involves this company that we going to sort of attempt to address at the same time. Would it not serve us better if we probably just address the two inner executives first before we touch the two because they also executive members of the board. And do it in a step, one, two and that you must tell us because you have

the facts on hand.

[01:07:06]

CHAIRPERSON: It does not make the difference.

[01:07:07]

MALE VOICE: It does not make the difference. Okay, thank you at least we have asked that question.

[01:07:10]

MALE VOICE: If you two could stay?

[01:07:12]

MALE VOICE: No, we cannot.

[01:07:13]

MALE VOICE: Ok we have asked that Can question. [indistinct-cross-talking]

[01:07:20]

CHAIRPERSON: Okay can we do this then Nick the mandate we would like to give you as you have explained one of coordinating this entire exercise fortunately you have done work on this you are familiar with what is going on. That means to say you worked with it particularly the audit and risk committee.

I think we also need for you to support them in terms of the terms of reference that must be put in place and then assist them as the expert input that needs to come in to do specific things and they will then suggest a modes operandi between them and yourself. There is also the people in governance committee which committee then

would be doing the suspension issues.

Audit and risk will be doing the operational work around the investigation itself but the people in governance has to do the substantive HR issues in other words pre-call each of the executives, tell them is there any reason not to suspend you. That process we would like you to assist as well.

[01:08:44]

MR LINNELL: Certainly, I can I think as I would understand it is your resolution that you have given the sub-committee the delegated authority from the board. So to put it clear if you delegate authority to me I cannot re-delegate it to someone else.

So the sub-committee is seized with the delegated authority not part of it. So when you come to making those decisions to suspend the sub-committee is acting for the board. So the sub-committee needs to do that not part of the sub-committee.

[01:09:18]

CHAIRPERSON: Yes.

[01:09:19]

MALE VOICE: So it is wrong to try and re-delegate some of your powers.

[01:09:21]

CHAIRPERSON: No, no.

[01:09:22]

MR LINNELL: So sub-committee is doing it as a whole.

[01:09:23]

CHAIRPERSON: Yes.

[01:09:24]

MR LINNELL: It is considering this that the sub-committee will come to a decision whether they had deduced to suspend. So that would be fine, on the second part absolutely I am more than happy to work with you on that basis. Can I just sound you out I would think from a perspective of making sure everyone internally and externally accepts your findings. It is so important to the credibility of the outcome because you are going to take some actions and you want everyone to buy in and you do not want disputed words a good thing, a bad thing.

Your audit risk committee should define the principles around what it wants done and then you have had your appointed service providers the investigators to go and do it. Again, unfair to him because even as a board and a sub-committee you unfortunately will have other retractors.

They are going to say no you had an agenda and regardless of whether you had an agenda or not someone will say you had an agenda and if none of you probably have been alive long enough to remember Richard Nixon when he went on TV and said I am not a crook. The moment he said I am not a crook the world his living

memory he is a crook.

So perceptions are created by things and so we got to make sure the board is protected from people saying you targeted us. You started off, you might not have said it but in your mind, you were gunning for this, that or the other guy. So I suggest you decide the principles and you step back but you oversee it without doubt.

You do not allow free reign you have regular report backs where you test it you say I did not understand your point where you going with this. It does not make sense. Have you checked that because you are not saying do not go down that road but you are saying I want to understand why you think that is relevant and that is good governance because the board is not giving someone a free ticket just to do what they want.

[01:11:23]

CHAIRPERSON: Okay now the timing of all of this and of course managing the media. What is your view on the timing of this and also on my follow-up because we have to do this thing?

[01:11:41]

MR LINNELL: Sure probably the most critical thing after you made the decision. This moment the press will know of your decision.

[01:11:51]

CHAIRPERSON: Correct.

[01:11:53]

MR LINNELL: So the press...

[01:11:54]

CHAIRPERSON: There will be something buzzing up here we must...

[01:11:55]

MR LINNELL: Ja. Look I have been in boardrooms where the pen has a camera and a recorder and my lapel badge is a camera and recorder.

[01:12:09]

MALE VOICE: Ja, ja.

[01:11:10]

MR LINNELL: And so do not ever assume you are in a boardroom and you talking in confidence because I am afraid the same as yourself and it got smaller and smaller these sort of devices get smaller and smaller.

[01:12:21]

MALE VOICE: It is very small.

[01:12:22]

MR LINNELL: So to coming back to the information the media communication is so important again. The nation agrees on what happens in here. So the press right now is going to read into this which they already know all sorts of things. You are targeting his people; it is political it is this it is whatever that I have mentioned.

So an appropriate media statement is very important

to come up with. You saying you have taken this course and this is why you doing it because if you can take the initiative and then I can promise the population at large wants to hear what you have done today because they want Eskom to stand up and say we going to save this.

[01:13:10]

CHAIRPERSON: Ja.

[01:13:11]

MR LINNELL: So the people will be biased in your favour you just have to make them understand why you doing it and it is good for a reason and I think particularly it is independent it is not hinged, you not after a lynch, you're not going after someone's neck you are trying to fix your business. And as important as that the moment you start doing what you do you have got thousands of employees who are going...

[01:13:35]

MALE VOICE: Who are in it, ja.

[01:13:36]

MR LINNELL: Who are threatened, insecure, fearful. Some are going to see opportunity there is all sorts of things from the worst to the least and you have to anticipate this. When you make a communication to your employees it is more the heart than your mind. You are going to tell them the board has done this and this is why we are doing it and that is two sentences. The next 50

sentences is about your heart, you important, you important to the country, you stand between this and that. All the messages and you write the messages down must have every single one of the company the country relies on you to do it. So it is like going into war.

[01:14:24]

CHAIRPERSON: Ja.

[01:14:25]

MR LINNELL: And I promise if you communicate that with emotion and feeling tomorrow you walk in after having done it you will see a lighter step...

[01:14:34]

CHAIRPERSON: Yes.

[01:14:35]

MR LINNELL: Because people were behind you and now feel committed to where you going and they will not feel endangered, threatened, insecure. So that is the most important communication you are going to give and again you have to do it very quickly because the rumour mill will be flying.

[01:14:51]

CHAIRPERSON: It will be fast, ja, okay.

[01:14:53]

MS NAIDOO: But I think the moral of the staff will be a bit down.

[01:14:56]

MALE VOICE: Ja, it is going to shock the place.

[01:14:59]

CHAIRPERSON: Now it is now 16:15. The next thing we have to do is to call those individuals.

[01:15:06]

MALE VOICE: I think so to Chair, ja.

[01:15:08]

CHAIRPERSON: Which is one by one.

[01:15:10]

MALE VOICE: Have them listen and engage with them on this.

[01:15:13]

CHAIRPERSON: Now is there time enough today to that would they still be here?

[01:15:17]

MS KLEIN: I do not think they have got a choice.

[01:15:18]

MALE VOICE: We have to do it Chair.

[01:15:19]

MS KLEIN: It got to be done.

[01:15:20]

MALE VOICE: We must do it no sorry Chairperson.

[01:15:21]

MS NAIDOO: Is the board doing this or sub-committee...[intervene]

[01:15:23]

CHAIRPERSON: It is the subcommittee.

[01:15:24]

MS NAIDOO: Ja.

[01:15:25]

CHAIRPERSON: They are now - the two sub-committees must deal with the nitty gritty.

[01:15:28]

MS NAIDOO: Look but are you not getting a service provider to do this?

[01:15:31]

CHAIRPERSON: Sorry?

[01:15:32]

MS NAIDOO: Are we not getting a service provider to do this?

[01:15:33]

CHAIRPERSON: No, no the individuals.

[01:15:35]

MR LINNELL: Your sub-committee takes that decision.

[01:15:36]

MS NAIDOO: Ja.

[01:15:37]

MS KLEIN: Ja but must the sub-committee sit across from the leaders.

[01:15:39]

MR LINNELL: Yes, ja and have that discussion.

[01:15:43]

MALE VOICE: But Chairperson we thinking and in principle decision to suspend. They must now together

with our service provider work out the processes.

[01:15:52]

MALE VOICE: Okay.

[01:15:53]

MS NAIDOO: We must have had that conversation now with them we need to follow due process. Those letters have to be drafted and everything or is the letters already ready?

[01:16:02]

CHAIRPERSON: Already ready.

[01:16:03]

MALE VOICE: Ja.

[01:16:04]

CHAIRPERSON: I do not know are the letters ready?

[01:16:06]

MR LINNELL: I have not seen any. [indistinct-cross-talking]

[01:16:08]

MALE VOICE: We have to just check that.

[01:16:10]

CHAIRPERSON: No sorry, sorry this is now really a no, no. There are no letters ready these people will prepare the letters with the help of the service provider and carry out the process.

[01:16:20]

MS KLEIN: Ja.

[01:16:21]

MALE VOICE: Okay thank you very much okay.

[01:16:22]

MALE VOICE: We can have it ready now. [indistinct-cross-talking]

[01:16:25]

CHAIRPERSON: The board's role is over finish except for one thing please advise me. It just happens that the people in governance committee is one of the committees that I sit on. Now is it advisable for me as a Chairperson to be present in that meeting.

[01:16:47]

MR LINNELL: Yes.

[01:16:49]

MALE VOICE: They are not sharing here.

[01:16:51]

MALE VOICE: Okay.

[01:16:55]

MALE VOICE: Without a few words Chairperson as well.

[01:17:00]

MALE VOICE: No we are in the same governance committee as well. We got Delta...

[01:17:05]

CHAIRPERSON: It is the four of us.

[

MALE VOICE: Isn't the CEO a member of that as well?

[01:17:12]

MR LINNELL: Who's your committee, who is your...

[01:17:14]

MS NAIDOO: For people and governance?

[01:17:15]

MR LINNELL: No, no for the board has created a sub-committee to oversee this investigation.

[01:17:20]

MALE VOICE: No, no.

[01:17:22]

MS NAIDOO: We asked the risk and audit...[intervene]

[01:17:23]

MR LINNELL: So they are in charge so the board has given them the authority.

[01:17:27]

MALE VOICE: And the longer we talk Chairperson the longer we delay their work. [indistinct-cross-talking]

[01:17:31]

MR LINNELL: If you are part of their committee you must just say.

[01:17:33]

CHAIRPERSON: No okay fine can I just establish are you saying that the audit and risk will take up the whole process from now on going forward.

[01:17:44]

MR LINNELL: No, no.

[01:17:45]

CHAIRPERSON: Or will people in governance do that and hand over once the suspensions have been done.

[01:17:51]

MALE VOICE: Ja.

[01:17:51]

CHAIRPERSON: Hand over the process to the people in governance.

[01:17:53]

MALE VOICE: To audit risk.

[01:17:55]

CHAIRPERSON: Okay now I understand.

[01:17:57]

MS NAIDOO: But Chairperson there is one other thing that came up from Nick as well we did speak about the fact that this information is probably out there somewhere but that does not sit with any of those schematics. Something needs to happen concurrently with the work that now gets done.

[01:18:09]

MS KLEIN: Do you mean a parcel bar thing?

[01:18:10]

MS NAIDOO: No, no not a parcel bar I am talking about getting statements ready etcetera, etcetera because it has got nothing to do with people and risk sorry people and governance and it has got nothing to do – it is part of a discussion but we must make a decision in terms of who is going to be engaged to help us with that because that becomes critical once this is done.

[01:18:34]

MALE VOICE: It is a PR exercise yes.

[01:18:35]

MS NAIDOO: Ja.

[01:18:37]

CHAIRPERSON: Remember that we discussed this matter with Ronny and Ronny knows people who can do this

[01:18:44].

MS KLEIN: Who is Ronny?

[01:18:45]

MALE VOICE: Romeo.

[01:18:45]

MS KLEIN: Oh.

[01:18:47]

CHAIRPERSON: He knows – he said he can give us advise before he left here, he said it was important that we get the best. This is a member of the board ja, we get the best communications person to handle these matters. So we need to now conducting and find out if there is a person to do that.

[01:19:08]

MS KLEIN: I have also given a name to which Mia...

[01:19:09]

MALE VOICE: Leo.

[01:19:11]

MS KLEIN: Leo was looking chuck that out the back.

[01:19:13]

CHAIRPERSON: Okay let us hear it then.

[01:19:15]

MS KLEIN: Ja.

[01:19:16]

MALE VOICE: That communication should come out of your office Chair.

[01:19:17]

MALE VOICE: Ja, and then you take charge of that.

[01:19:20]

CHAIRPERSON: Sure. Maybe we look at the timing remember now we going to look at the issue the letter of intent or we are going to invite them for tomorrow to come with their representative. Then you will issue them with this, we disused this issues it is only then we can communicate.

[01:19:40]

MR LINNELL: Okay, can I just put some views to you. In an ordinary situation it is good practice to give a person a letter and let them think about the letter and then you call them and have a hearing.

But that is again dependent upon the circumstances, for example if you caught someone doing a horrendous crime taking money out of the till now you are not going to give him a letter and then have a you know let him go home and then come back for that.

[01:20:11]

CHAIRPERSON: Ja.

[01:20:12]

MR LINNELL: It depends on the circumstances. I would suggest the seniority of these people, the nature of your decision today is serious and significant. You could dispense of the letter call them and have a verbal conversation but the conversation is a conversation two parts. The first part is I am telling you what the in principle decision of the board is, we feel this that you should be placed on suspension for these reasons, okay.

Now you need to tell us why that is not the right thing to do etcetera, etcetera what we just discussed and then you say to them – and you have to do it one at a time you cannot do it as a group. We going to go out of the room now you stay here we will come back in an hour okay and when you come back you say please give me your reasons because the process part of it is one of fairness. They going to come back and say you surprised me so much that you only gave me an hour to think about it. These allegations are quite simple, we followed them in, in a few minutes. It is common sense that if you have leaders overseeing an investigation it is going to lead to impairing the process. They do not need more than an hour.

[01:21:30]

MS MABUDE: But...

[01:21:31]

CHAIRPERSON: Yes.

[01:21:32]

MS MABUDE: What is going to come out of mind is the people of governance sitting discussing this thing and then after that getting into the decisions...[intervene]

[01:21:49]

MR LINNELL: Sorry what is that I do not understand that decisions.

[01:21:52]

MALE VOICE: Okay let us go again to the Chairperson.

[01:21:54]

CHAIRPERSON: No, no I did not – listen to what they are saying here. What she is saying is this...[intervene]

[01:22:00]

MS NAIDOO: Because Nick is not aware that we started here on the CEO. [indistinct-cross-talking]

[01:22:09]

MS MABUDE: Ja, but let me check.

[01:22:10]

CHAIRPERSON: Nick, what is happening is that the Chairperson of people and governance happens to be the same individual the board has agreed will temporarily sit in the CEO's position. Now the question that she is asking is if he is going to be the one who is chairing the committee that is harassing the suspension.

[01:22:33]

MR LINNELL: Yes, you are absolutely right it is not good

practice.

[01:22:35]

MALE VOICE: No it is not good practice.

[01:22:37]

MR LINNELL: No you are judge and jury...

[01:22:38]

MALE VOICE: Ja judge and referee all at the same time.

[01:22:39]

MR LINNELL: Oh yes.

[01:22:40]

MS NAIDOO: Does it have to be one of us board members why cannot this be an independents service provider, a law firm?

[01:22:45]

MR LINNELL: No, it is the employer.

[01:22:46]

MS NAIDOO: Is it?

[01:22:51]

MR LINNELL: Ja in fact if he said I am going to phone my lawyer and ask him to come in here. You say no, no this is a discussion between the employer and the employee.

[01:22:57]

MS NAIDOO: Okay.

[01:22:58]

MR LINNELL: We cannot have outsiders

[01:22:59]

MALE VOICE: Ja.

[01:23:00]

MR LINNELL: And you cannot have me actually sitting there because then he is going to say but you have got someone to assist you it is only fair that I have someone. Then you open up a can of worms because then you are going to have a whole team in here. You just want the employer to sit there and the employee to sit there and you have – and there is no rules it is just fair and reasonable. It is just constantly saying what is fair.

[01:23:24]

MALE VOICE: I think Chairperson you have to do it. The seniority is so...[intervene]

[01:23:29]

MALE VOICE: Ja, absolutely.

[01:23:33]

MALE VOICE: I just want to catch this one point, this two points...[intervene]

[01:23:34]

MR LINNELL: Did you have as a Chairperson received the delegated authority of the board to do that because in a normal situation if you suspending say the CEO who reports directly to the board the board has the power to suspend, no one else. The Chairperson cannot suspend; the board is the majority. So you will just have to be comfortable that the board has given him the delegated authority to do that

.**[01:23;58]**

MALE VOICE: Ja.

[01:23:59]

MR LINNELL: Then he can do with it whatever he likes.

[01:24:01]

MS KLEIN: Well right now.

[[01:24:02]

MALE VOICE: Right now the delegated authority, ja. [indistinct-cross-talking]

[01:24:04]

CHAIRPERSON: No, no wait no misunderstandings. It is the people and governance committee that is doing this. That is where the delegated authority who it has gone to.

[01:24:19]

MR LINNELL: Then they must do it but you must...[intervene]

[01:24:21]

CHAIRPERSON: Now hang on.

[01:24:23]

MALE VOICE: Ja, he is in a complicated position himself.

[01:24:25]

MR LINNELL: Then he just need to recuse himself from that.

[01:24:27]

CHAIRPERSON: No hang on wait a minute let me explain. It is the people and governance committee that the board has delegated to carry out this exercise. Now he being the

Chairperson of the committee and then subsequently becomes the...

[01:24:42]

MS NAIDOO: The acting CEO.

[01:24:45]

CHAIRPERSON: We feel he is conflicted so they are saying let us get another member of the committee to do it.

[01:21:51]

MR LINNELL: Are there only two members of the committee?

[01;24:54]

CHAIRPERSON: No, there is 1,2,3,4,5.

[01:24:56]

MS NAIDOO: Are you in the committee to?

[01:24:57]

MALE VOICE: But we have agreed on you Chairperson.

[01:24;58]

MS NAIDOO: We have just agreed on you.

[01:25:00]

CHAIRPERSON: So that is why I am saying to you understand that is not because I am the Chairperson it is because I am a member...[intervene]

[01:25:07]

MS NAIDOO: A member of the committee, ja so we all agree to that.

[01:25:08]

CHAIRPERSON: So and it is not me being delegated to

do this it is the work of the people in governance committee.

[01:25:14]

MS NAIDOO: Ja.

[01:25:15]

CHAIRPERSON: Do you understand.

[01:25:16]

MS KLEIN: But is that okay?

[01:25:17]

CHAIRPERSON: But I asked is it okay that I should do it as the Chairperson.

[01:25:19]

MR LINNELL: I prefer it not to be but we can afford to be robust it is just that technically you as a board empowered a group of people. The moment you empower a group of people the group has to act as a unit.

[01:25:34]

MALE VOICE: As a unit, ja.

[01:25:35]

MR LINNELL: Which means it is the majority of that unit. So if there is five people and three people say yes it does not matter what the other two people said it is yes. So as soon as that body says we going to give the power to one of us you going to say did the board when it took a decision to empower five people anticipate in you re-delegating or abdicating that responsibility to one of you.

Then we say if the board knew we were going to do that would they still have approved it.

[01:26:04]

CHAIRPERSON: That is not what we want to do. The understanding is that that is not what we going to do. I just happen to be one member of this committee.

[01:26:11]

MS NAIDOO: Yes.

[01:26:12]

CHAIRPERSON: And they are saying okay his not available to do it so why don't I do it.

[01:26:16]

MR LINNELL: Ja I agree. I do not see why the committee cannot do it with the Chairperson of the committee recusing himself for obvious reasons. The rest of the committee continues with the process and they decide on the matter as a collective.

[01:26:29]

MS NAIDOO: Ja.

[01:26:30]

MR LINNELL: Except you recuse yourself and you say, you just recuse yourself you say you are conflicted.

[01:26:36]

MALE VOICE: Yes we put him in his place as Chairman of the governance committee.

[01:26:40]

MALE VOICE: Ja.

[01:26:41]

MALE VOICE: Him, we members of the committee appoint him.

[01:26:43]

MS KLEIN: That is right given where we going.

[01:26:46]

MALE VOICE: That is allowed in terms of your terms of reference.

[01:26:48]

CHAIRPERSON: They are saying I should act as the Chairperson of the governance committee something like that.

[01:26:51]

MR LINNELL: Ja that is not an important legal decision you can do that from one meeting to the next. So you sit down at this meeting of the committee that committee and you say the Chairperson is not at this meeting today he has recused himself who shall we have as Chairman for this meeting. You appoint a person, you record he is appointed for this meeting and that is final. So it is a procedure within your committee so it is not a big issue.

[01:27:17]

MALE VOICE: Chair the – I just wanted to also highlight something that may also be an issue to consider. Remember that the chief executive and the FDR non-executive director their appointment is non-executive

directors comes from the executive directors.

[01:27:40]

MR LINNELL: Except the CEO, ja.

[01:27:41]

MALE VOICE: There appointment comes from the shareholder.

[01:27:43]

CHAIRPERSON: Yes.

[01:27:44]

MALE VOICE: I am sitting here and thinking have we requested, have we notified the shareholder or recommend to the shareholder that because of A, B and C this is what the board has decided to do because I am still struggling to think whether can the board without a nod from the shareholder suspend both.

[01:28:10]

MS NAIDOO: Are you asking like whether there is a written letter that is beings sent to like a formality.

[01:28:14]

MALE VOICE: Yes.

[01:28:15]

MS NAIDOO: The nod is there the formality.

[01:28:16]

MALE VOICE: Ah, the formality.

[01:28:17]

CHAIRPERSON: But sorry we are not suspending them as directors only the shareholder can do that. We are just

suspending them as officers of this organisation but as directors of the board is the shareholder who will do that.

[01:28:33]

MR LINNELL: Can I answer there because that is the right answer. You dealing with them in an employee capacity.

[01:28:40]

CHAIRPERSON: Yes.

[01:28:41]

MR LINNELL: Not as a director the memorandum of a corporation specifies that there are as ex-officio directors. So this board has no power to remove them.

[01:28:51]

CHAIRPERSON: Yes, that is the point...[intervene]

[01:28:52]

MR LINNELL: Because the memorandum of a corporation determines what this boards powers are and so this board is not interested as you rightly say their role as director and if you have a board meeting tomorrow even though they are suspended as an employee they could come to the board meeting...[intervene]

[01:29:06]

MALE VOICE: Absolutely.

[01:29:07]

MR LINNELL: And we will have to send them a notice of all board meetings as you would normally do you cannot

exclude them at all.

[01:29:13]

MALE VOICE: That is important.

[01:29:14]

MR LINNELL: It I an awkward position and we recommended it before that state owned companies and private companies change that in their memorandum of a corporation because it leads to all sort of problems because CEO's sometimes gets suspended four or five months and you might be making major commercial decisions and you suspended the person because of his involvement in one of those decisions. So he is not allowed to come to work but he can sit and adjudicate over this decision.

[01:29:41]

MALE VOICE: Absolutely.

[01:29:42]

MR LINNELL: So it compromises the process but at the moment the law, the regulations governing this board says you cannot change it. So you dealing with him greatly as an employee, you do not – I think the courtesy you should tell your CEO or the minister that this has happened but it is not approval. You are not advocating that status.

[01:30:04]

CHAIRPERSON: Can the shareholder then exercise any right to suspend them from directorship?

[01:30:09]

MR LINNELL: No, she cannot.

[01:30:10]

MALE VOICE: No, until they are proven guilty. Ja, there is no way she is going to act to remove them as directors.

[01:30:16]

MR LINNELL: The company's act provides if you want to - there is no provision in the company's act for suspension of a director you either are or you aren't because even if you do not attend the meeting you are still liable for the activities of the company. So if the shareholder wants to get rid of a director you must give him 14 days' notice and say I want you to tell me why I should not remove you as a director and just like you are having a suspension discussion she has to listen to their reasons and if she thinks their reasons aren't good she fires them for a reason. But you cannot unilaterally do it without fairness so it is rather limited.

[01:30:56]

MALE VOICE: That is why maybe asking it indirectly or directly because actually I have not, I do not know if each and every word of our MOI...

[01:31:11]

CHAIRPERSON: Sorry can you raise your voice.

[01:31:12]

MALE VOICE: Okay so I am asking a simple question that

will it be this board that finally suspend them or would it be the shareholder?

[01:31:28]

MR LINNELL: No it is the sub-committee which is acting on, with a delegated...[intervene]

[01:31:31]

MALE VOICE: That is why I am asking will it be the board or the shareholder?

[01:31:40]

MR LINNELL: It is the board. Look there is some interesting recent cases and there is one going on I think with the Department of Agriculture, Department of Energy at the moment that the board suspended the CEO. So the board took a decision like you taking suspended here and then the Minister came and said to the board no you must put them back and they refused and then they had a meeting and they all walked out of the meeting with their heads down and reinstated him. Now I am afraid to say either they were cajoled to do that but in law the shareholder had no power to that whatsoever it is the board's decision and so the shareholder can say to the board if you do not do as I tell you I have got to fire you guys in 14 days. So that is a thing you think about but you cannot tell him what to do, you are in charge of this business and she is not. But it is an interesting, it will be an interesting case reported to tell the board to reinstate.

[01:32:42]

MALE VOICE: So you cannot do it.

[01:32:43]

CHAIRPERSON: Okay can we then, sorry...[intervene]

[01:32:45]

NEXT: Chair can I ask that we explore that scenario so that if we have to do it we should do it and we should not allow for it to scupper the process because true you do not want to have a situation that permit it in that agricultural case where because of process. Given what you had to do and what you should have done in the first place, if we could be allowed to...[intervene]

[01:33:13]

CHAIRPERSON: In reference to what? It happens to what specifically?

[01:33:16]

MALE VOICE: The issue with the shareholder because we have a new MOI and Madisella would help us as to what it says so that we then understand so that we following a proper process.

[01:33:33]

CHAIRPERSON: Look you have seen them and however you read it.

[01:33:36]

MR LINNELL: Well if you change in the last couple of weeks, I have not seen it.

[01:33:39]

MALE VOICE: No it has not changed not in the last couple of weeks.

[01:33:41]

MR LINNELL: Ja.

[01:33:42]

MALE VOICE: But it certainly changed.

[01:33:44]

MR LINNELL: Look it will not deal with your powers in respect of this the principles are the board is empowered to do what it is doing; the shareholder does not have the power to do anything – cannot interfere with your powers all that the shareholders can do is fire you.

They have got no other power you are in charge of the business. So that is what it will say the issue of the two Chairpersons I think it is quite right if you thinking that in the event that you suspend the CEO well you going to appoint someone else and that person is part of the process. He recuses himself it would be improper to be there and he has volunteered in any event to recuse himself.

[01:34:26]

MS MABUDE: No I am just talking about the...

[01:34:29]

MALE VOICE: The board proceedings.

[01:34:30]

MS MABUDE: The acting CE being there as the acting CE

and the old CE coming in the board meeting as a board member because...[intervene]

[01:34:34]

MR LINNELL: Oh I see what you mean it is always uncomfortable, I promise. You know what one does I think in life the law can compel people to do certain things but at the end of the day the better way to give people to do things is by persuasion and you got to say to the person exactly what you said this will be difficult and it will be difficult for you. Do you want to put yourself through that embracement because things might come in the meeting which, a discussion that we ask you to leave the – recuse yourself from the matter and then you come back and I they ask you to recuse yourself again.

[01:35:18]

MALE VOICE: The acting CE comings to the board meeting or whatever committee but he does not vote because he is not a director. While the existing CE and the FD are directors of the company. That is the anomaly, you can come in and sit there so he is the acting FD but cannot vote because these were directors until the minister removes them as directors only then he registers him as a director and then he can vote. I mean we have been through this many times.

[01:35:51]

MS NAIDOO: Yes we did that in the past, I mean I a

mindful of the time and what this committee still needs to do today.

[01:35:57]

MS KLEIN: I think the thing about what the minister is or is not going to do regarding them or the executive directors I think that you need to work on. I am more concerned about what we need to do in the time not because I need to leave, I can leave at 12, it does not matter. But in terms of what work still needs to be done by us as a committee today.

[01:36:15]

CHAIRPERSON: Can we then say the board session and then we can finish with that, we finish with the important decisions.

[01:36:22]

MALE VOICE: Right.

[01:36:23]

CHAIRPERSON: And let us then let the people in governance committee sit and deliberate on what to do.

[

MALE VOICE: Absolutely.

[01:36:36]

CHAIRPERSON: I think normally...[intervene]

[01:36:37]

NORMAN: Actually, it is a suggestion can we not check with our members whether there is a timeline that provide

for people to respond to the letter. Is there a specification on the timeline maybe seven days or I do not know?

[01:36:59]

CHAIRPERSON: As far as I can recall it is 48 hours.

[01:37:02]

MR LINNELL: Where would you find that I do not think that is mandated. [indistinct-cross-talking]

[01:37:10]

MALE VOICE: Yes, they give you notice and then within 48 hours you must say why you should not be suspended.

[01:37:14]

MR LINNELL: I think give them whatever you want to give them and the letter certainly so if you give them 48 hours it is 48 hours because if you give them 5 minutes it is 5 minutes.

[01:37:20]

MS KLEIN: It is not normally no.

[01:37:21]

MR LINNELL: It is not a regulated period of time there is always a reason. It is a question of fairness and what is reason. So if it is - as I use the analogy if you walk out of here and see someone stealing money you are not going to give them 48 hours to come back and argue. So it is just depends on the circumstances.

[01:37:38]

MS MABUDE: No he is talking about within, within means

1 minute or 48 minutes.

[01:37:43]

MR LINNELL: That is why I think if you said within 48 hours it implies that you giving the person 48 hours to think about it and I think that would be difficult because and I think that will be entirely inappropriate to even have that as an option in your policy because imagine you are suspending anyone in a position of authority in this business for good reasons for allegations of wrong doing and the guy is walking around in business while you investigated, you investigated him.

What the court would say if you left him for 48 hours you should leave him there for the whole time, you obviously has no right to suspend him. So you cannot have him walking around at 48 hours. After the news of suspend the person now, you say, you call him in and you say we starting this discussion now you must leave the office now and come back and talk to us in the morning but in between you may not be in the office. You can break it up like that. So the board can tell people I am not suspending you but I am giving you an instruction to go home they must follow your instruction.

[01:38:49]

MALE VOICE: Sorry Chair quick just quickly there is an interesting provision in the MOI it says unless the shareholder resolves otherwise a director shall also seize

to hold office if states then the interesting one is 18.11.4.3 which says he or she stands to be an employee of the company or is suspended as an employee of the company.

[01:39:10]

MR LINNELL: Ja no then it is changed, when did that change? So let me have a look at that when did that print.

[01:39:14]

MALE VOICE: That is interesting

[01:39:15]

MR LINNELL: Because that is a new change that the state is putting in.

[01:39:18]

CHAIRPERSON: Ja, it is very clear all that.

[01:39:21]

MALE VOICE: Ja we all have that, excellent.

[01:39:22]

MR LINNELL: So for example, most other settings they have not changed that.

[01:39:26]

CHAIRPERSON: That is very good Mellissa. So if they are suspended on a continuous basis.

[01:39:32]

MR LINNELL: Continuous to serve is it actually suspended now.

[01:39:35]

MALE VOICE: Ja.

[01:39:37]

MR LINNELL: And this has been signed off?

[01:39:38]

MALE VOICE: Ja, this has been signed off.

[01:39:39]

MALE VOICE: Chair I got two nice phrases that did get to an answer. Independent fact gathering exercise, sounds nice and the other one was to fix the business model. An independent fact gathering exercise to fix the business somewhere you should catch that. An independent fact gathering exercise to fix the business.

[01:40:05]

MALE VOICE: Sure.

[01:40:06]

MALE VOICE: Positive.

[01:40:08]

CHAIRPERSON: Ja I like that.

[01:40:09]

MALE VOICE: Ja, it is not for a second person.

[01:40:11]

CHAIRPERSON: I like that idea.

[01:40:12]

MALE VOICE: Ja you like that?

[01:40:14]

CHAIRPERSON: Yes, I like that idea.

[01:40:15]

MALE VOICE: Is it in our formal MOI is it, no – I do not understand what you are saying now.

[01:40:22]

CHAIRPERSON: No what we got from the presentation. Would the board suggest those communications a press release or a press conference?

[01:40:34]

MS KLEIN: Press release.

[01:40:36]

MALE VOICE: Are you able to take questions?

[01:40:38]

MS KLEIN: Ja you do not want to be in that position right now do you.

[01:40:42]

MALE VOICE: This is a manual I had his name linked to the communication. I do not even know what it is ambassador.

[01:40:55]

MS KLEIN: Ja.

[01:40:56]

MALE VOICE: But Chair if you do have a press conference, I will recommend the two Chairs to be there and not be alone do not be a loner.

[01:41:02]

MS NAIDOO: Oh but maybe at this stage you would want

[01:41:04]

MALE VOICE: Ja.

[01:41:05]

MS KLEIN: Are you prepared to answer all those

questions

[01:41:09]

MS MABUDE: We are CE we cannot...

[01:41:10]

CHAIRPERSON: Oh you cannot.

[01:41:11]

MS MABUDE: Ja. [indistinct-cross-talking]

[01:41:15]

MALE VOICE: No, the Chairperson can handle it.

[01:41:17]

MALE VOICE: Alright Chairperson.

[01:41:18]

CHAIRPERSON: No I will be the person that is for sure.

[01:41:20]

MS NAIDOO: Ja.

[01:41:21]

MALE VOICE: A press release?

[01:41:22]

CHAIRPERSON: I will not call a press media conference.

[01:41:23]

MS NAIDOO: The press will have a field day with you.

[01:41:25]

CHAIRPERSON: I will not do that now.

[01:41:27]

MS KLEIN: Absolutely until we have you know enough information. [indistinct-cross-talking]

[01:41:33]

MS NAIDOO: Is this meeting over or are we going to dismiss because I think some of us can be excused.

[01:41:40]

CHAIRPERSON: Okay look we done on the board side. [indistinct-cross-talking]. We are done on the board side.

[01:41:58]

MALE VOICE: Yes sir.

[01:41:59]

CHAIRPERSON: So let us just sit as a...

[01:42:01]

MALE VOICE: Peoples governance.

[01:42:02]

CHAIRPERSON: As a people's governance and just see where we going to go.

[01:42:04]

MS KLEIN: Okay fine.

[01:42:05]

MS MABUDE: Chairperson.

[01:42:06]

CHAIRPERSON: Yes.

[01:42:07]

MS MABUDE: Your colleague.

[01:42:10]

MALE VOICE: You had something that you did not even do.

[01:42:12]

MS NAIDOO: You did not even respond to.

[01:42:14]

CHAIRPERSON: Which is that?

[01:42:15]

MALE VOICE: That he did not respond to.

[01:42:18]

CHAIRPERSON: Nick there is a question.

[01:42:21]

MALE VOICE: Ja actually to the – I wanted to find out from you when you did your background EC checks and balances.

[01:42:32]

MR LINNELL: On people or things?

[01:42:34]

MALE VOICE: No, no on background of...

[01:42:38]

MS KLEIN: Service providers.

[01:42:42]

MALE VOICE: At least up to now whether maybe I mean the status of Eskom at high level whether you have done it to the level where there is a conviction that his decision can be an appropriate decision to take. I mean I am all about the fact findings because actually some of us we are getting information for the first time today and I am trying to find out whether you have got some concrete information that leads to this type of decisions.

[01:43:22]

MR LINNELL: No the answer is, the information I would

have in terms of decisions and discussions is that this board it would be wise to discover the facts of what is going on here so that they can determine a number of things. Alternative strategies, restructuring different policy and people through actual omissions wilful or negligent have done things wrong here to cause or to exacerbate certain situations.

Now I think what I have done is it confirms in my mind sufficient grounds for you to say we as a board need to find out exactly what is going on here. The situation is being at the moment at the board and at any company relies on its manager its executive to tell you what is going on.

This is such a big and complex business to rely on management always and in this particular situation where the company is facing unusual and extreme crisis. It is almost the dereliction of your duty not to say more on independent guidance as to what is happening here.

[01:44:39]

CHAIRPERSON: Nick can I, I...

[

MR LINNELL: So I do not have any pre-condition ideas.

[01:44:44]

CHAIRPERSON: Can I, that question does not belong to me.

[01:44:45]

MALE VOICE: Oh okay I thought the...[intervene]

[01:44:48]

CHAIRPERSON: Look I think it is very clear if we are board members and we did not see that as a problem in the company then there is something wrong then we do not belong here. I want to make that very clear you heard what the Minister said there are cost that are running into billions of rand's in fact this moment the cost we running it is about R40billion.

We have load shedding cost by maintenance and irregular maintenance really. We have a financial client here were almost bankrupted as a company. We cannot sit here as a board and wonder why we need to make an investigation. No we cannot it is unacceptable. I cannot have board members asking what is the root cause for us to have this investigation, I cannot accept that.

[01:45:38]

MALE VOICE: No I think Chairperson it the...[intervene]

[01:45:41]

CHAIRPERSON: If I understand it we will be saying then it is unacceptable, I cannot.

[01:45:43]

NORMAN: No, no it is emanating from the fact that there are some reports somewhere when we had our meeting that there are some reports that you already done hence, I was just hopeful for searching for such reports if they are

already available to be made available. [indistinct-cross-talking]

[01:46:02]

MALE VOICE: Chairperson.

[01:46:03]]

CHAIRPERSON: Yes sir.

[01:46:04]

MALE VOICE: In starting this afternoon session of the board I propose a resolution that there are no documents available.

[01:46:12]

CHAIRPERSON: Yes.

[01:46:13]

MALE VOICE: A priority to us taking this decision and there is no one else involved in us taking this decision.

[01:46:20]

CHAIRPERSON: Correct.

[01:46:21]

MALE VOICE: It is a decision of the board for the reasons that you have mentioned.

[01:46:24]

CHAIRPERSON: Yes.

[01:46:25]

MS NAIDOO: It is fact finding.

[01:46:26]

MALE VOICE: That was the resolution fact finding exercise there is no document.

[01:46:29]

MALE VOICE: I think we are done Chairperson.

[01:46:30]

CHAIRPERSON: Okay let us move, can we have the governance committee then sitting please, time is running out. Can you stay?

[01:46:41]

MR LINNELL: Sure.

[01:46:43]

CHAIRPERSON: Unless the others want to join the committee that is fine we can proceed.

[01:46:47]

MS NAIDOO: Okay I can stay.

[01:46:49]

CHAIRPERSON: Oh they will stay; okay fine we can go into the committees meeting. Now modes operandi since I have now been asked...

[01:46:58]

MR LINNELL: Pressed by these communications because it is the end of the day and you have media talking straight away.

[01:47:05]

MS MABUDE: Let me ask just one little question. Is it according to the governance now is it right for the committee to handle this only or it should be handled by the issues, the committee should report to the board and then the board handles it? Like take it forward I just want

to be sure in terms of governance.

[01:47:31]

MR LINNELL: As I understand you the possible resolution give the power to the sub-committee to take those decisions on its part. So you do not take a recommendation as a board you make the decision.

[01:47:42]

MS MABUDE: And implement them.

[01:47:43]

MR LINNELL: You implement them; you have the power.

[01:47:45]

MS KLEIN: But you can inform the board.

[01:47:46]

MALE VOICE: Ja.

[01:47:47]

MR LINNELL: Very important step you should not cut the board out everything you do you should inform them,that is out of keeping them informed but not to counter your decisions.

[01:47:56]

MALE VOICE: Your committee is statutory also, no.

[01:48:01]

MALE VOICE: No audit and risk.

[01:48:02]

MALE VOICE: Oh you talking about audit and risk.

[01:48:03]

MR LINNELL: But not for this purpose.

[01:48:05]

MALE VOICE: No not for this purpose.

[01:48:06]

CHAIRPERSON: Okay can we have – what were you saying Nick what is the modes operandi?

[01:48:11]

MR LINNELL: I would think that you have got to look at this communication it should be because the rumour mill will be running wild.

[01:48:16]

CHAIRPERSON: Yes.

[01:48:17]

MR LINNELL: And if you do not say anything people fill the vacuum with what they think is a good thing to say. So I think you have got to think of the two communications one to the media and one to your staff. At the moment you have not suspended anyone as you sit here so your first communication is probably to tell people that you had taken a decision to do something which is this investigation and you have appointed a sub-committee to do, to have oversight and to do the necessary things to enable it.

That is your first communication and then internally you want to tell them but I again with more heart and then as soon as you have taken any new decisions with regards to suspension you will make another communication both internally and externally and then internally then becomes

more important because as I say...[intervene]

[01:49:05]

MALE VOICE: But Chairperson just to clear all sorts of if we – I propose a resolution that the people in governance committee has been delegated to implement the in-principle board decision to suspend the four executives and to follow due process. Yes, it summarises...[intervene]

[01:49:29]

CHAIRPERSON: Okay have you got that now.

[01:49:30]

MR LINNELL: Ja.

[01:49:30]

CHAIRPERSON: Okay that is the answer.

[01:49:33]

MALE VOICE: Sure. Okay alright in terms of the communication I think there is four key stakeholders here. One is we got to communicate to the shareholder. The other one is we got to communicate to the customers.

[01:49:42]

CHAIRPERSON: Sure.

[01:49:43]

MALE VOICE: The customers both as an Eskom direct customers and also as the public and we should be able to communicate to the employees and management of the employees of this, there is two things there. So if we can capture that correctly so that we get the message across

correctly.

[01:49:59]

CHAIRPERSON: Okay.

[01:50:00]

MALE VOICE: If we can do all that in writing.

[01:50:02]

CHAIRPERSON: So the messaging is simply saying that the board has decided that it is – to carry out and...[intervene]

[01:50:13]

MS MABUDE: Fact finding.

[01:50:14]

CHAIRPERSON: A fact finding – what did we say?

[01:50:15]

MALE VOICE: A fact finding exercise to fix the business an independent fact gathering exercise fact finding to fix the business, right and do in lieu of that you have requested these particular.

[01:50:37]

CHAIRPERSON: No before that.

[01:50:38]

MALE VOICE: Before that.

[01:50:39]

MS NAIDOO: Sorry I cannot read you verbatim, can you.

[01:50:41]

CHAIRPERSON: No I just stopped it there. So the communicate will say the board has decided that it will

institute a fact finding...[intervene]

[01:50:49]

MALE VOICE: An independent fact finding, fact gathering exercise.

[01:50:52]

MR LINNELL: Enquiry is a good word.

[01:50:53]

MS KLEIN: Enquiry yes.

[01:50:54]

MR LINNELL: It is a softer word.

[01:50:56]

CHAIRPERSON: A fact finding enquiry.

[01:50:59]

MALE VOICE: Ja. Right to fix the business.

[01:51:01]

MR LINNELL: I think fix implies...[intervene]

[01:51:02]

MS KLEIN: That it is broken.

[01:51:03]

MR LINNELL: That is it broken.

[01:51:04]

MS KLEIN: We need to decide.

[01:51:05]

MR LINNELL: It is a fact finding exercise to...[intervene]

[01:51:06]

MALE VOICE: To establish the status.

[01:51:07]

MR LINNELL: To establish the status.

[01:51:08]

MALE VOICE: To establish the true status of the business.

[01:51:09]

CHAIRPERSON: The true status ja.

[01:51:11]

MR LINNELL: The capability ja.

[01:51:13]

MALE VOICE: That is fine.

[01:51:14]

MR LINNELL: And the word true might be a problem because it implies that it is currently not true.

[01:51:17]

CHAIRPERSON: Okay.

[01:51:20]

MR LINNELL: So it is an unnecessary adjective.

[01:51:22]

CHAIRPERSON: To establish an accurate status of the business.

[01:51:24]

MS NAIDOO: Ja, but Chair you know what I am going to go back to what the ambassador said I think we are getting busy with stuff we are not wordsmiths.

[01:51:30]

CHAIRPERSON: Ja, ja.

[01:51:31]

MS NAIDOO: Can we get somebody who does this for a living to help us craft something taking into account the heart kind of angles because we are going to sit here and throw words at it.

[01:51:44]

CHAIRPERSON: It is now 16:52 can we find the person before...[intervene]

[01:51:46]

MS NAIDOO: Remember this report came out the 12th do you remember it and you Chairperson said you were going to ask Leo.

[01:51:56]

CHAIRPERSON: Did Leo get the name?

[01:51:57]

MS NAIDOO: No but I am asking you remember we said we going to need to do this. Do you have someone?

[01:52:03]

MALE VOICE: Let me phone our board member.

[01:52:05]

MS NAIDOO: I have already given a name as well so can I give you that name, can we check if there is and then you check with Romeo and see because we – because word-smithing done incorrectly can have a counter effect on what we trying to do here.

[01:52:16]

MR LINNELL: Ja you also have to be with respect that is

right 100%. There are not many public relations experts who have a better feel than you do.

[01:52:28]

MALE VOICE: Ja.

[01:52:29]

MR LINNELL: So I guess it is word-smithing but it is a minor part of it. The message is your message because this is your business. PR agencies are kind of flowery by nature. They broadcast it will be better for your internal message. So I think your message is a public now is a very short it is one or two paragraphs. We doing this and you make also the point that it does not imply that there is any sense of wrongdoing or an anticipated or unexpected risks because you do not want tomorrow the financial papers to say Eskom's board is doing this because they heard something awful is going to happen like we going to have a blackout tomorrow. So you have to say we doing this in a sense is proactive but you make a statement this does not mean the board fears there is any reasonable likelihood from a deterioration of the current situation.

So people have got to be understanding we doing this for positive reasons there is no negative influence in this communication and I would keep it at that and say the board will communicate further. So keep that short and sweet you do not want any massaging. I think you would understand any risk phrases coming in and I think soon as

you do your internal one, I think these people are very good because that has got to have a lot of heart in it.

[01:54:10]

MS NAIDOO: I think my point was a bit further than just word-smithing. The issue of how we say it is one thing there is whole issue of what happens after that and I just find that a lot of these PR companies have got a much better handle on how to put it out and who to put it out with and who to lobby with than many of us either collectively or individually. That was the point I was making.

I see that whatshis name has stepped out; I am also going to make a call and see if somebody – to your question is somebody available because Leo you would obviously not have had the name in terms of speaking to the person. So the ambassador is checking with Romeo quickly.

[01:54:50]

MALE VOICE: Yes.

[01:54:52]

MS NAIDOO: I will also just make a call and see if there is somebody on standby but then we must make a decision here.

[01:54:56]

MALE VOICE: Yes.

[01:54:57]

MS NAIDOO: To say do we or don't we get somebody

involved at this stage.

[01:54:59]

CHAIRPERSON: Okay.

[01:55:02]

MS NAIDOO: And then we could see what would you need.

[01:55:05]

MR LINNELL: Yes, there is an issue that you would have to just watch. I would think by now through your shareholder Minister that she has informed her boss which is the President. So we have to watch out when are they making statements.

I would imagine this is going to have such a positive effect on the public that you would find your Minister and the President will make a statement to this effect. Now we all know he is talking in parliament today and so if your Minister has told him about it he might also make a statement in parliament today, who knows but we have to anticipate that your announcement might not be the first announcement because if the Minister is saying President we are doing this he's going to – physically he should tell the public he is the leader of the country. He should stand up and say guys the board is doing this and I support it.

[01:56:08]

CHAIRPERSON: Okay now I think I would have to obviously call the Minister and tell her about the outcome

of this meeting.

[01:56:15]

MR LINNELL: Very important, ja.

[01:56:16]

CHAIRPERSON: Right, and I will also indicate to her that we intend to put out a statement tonight just about the decision of the board to do this fact finding enquiry. Just so that she knows that that is coming out. Now she may have whatever responses she has but certainly it is important for us.

[01:56:43]

MR LINNELL: It is good protocol.

[01:56:44]

CHAIRPERSON: She may want us to have that emailed to her.

[01:56:47]

MALE VOICE: Ja, listen to this Chairman board in its pursuit to – can I say it? Board in its pursuit of making Eskom would class something like that has resolved to commission an independent fact gathering exercise with the health and condition of Eskom. To this end the board has requested four of the top executives of the company to be relieved of the duties during the period of the fact gathering exercise.

[01:57:18]

MR LINNELL: I would not do that, it is premature.

[01:57:21]

MS KLEIN: We still need to happen that meeting with them.

[01:57:23]

MR LINNELL: Ja I think adjectives like world class organisation are superlatives which are not necessary because you are business people that is marketing talk.

[01:57:32]

MALE VOICE: Okay.

[01:57:33]

MR LINNELL: What you want to do is say we as a board have taken a decision to do this the reason is that we want to better understand the status, the condition of our capacity and capability and make adjustments as are necessary in this business responsibility. And then reassure the public that there is no immediate risk that you are concerned of that they have not been previously told about. So it is a positive statement with countering a negative and then there are no negatives.

[01:58:09]

CHAIRPERSON: You will have to put something together.

[01:58:10]

MALE VOICE: Capture all that.

[01:58:10]

CHAIRPERSON: Did you capture all that?

[01:58:11]

MS NAIDOO: But you can work with Nick.

[01:58:12]

MALE VOICE: Ja.

[01:58:14]

MS MABUDE: And Andrew where does he fit in here?

[01:58:19]

MALE VOICE: Okay let me see, let me just get my...[intervene]

[01:58:21]

MR LINNELL: I did draft something.

[01:58:23]

CHAIRPERSON: Did you draft something?

[01:58:24]

MR LINNELL: Ja.

[01:58:25]

CHAIRPERSON: So let us have a listen then.

[01:58:26]

MR LINNELL: But again it is your decision I mean I just because obviously I have been thinking about the logical steps.

[01:58:32]

MALE VOICE: We are delaying the process in telling people that they are gone, they are going to go.

[01:58:35]

MS NAIDOO: Ja you all need to go ahead and do that.

[01:58:37]

MALE VOICE: They going to leave the offices.

[01:58:39]

MR LINNELL: Ja, can I just test an understanding with you as I understand it I might not be right but did the Minister inform any of the individuals that could well be suspended?

[01:58:55]

MALE VOICE: No the Minister is not involved no.

[01:58:56]

MS NAIDOO: No.

[01:58:57]

CHAIRPERSON: Our Minister is not involved.

[01:58:57]

MS NAIDOO: The Minister not, this is a board decision.

[01:58:58]

CHAIRPERSON: This is a board discussion.

[01:59:00]

MR LINNELL: Okay it might not be so in which case they already know.

[01:59:08]

MALE VOICE: Ja you sense the fact that sitting members are taken out of meetings for the first time ever shows some...[intervene]

[01:59:18]

CHAIRPERSON: Something is wrong.

[01:59:19]

MALE VOICE: Something is wrong.

[01:59:20]

MR LINNELL: Well did you ask some people to recuse themselves?

[01:59:21]

MS KLEIN: Ja when the Minister arrived, she did.

[01:59:25]

MR LINNELL: What the executives to remove themselves?

[01:59:30]

MS KLEIN: Ja, because the others had already left.

[01:59:32]

MS MABUDE: It is the EC and the FDR directors so when he wants to see the board, they are part of the board but he specifically asked them...[intervene]

[01:59:47]

MR LINNELL: So was there any committee discussions done?

[01:59:48]

MALE VOICE: That is still there.

[01:59:50]

MR LINNELL: Oh okay she is, it is her call I mean there are no A and B to create directors typically but it is her call and there is nothing wrong with that. Absolutely she is allowed to come and talk in the committee it is not a board meeting. When she was addressing you, she was addressing you as a shareholder informally sharing with you her feelings.

So it is not wrong but it does create a mind-set and you have to think about people's reactions to events. So we also got to anticipate if I do this what is someone else going to do. It is like the conspiracy theory but it is really necessary to think those things through but they could well be forewarned now and that is some of the reason why as you said we need to act quite quickly because uncertainty is never a good thing.

[02:00:43]

MALE VOICE: By the way, just to add on that Mbalani it is actually very smart because do not forget we are talking commercial and technology and it so happens that Mbalani is already involved in the turn around, in the generation turnaround.

[02:00:59]

CHAIRPERSON: Yes.

[02:01:01]

MS MABUDE: Mbalani?

[02:01:03]

MALE VOICE: That one that was selected.

[02:01:05]

MALE VOICE: Mbalani

[02:01:06]

MALE VOICE: Yes I know him.

[02:01:07]

CHAIRPERSON: So it is a good choice as a matter of fact

because he can also quote us on the technology side.

[02:01:14]

MALE VOICE: Okay cool.

[02:01:15]

CHAIRPERSON: Okay Nick...

[02:01:17]

MS NAIDOO: Mr Chair can we excuse ourselves?

[02:01:18]

MALE VOICE: Okay.

[02:01:22]

MR LINNELL: I assume I would have said something. [indistinct-cross-talking]

[02:01:42]

CHAIRPERSON: Okay this is Nick's...[intervene]

[02:01:45]

MS KLEIN: Suggested statement.

[02:01:46]

CHAIRPERSON: But we will print it, Leo.

[02:01:48]

MALE VOICE: Chairman

[02:01:50]

MS NAIDOO: Just read it to us it is fine.

[02:01:51]

MALE VOICE: Okays sorry can I just say Romeo said he has got a person to polish and handle our statement in such a way that it is well received but he cannot see this person right now. We need to draft it and email it to him...

[02:02:11]

CHAIRPERSON: To Romeo?

[02:02:12]

MALE VOICE: And then he is going to deal with this person.

[02:02:13]

CHAIRPERSON: Okay that is good.

[02:02:14]

CHAIRPERSON: Okay that will work that is fine. Okay here it is we will see how it goes. Number 1, its says Eskom associate media release 11 March 2015. 1, the stays in the capacity is not only a critical issue for Eskom but more importantly for the nation as a whole. 2, supply outages have had a major effect on people's lives, the economy and investment in the country.

There can be no denying that the severity of the risk caused by these outages. 3, Eskom is however working tirelessly to ensure that the current spate of outages do not increase and become more severe. The board is confident that all practical steps are being taken and we are reasonably confident that the position will not deteriorate further.

Recently the President engaged with the Chairperson of the board and the Minister, the substance of this consultation is that the government expects and subsequent deserves better insight into the current

uncertainty. That where there are risks that they should be urgently addressed and further that if there was any wrong doing be it negligence or wilful and he did not imply there was then the board needs to address this openly and objectively. The President suggested that an individual...

[02:03:49]

MALE VOICE: No, no too much, just leave the President...

[02:03:55]

CHAIRPERSON: I am just reading to you what is on here.

[02:03:58]

MALE VOICE: If you have to include them you must take it from his national address.

[02:04:02]

CHAIRPERSON: Yes from his address.

[02:04:04]

MALE VOICE: The state of the nation address and the comments made by the Minister the board have seen it very important that they start acting seriously.

[02:04:12]

CHAIRPERSON: Okay.

[02:04:13]

MALE VOICE: Then it is fine.

[02:04:15]

CHAIRPERSON: Okay, have you got the state of the nation address accessible?

[02:04:18]

MALE VOICE: Ja.

[02:04:20]

CHAIRPERSON: Because we need to quote from there.

[02:04:22]

MALE VOICE: Ja, that will work.

[02:04:23]

CHAIRPERSON: Okay I think what you then ended up doing here Nick is to say this morning the board considered this matter – this is now the issue of an enquiry and at the conclusion of that meeting the board resolved that an independent enquiry into the current status and capacity of Eskom and a review of the past actions would be conducted with urgency. But the board would appoint a sub-committee to oversee an act on behalf of the board.

[02:05:00]

MALE VOICE: No, no.

[02:05:01]

CHAIRPERSON: So okay that is...

[02:05:03]

MS NAIDOO: The board is mandated.

[02:05:04]

MR LINNELL: Board is mandated.

[02:05:5]

MS KLEIN: The board has mandated an audit committee.

[02:05:08]

MALE VOICE: The board is delegated to the people governance and the audit and risk committee to carry out

its in principle decision to suspend.

[02:05:21]

MR LINNELL: But I would not mention that...[intervene]

[02:05:23]

MALE VOICE: But you do not go there

[02:05:24]

CHAIRPERSON: We do not go that far.

[02:05:24]

MALE VOICE: Oh okay.

[02:05:25]

MR LINNELL: What you're telling them at the moment is that you have taken a decision to have this investigation.

[02:05:27]

MALE VOICE: The investigation.

[02:05:28]

CHAIRPERSON: Okay, alright, right.

[02:05:31]

MS MABUDE: Chair can we leave after the mandatory part with the matter.

[02:05:35]

CHAIRPERSON: Okay.

[02:05:36]

MALE VOICE: Just leave it to the Chair.

[02:05:37]

CHAIRPERSON: Alright... [recording cuts off]

END OF RECORDING

BizNews

Sign In Try BizNews Premium



Myeni; the hunter becomes the hunted – Paul O'Sullivan

30th May 2020 by Chris Bateman

It's better than a block-buster Hollywood crime thriller, where the hunted becomes the hunter, with more twists and turns that an overgrown game trail. The best the 'partially-uncaptured' South African criminal justice system has come up with so far on former bully-girl, intimate-Zuma-associate and airline-wrecker, Dudu Myeni, is to get her declared a Delinquent Director. Given the counter-litigation tide the protagonists had to swim against, this is no small achievement. Yet Ms Myeni has far more to answer for, according to forensic sleuth Paul O'Sullivan, whose open letter to NPA chief, Shamila Batohi, below makes for riveting reading. He was the fox the Zuptoid hunters, led by the then-powerful Myeni, set their State pack upon, ambushing, caging and allegedly torturing him. He wriggled free and is now causing seven different kinds of pain for his former captors, an agony Ms Myeni will do all in her power to avoid, pulling whatever strings are still attached to the Zuptoid machine in the system. O'Sullivan is after the entire Zuptoid pack, feeding juicy evidential bones to a thinly-staffed Batohi. It's a drama in about its third season, with self-contained episodes and more to come. Tune in for maximum entertainment and dare we hope, political reassurance, before the final season plays out. – Chris Bateman

Paul O'Sullivan's open letter to head of the NPA Shamila Batohi

Dear Shamila,

I hope you are well and coping with the challenges imposed by Covid-19.

I attach a copy of the scathing judgement of Justice RG Tolmay dated 27th May 2020, which is self-explanatory.

Paul O'Sullivan

I request you to NOTE the references in the judgement to Mr Nick Linnell (page 30 and further) Mr Masotsha Mngadi (page 82 and further) Mr (John) Motloba (page 73 and further) Quartile Capital (page 72 and further) and BNP Capital (page 83 and further)

I then refer to the case I opened at OR Tambo Airport on 2016-01-14 under OR Tambo CAS 91/01/2016 against Ms Myeni and others wherein I alleged Fraud and Reckless Conduct as a director, in contravention of Section

A copy of the above mentioned docket, wherein I adduce evidence of the fraud perpetrated by her and the collective board of SAA, can be found, with annexes.

On 2016-03-17 I submitted a further sworn statement in respect of the OR Tambo docket, a copy of which is also attached. In this supplemental sworn statement I clearly implicated Mr John Motloba as an additional suspect, along with then president, Jacob Zuma and the company Quartile Capital. I did not publish this sworn statement on our website, so have attached a copy hereto, for your convenience.

> It cannot be coincidence that the 2016-03-17 statement set in motion a chain of criminal events, (together with an e-mail I had sent to then acting

Commissioner of Police on 2016-03-15) which saw me being unlawfully arrested and dragged off a London bound plane at OR Tambo, along with my then 7 and 9 year old daughters, where after I was subjected to four days of unlawful detention, torture and a subsequent two and a half years of facing trumped up charges of fraud, kidnapping, racketeering and false allegations of treason and terrorism all orchestrated by the unlawfully appointed Gauteng DPCI head Prince Mokotedi. The day after my arrest, which was orchestrated by Major General Prince Mokotedi and his accomplices, the said Mokotedi pinned me up against a wall, whilst my hands were cuffed behind my back and told me, amongst other things; '*You don't know how you've upset Dudu Myeni*'. During the trial on trumped up charges in terms of Section 26B of the South African Citizenship Act, one of Mokotedi's accomplices admitted that the arrest had been expedited because I had 'threatened' the chairman of SAA, Dudu Myeni. It subsequently came to my attention that Mr Nick Linnell (the same person fingered in the 2020-05-27 judgment) was paid by SAA to orchestrate my arrest and he billed SAA hundreds of thousands of Rand for such 'work', as can be seen by reading the news item at: https://city-press.news24.com/News/SAAs-R167K-a-month-adviser-20150809

You would be aware that I am currently suing the state as a result of the above unlawful conduct of criminals in the DPCI, Police and NPA who acted with a common purpose with the intention to silence me from exposing corruption. Myeni is also a defendant in that case, along with named police officials and NPA officials.

On 2016-07-03 I submitted a further sworn statement in respect of the OR Tambo docket, a copy of which can be found here. In this further statement I implicated Mngadi and BNP Capital as co-suspects in the frauds being

perpetrated by Ms Myeni. I also notified Nedbank's Forensic Head of Mr Mngadi's involvement and he was suspended and subsequently dismissed.

Finally, on 2017-12-04, Forensics for Justice opened a further docket against (amongst others) Dudu Myeni, Jacob Zuma, their son Thalente Myeni and Nick Linnell, for their joint and several role, where they all acted with a common purpose in the capture of ESKOM. According to the evidence led by Zola Tsotsi at the Portfolio Committee on Public Enterprises on 2017-11-21, he was 'persuaded' to hire Mr Linnell to unlawfully get rid of senior executives at Eskom, paving the way for the criminal 'capture' of Eskom. A copy of that docket can be found here. I will seek the case number, which I do not have to hand right now and advise you accordingly.

I went so far as to predict way back in November 2014, that Myeni, if left unchecked would bring SAA to its knees. See attached e-mail to her in November 2014 and a sworn statement I provided to Mr Kalawe in February 2014. See also the mail from a PI hired by one of her accomplices, which makes it clear that Myeni was the puppeteer at SAA.

> Also read: Paul O'Sullivan: Gordhan must be SCALPED, with Zuma, Myeni for crooked mess at SAA

Despite opening countless dockets against her and providing copious amounts of *prima facie* evidence, she has been left to her own devices and 'allowed' (or encouraged) to eviscerate a once great airline and put thousands of people out of work, whilst irrevocably damaging the economy of our country.

It therefore pains me to record the following:

1. More than four years have passed since I opened the OR Tambo case against the board of SAA and others.
2. More than two years have passed since I opened the docket against Myeni, Zuma, Linnell and others, pertaining to the capture of Eskom.
3. It is my belief that the reason these years have passed and no steps have been taken to bring the suspects to justice is solely because the criminal justice system was captured and remains captured to this very day.

I believe sincerely believe that the Tolmay judgement, read together with the trial transcript and documentary evidence submitted by the plaintiffs, will more than adequately supplement and corroborate the evidence I have submitted as outlined above and make it possible for Ms Myeni to be arrested and charged, along with her accomplices, this side of Christmas 2020.

As leader of the NPA, you cannot be expected to prosecute these cases on your own.

As leader of DPCI Lt General Lebeya cannot be expected to investigate and refer cases for prosecution on his own.

NPA and DPCI heads have to rely on subordinates for the above investigations and prosecutions. However, the rot is still ever present in the police, DPCI and NPA, to the extent that to date not a single trial has started or a single conviction has been had from the countless cases, replete with ample *prima facie* evidence that we have spent many years and millions of Rand putting together. Instead countless millions were wasted on dirty cops hunting for evidence they could nail me with, as well as multiple trials on trumped up charges. If the same level of diligence that has been unlawfully meted out against me had of been applied to the criminals engaged in state capture, they would all be behind bars by now.

I must therefore respectfully request that urgent steps are taken to prosecute some of the many cases we have opened, starting with Myeni, or give us a certificate as envisaged in Section 7 (2) (b) of Act 51 of 1977, the Criminal Procedures Act.

I am confident that I can obtain funding and the requisite skills for private prosecutions, should the need arise.

I look forward to hearing from you soon and pledge my assistance and that of Forensics for Justice if it is needed, in bringing these people to book.

A clear signal MUST be sent out that it is NOT OK to bring state owned companies to their knees, such as was done at SAA, Eskom, PRASA and Transnet.

Best wishes,

Paul O'Sullivan, Forensics for Justice

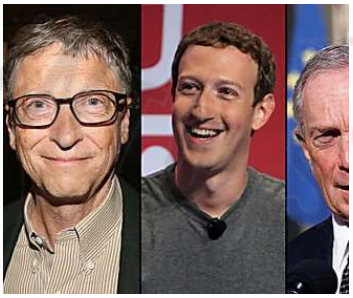
(Visited 48,632 times, 11 visits today)

Share This Post

Sponsored Content



Here's how you can profit from stocks like Amazon with only $250.
smartinvest.com


Where Do The Richest Americans Live?
Mansion Global


[Pics] You Can't Fix Stupid But you Can Laugh At It
Ice Pop


Jeff Bezos Drops $16 Million on Anc Manhattan Pa
Mansion Global



A Turnkey Waterfront Villa on the Bahamas' Paradise Island

Mansion Global



Barack and Michelle Obama Reportedly Close Deal for $11.75

Mansion Global



Registration for the new Green Card Lottery is now open -

U.S Green Card - Free Check



20 Rules That All Hells Angels Have To Follow

Post Fun

Recommended by

Cyril Ramaphosa: The Audio Biography

Listen to the story of Cyril Ramaphosa's rise to presidential power, narrated by our very own Alec Hogg.

Get the Audiobook

Narration by Alec Hogg

What do you think?

48 Responses

Upvote Funny Love

Surprised Angry Sad

Comments Community Privacy Policy 1 Login

♡ Recommend Tweet Share Sort by Best

Join the discussion…

LOG IN WITH OR SIGN UP WITH DISQUS ?

Name

Tania • 3 months ago

"the criminal justice system was captured and remains captured to this very day."
Yes, indeed. Because of the ANC.

18 ^ | v • Reply • Share ›

v_3 ➚ Tania • 3 months ago

By the ANC

3 ^ | v • Reply • Share ›

Greg M • 3 months ago

My man! I will contribute to private prosecutions. Go man go.

10 ^ | v • Reply • Share ›

Thomas • 3 months ago • edited

Good luck to O'Sullivan, Outa and all those who demand accountability (SA public except politicians and those on the take). But by now he knows the NPA and SAPS await instructions from government (national, and provincial where applicable) when deciding to investigate and prosecute corruption and politically sensitive cases. Nudge-nudge, wink-wink counts as 'instructions' too. Tame poodles are highly attuned to their master's voice and await treats in reward.

About the certificate not to prosecute, good luck there too. Last year I asked Rodney de Kock's Cape Town DPP (he was a failed applicant for the top job, shame) for unambiguous word - let's call it a 'certificate' - that they *weren't* proceeding w/ an inquest case (culpable homicide, medical negligence and fraud/corruption knocked down to second class non-offences after they and SAPS declined to prosecute, coincidentally after then premier Zille intervened w/ DPP). The DPP said I must ask the court (huh? - who brings cases, the DPP

or courts?) whose clerk literally got abusive to me. I have no idea where the case is (related to this, like O'Sullican w/ his charges, I resubmitted the affidavit of complaint to DPP in March after they and SAPS refused to accept my first attempt last year).

BTW Batohi the Meek's office never responded to the emailed letters I sent.

To put it in context, while the cases O'Sullivan presents are important - (sigh) money always is - they're insignificant next to the blatant failures of SAPS and NPA, cases like the one I mentioned that fall through the media cracks, unheralded. If he thinks he has it bad, he ain't seen nothing yet.

10 ^ | v 1 • Reply • Share ›

ElizardBeast2 • 3 months ago

It appears that Batohi is also captured from where I sit - either that or useless !

ER

6 ^ | v • Reply • Share ›

Ace of Spades • 3 months ago

Another Crook in a Doek!

6 ^ | v • Reply • Share ›

Storm Ferguson • 3 months ago • edited

How come the opposition parties, who surely have seen what O'Sullivan has revealed, haven't been shouting this from every union's rooftop and every locale where the Zuma supporters are drawn from? Too much hand sitting from too many it would seem.

4 ^ | v • Reply • Share ›

Domjan • 3 months ago

This incompetent primary school teacher should have been fired a long time ago but as usual the cAncer leadership have no balls nor brains to employ competent CEO's . No wonder every SOE is bankrupt

4 ^ | v • Reply • Share ›

Geoff Coles • 3 months ago

Batohi, like every NPA Director does not seem to want to prosecute people from KZN.... Which by and large dominate NPA appointments ... True to a large extent to

the most useless, and often corrupt, of Government Ministers.

3 ^ | v • Reply • Share ›

Movingthegorgonzolaback • 3 months ago

But, but saa is going to rise up again! Better than before! Profitable too! Halaluja! Praise be! Maybe there is yet a place for dudu. All that experience. Cant waste it. Long live saa! Long live! Long live dudu! Long live! Squirrel hot frog pond gung ho ramapops youre on it!

3 ^ | v • Reply • Share ›

Murky Waters ➚ Movingthegorgonzolaback • 3 months ago

Why does RumpyPumpy not restart Africa's incredible Space Program ..



African hi-tech leadership... showing the world!

1 ^ | v • Reply • Share ›

Rod Baker • 3 months ago

Alec, to your newsletter header '...Read Tolmay's judgement and you'll wonder how Myeni, Zuma still walk free...'

Simple.

They are ANC. Above the law, and in Myeni's case, do not be surprised if there is some cushy ambassadorship in the wings.

The ANC is Acutely Naturally Corrupt - and ***NOTHING*** has changed under CR.

Thousands of people have been arrested and harassed for breaking some or other lockdown rule but NOT ONE ANC leader behind the crap state this country is in (even without the impact of covid-19) has even seen the inside of a jail.

2 ^ | v • Reply • Share ›

Colnef • 3 months ago

As long as the ANC continues to put forward such delinquents as key decision-makers and then support them when their incompetence flairs up - as it no doubt will - the country will continue on the road to oblivion. Even if you cannot tolerate Whites and others in senior positions what can possibly be the problem with putting the best Black person in the job?

2 ^ | v • Reply • Share ›

Murky Waters ↗ Colnef • 3 months ago

The only requirement for a top position in any SOE, Municipality etc. - under the Zuma years - is that one must be a pliable, corrupt degenerate - devoid of any scruples, morals or ethics - that coupled with a desire to enrich yourself and thereby screw over all citizens of SA - including the destitute !!

Scum of the earth !! But still the heroes of the ANC and its supporters ...

1 ^ | v • Reply • Share ›

Klaus Muller ↗ Colnef • 3 months ago

But they have put, in their opinion, best BLACK person in the job?!

1 ^ | v • Reply • Share ›

Russ Wood ↗ Klaus Muller • 3 months ago

Best at what? is the question.

^ | v • Reply • Share ›

CentralLimit • 3 months ago

Blatant failure to deliver law enforcement and justice for all, as per SA Constitution (1995).
ANC is undermining institutions of constitutional

BizNews Radio

Generous bid for Phumelela; Distell profit fall; AYO's hefty fine; Massmart
27 AUG 7PM / BizNews Radio
00:00 03:34
56k iono.fm

Playlist

Generous bid for Phumelela; Distell profit fall; AYO's hefty fine; Massmart 27 AUG 7PM / BizNews Radio	03:34
Business interruption claims fiasco: tourism, hospitality operators get set for court battle. LISTEN 27 AUG 3PM / BizNews Radio	04:51
Nedbank profits fall by 70%; zero-alcohol limit by December; Bidcorp; ICA 26 AUG 8PM / BizNews Radio	03:36
Covid-19 fall-out: South Africans are struggling, with many tipping into poverty and deeper into de... 26 AUG 2PM / BizNews Radio	11:07
Covid-19 angels: While Covidpreneurs profit, one charity organisation donates lifesaving equipmen... 26 AUG 9AM / BizNews Radio	12:30

BizNews App

Popular Posts



Duduzane Zuma, son of Jacob, steps back into...

Magnus Heystek: Allan Gray warning of SA death...





Capital controls, emigration, and the biggest threat...



How world sees SA: Covid-19 booze rules have...



Cell C sheds stores, jobs; Tiger Brands; Naspers;...

BizNews Radio on Spotify

LISTEN ON Spotify



Get Daily Updates

Subscribe to our Newsletter to get daily updates on local affairs, with a global context.

First Name

Last Name

Email Address *

Get Daily Updates



Visit the BizNews Shop

The BizNews Shop

Everything from investing like Warren Buffett to the Audiobiography of Cyril Ramaphosa.

Visit the Shop

BizNews

Company

About BizNews

How To Support BizNews

Make us your Homepage

Contact BizNews Support

Advertisers

Advertising on BizNews

Sponsored Content Disclaimer

BizNews Premium

BizNews Premium

Biznews Premium FAQs

Login

Newsletter

First Name

Last Name

Email Address *

Get Daily Updates

© 2020 BizNews, Inc. | The Rational Perspective

Terms & Conditions Comments Policy

U16-NHL-443



Paul O'Sullivan: Ex-Eskom chair Tsotsi provides State Capture's "smoking gun"

22nd November 2017 by Alec Hogg

U16-NHL-444

LONDON – Former Eskom chairman Zola Tsotsi dropped a proverbial State Capture bomb in South Africa's Parliament this morning. His statement to the investigating committee unpacks how he was bullied by the Guptas and State Enterprises minister Lynne Brown, and implicates president Jacob Zuma in an identical manner to that what was previously explained by whistle-blowing ANC politicians Vytjie Mentor and Mcebisi Jonas. The former Eskom chairman Tsotsi says Zuma was in the room when the chair of his foundation and former chair of SAA Dudu Myeni instructed Tsotsi to toe the plunderers' line or be dismissed. Forensic investigator Paul O'Sullivan has been closely following events and unpacks the relevance of Tsotsi's statement, which was made under oath. He reckons this is the "smoking gun" which will bury the Guptas and their puppets, and, he avers, very possibly end the Zuma presidency. The audio of the interview with O'Sullivan is followed by Zola Tsotsi's full statement as it was delivered to Parliament this morning. Dynamite. – Alec Hogg

Joining us on the line from Johannesburg is Paul O'Sullivan. There have been dramatic things going down in Parliament this morning. Paul, you've been following the story closely given the work that Forensics for Justice does. Just give us an insight into Zola Tsotsi, the former chairman of Eskom and the evidence that he led today. Was any of this expected?

No, absolutely not, Alec, and in my opinion, it's a bombshell that's been dropped because the statement that he read out in Parliament today is the first evidence, what I call the 'smoking gun' of the involvement in the President in State Capture.

U16-NHL-445

What Zola Tsotsi had to say left a lot of people with mouths wide open. It's just shocking and it's unbelievable. I think it could signal the fall of President Zuma.

Just explain, when you say, 'the smoking gun,' how so?

Paul O'Sullivan

Well, what he explained today was not known until today. It was probably known by a small group of people, but effectively what happened was he was appointed as the Chairman of Eskom back in, I think, 2014. Now, when he was appointed he was working with the then minister, which was Gigaba and he had a cordial working relationship with Gigaba. As we know, soon after Gigaba handed over to Lynne Brown in May 2014. So, he then had to cultivate a relationship with Lynne Brown, which he was trying to do and he thought he was getting there. Until all of a sudden in February 2015, he got a phone call and he had to go and see Lynne Brown. This was now probably 2 or 3 days before that fateful State of the Nation Address where the Secret Service used signal jamming technology to stop people recording what was going on, while they threw the EFF members out of parliament. As you know, both the signal jamming and the throwing out of parliament of the EFF by plain clothed police officers was declared unlawful.

So, you had the situation where he gets a call from Lynne Brown and he goes to see her, and she makes it pretty clear to him that he doesn't appear to be doing his

U16-NHL-446

job properly and if he doesn't she's going to find somebody else. She accused him of interfering with the mechanics of Eskom so, he then told her if scrutinising the executive decisions at Eskom and calling them to account for the decisions amounted to interference with management, and he was happy to continue doing so. She then told him that if he doesn't change his ways she'll find somebody else to do the job. So, he left that meeting and at the very same afternoon he met with Tony Gupta and the meeting was initiated by Tony Gupta.

> Read also: How SA was stolen: NPA, police in bed with Zupta crooks – O'Sullivan team

Tony Gupta told him in no uncertain terms that he, as chairman of Eskom, was not helping them, the Guptas, with anything. He then went on to say, 'we are the ones who put you in the position you are in – we are the ones who can take you out.' That meeting was then short and sweet, and he left there. Then he was supposed to have a board meeting on the 26th February 2015, with the whole board of Eskom. The night before the board meeting he got a call from Zuma and Zuma told him that he was trying to get hold of the Director General and the Minister and he could not, and he wanted to cancel the board meeting so, there you have the first 'smoking gun' if you like. The interference in the running of a state entity by the president and lo and behold an hour later he got a call from the acting-Director General to say that the Minister has asked that the meeting be postponed, i.e. the board meeting. So, put out by this she asked what the reasons were for the postponement and he was told that the Minister had not given any. He then communicated the postponement of the board meeting to other members. So, then a week or 10 days later, on the 7th March, he got a call from Dudu Myeni, the

U16-NHL-447

chairman of SA Airways, and she told him that he had to report to the presidential residence in Durban, which he did.

Sorry Paul, just to understand this and put it into context. Now, Dudu Myeni is the chairman of SA Airways. She's got nothing to do with Eskom. The chairman of Eskom was charged with running the state utility and he's having board meetings shuffled around and changed so, he can't really run that. Now he's been told by Dudu Myeni to report to a meeting. That must have been unusual to him.

Absolutely unusual to him but remember by this stage he was already put out by the fact that the meeting he had with Lynne Brown and the coincidence was not lost on him but a couple of hours after she had threatened to replace him, he got a call from Tony Gupta, and Tony Gupta did exactly the same. He threatened to replace him so, there is absolute evidence of interference in the running of Eskom. But when he gets this call from Myeni she doesn't disclose to him on the phone why the president wants to see him. She said, she wasn't prepared to discuss it on the phone. So, off he goes to Durban and he arrives at the presidential residence and he's met by Dudu Myeni. Her son, Thalente now, Thalente Myeni is the son of Dudu Myeni but his father is well known to be Jacob Zuma himself, but with them was another gentleman a guy called Nick Linnell.

> See also: http://www.presscouncil.org.za/Ruling/View/dudu-myeni-vs-zululand-fever-2267

Now, I've done a lot of research into Nick Linnell. He's a 'Mr Fix-It' for Dudu Myeni. In fact, he's been attached to her side since 2010. In 2011, when she was called out for arrant decisions at the Water Board in Richards Bay. Nick Linnell was the one

U16-NHL-448

that took the media on at the press ombudsman and attempted to get them a wrap over the knuckles for the story they wrote about Dudu Myeni, and it backfired but what he did was he left an audit trail that he was acting for Dudu Myeni, and we'll come back to Nick Linnell in a minute. So, he was introduced to him as a lawyer and then, according to his statement he says, 'Myeni then proceeded to outline the purpose of the meeting.' Namely, that the situation of Eskom's financial stress and poor technical performance warrants an enquiry into the company to be instituted.

> See also: http://ewn.co.za/2015/04/02/First-on-EWN-SAA-chair-accused-of-receiving-kickbacks

She further elaborated that in the course of the said enquiry, three executives, namely the acting CEO, Tshediso Matona, the group executive for group capital, Dan Marokane, and group executive for commercial, Matshela Koko were to be suspended. He was shocked by this. He didn't know what to say but while he's having the discussion Myeni is explaining to him that there'll be no prejudice by the executives. She doesn't explain why she's getting involved in the running of Eskom and shortly after this the president himself entered the room.

So, Zuma comes in as well?

Yes, Jacob Zuma himself, walked into the room so, there you've got Jacob Zuma, Myeni, this guy Nick Linnell, who purports to be an attorney but we know he's not. He was an attorney in the then Rhodesia. He's now 66 years' old and he has no business being involved in all these state-owned entities. So, you've Myeni, Nick Linnell, and Myeni and Zuma's son, Thalente, sitting there and the president asks, 'what are they are going to discuss?' Myeni then repeats the whole process and

U16-NHL-449

explains that these three executives have to be suspended. Now, for the first time in all the investigations that have been going on we now have the mention of Zuma himself in State Capture, which has been absent so, this is a watershed moment in the investigations into State Capture. But it goes a step further. After explaining, with the president present, and Myeni seemed to be running the meeting, she then stated that Nick Linnell had assisted her with a similar situation at SA Airways and she was making him available to assist Zola with the suspension of the Eskom executives.

> See also: http://city-press.news24.com/News/SAAs-R167K-a-month-adviser-20150809

A lot of this stuff, Paul, sounds like what happened when you first of all had Vytjie Mentor with her engagement with the Guptas and having Zuma in the room next door. Then subsequent to that what Mcebisi Jonas said happened with him and his engagement with the Guptas. It seems like in this case though, it wasn't a Gupta doing the messaging it was Dudu Myeni.

Yes, Dudu Myeni herself. Now, we've long known that Dudu Myeni is joined at the hip with Zuma. She was his mistress at one stage and we also know that Thalente is the son of both of them, and she's attempted desperately to conceal that but she's failed miserably. What she's now going to have to do, and I'm hoping that parliament will issue her with a summons as part of the Eskom enquiry, and bring her to parliament and get her to explain why she was interfering in the affairs of Eskom and why she was doing so with the blessing of Jacob Zuma. Now, I think we've mentioned before that Dudu Myeni is also the founder and chairman of the Jacob Zuma Foundation. It's worth noting that I have alleged that the Jacob Zuma

U16-NHL-450

Foundation has been used for money laundering by virtue of the fact that payments have been made to the Jacob Zuma Foundation and those payments have not been accounted for. Now, curiously for the last 3½ or 4 years the Jacob Zuma Foundation has not filed audited accounts.

File Image: Duduzile Myeni speaks during a visit to the SAA's offices by President Jacob Zuma in Johannesburg on May 6, 2016. Photographer: Waldo Swiegers/Bloomberg

So, you're just left wondering what the role of Dudu Myeni is in all this nonsense and I'm hoping that we'll get her into court sooner rather than later, and get her to explain this. Forensics for Justice – on our website you can see the docket that we've opened against Dudu Myeni and it's quite a substantial docket with oodles of prima facie evidence. We're now going to be adding a supplemental statement to that docket asking for her to be charged with additional counts of corruption in respect of her relationship with Zuma, and how they bullied this chairman of Eskom. When the chairman of Eskom did not go along with their plan a few weeks later he was fired.

The interesting part about all of this, as you say, is that there is a 'smoking gun' now, but by the same token, how do we know that Zola Tsotsi, the chairman, is

U16-NHL-451

actually telling the truth? That's got to be the crux to all of this.

Well, he gave his evidence under oath, Alec, and he prepared a statement, which I've sent to you and I think you should publish it on your website. Although the statement itself is not signed, he gave his evidence under oath. I think that, at the end of the day, the best way to unpack this is to subpoena this woman to parliament and let her explain to parliament what her relationship is with Zuma and more importantly, this guy, Nick Linnell. Now, Nick Linnell is the 'Mr Fix-It' for Dudu Myeni. Every time she gets into trouble Nick Lennell has been running around trying to put out fires and that includes at the Water Board in Richards Bay, at SA Airways, and as we now know, here he's been assisting her in bullying the chairman of Eskom and he pulled it off. He makes it clear that Nick Linnell actually drew up the suspension letters, which he then served on those three individuals.

You say he's not a lawyer. What exactly is he, apart from being a Mr Fix-It?

He was a lawyer in Zimbabwe, at that stage it was Rhodesia, and he in fact was a magistrate in Rhodesia.

So, he has legal training of some sort?

Oh yes, he absolutely has legal training but he's not registered with the Law Society. I've checked and he's not registered so, he shouldn't be going to meetings and referring to himself as a lawyer. Now, the other point of concern is this. She engaged his services whilst she was running the Water Board and she paid for his services from that Water Board. She then engaged his services and paid him R167 000 a month without any employment contract and without any procurement processes being followed whatsoever at SA Airways. What did he do? He worked together with Dudu Myeni instructing a law firm, ENSafrica, in bringing false charges against the then CEO of SA Airways, Monwabisi Kalawe. In fact, the law firm didn't only do that. They went after all the executives that she wanted to

U16-NHL-452

remove from SA Airways so that she could have her dirty hands on the tender processes of SA Airways. As you know, OUTA brought an application to stop her from paying R256m to BnP Capital last year and it just goes on and on.

I think we now have, what I consider to be a 'smoking gun' and we're going to be adding another supplementary statement. I've already written two weeks ago, to the National Director of Public Prosecutions and I've requested a certificate that they don't intend to prosecute Myeni because they're just sitting on the docket that I opened now, in January 2016, and they have to make a decision. If they don't make a decision by the new year, we are going to launch an application in the High Court to force the National Prosecuting Authority to make a decision and issue the certificate because we believe we have enough to prosecute Dudu Myeni privately, and we will do so.

Paul, just to dwell a little on the National Prosecuting Authority. There have been reports in the last day or so that they're starting to stir into action. That a 'crack' team has been put together to investigate State Capture, etc. What's your reading on that?

Well, I am aware that the Hawks are busy with it and it makes sense that there would have to be prosecutors guiding the Hawks because on a complex investigation like that, you can't have a situation where the police do the investigation without guidance from the National Prosecuting Authority. So, on these larger investigations, complex frauds and corruption, etc, they tend to be prosecutorial led investigations. So, the initial parts of the investigations would be carried out by the police, in this case the Hawks. They would then take their findings to the National Prosecuting Authority because at the end of the day they're the people that are tasked with drawing up the charge sheet and prosecuting the cases. They would then sit with the investigating team and say, 'okay, you know what else we need – we need this.' We need a statement from this person explaining, etc, and so on and so forth. When they've got all that together

CU16-NHL-453

they then make a decision as to whether or not they should prosecute. I think I've made it clear that I see the low-hanging fruit. Until today, the real low-hanging fruit was Brian Molefe. I now see there's two apples hanging on the low part of the tree. The one is Brian Molefe and the other is Dudu Myeni, and I'm hoping that they'll both be picked very soon.

Why no arrests, Hawks? More of Zapiro's magic available at www.zapiro.com.

Just to follow up after Zola Tsotsi, you had the Minister Lynne Brown, who he implicated in quite a deep way, coming onto the stand and herself saying, 'she would like to see investigations, etc,' this was in parliament. If she's been so deeply implicated in it why is she saying this?

Well, I think you know there's no 'smoking gun' against her as yet. She seems to be on the periphery of everything, but she would have to explain why she called Zola Tsotsi for a meeting a few days before the State of the Nation Address in CT in

U16-NHL-454

2015, and demand from him to stop interfering in the executive running of Eskom and if he did not do so she would replace him. It just doesn't sound like pure coincidence that 2 or 3 hours later he gets an unsolicited call and a meeting with Tony Gupta, and he pretty much said the same thing. So, somewhere it needs to be unpacked and if it can't be unpacked in parliament then it can be unpacked in a criminal trial and these people can be put on the stand and forced to explain what's going on.

> Read also: Paul O'Sullivan promises a Selebi repeat for Brian Molefe: "I'll put him in jail."

It's extraordinary developments to the North of us, in Zimbabwe and in SA as well. There has to be some wash-over of this effect but the SA Parliament, certainly in this case, appears to be hellbent on bringing the truth to the surface. Do you think that's an accurate assessment or do you think that, as we've heard it all before we heard a similar story, as I mentioned with Vytjie Mentor and with Mcebisi Jonas, that this whole thing might just disappear?

I think it's a bit further down the line now than that that it can just disappear. So, there has to be some sacrificial lambs at least and I would like to see the full gamut of these people being dragged before court and prosecuted. Certainly, we have enough, in my opinion, to indict a number of people, including Brian Molefe, including the suspended CFO of Eskom.

Anoj Singh.

Yes, including Dudu Myeni – they all have to explain their role.

U16-NHL-455

What about Jacob Zuma though? If one were to see the elective conference vote in his ex-wife, as some people say will occur, could this whole thing then be swept under the carpet?

It's possible because at the end of the day we all know that it's not supposed to happen but we all know it does happen, and I'm talking about executive interference in the criminal justice system. So, you do have people giving instructions to prosecutor, senior prosecutors and senior police officials and that needs to stop. I suppose you could say, maybe the National Director of Public Prosecutions has realised that the writing's on the wall if he doesn't start doing something soon. I imagine it will be too late if he waits until after the elective conference and maybe someone like Cyril Ramaphosa gets in because he'll be toast.

So, how do you see things developing from here, Paul?

Well, I've said it before, Alec. If the elective conference results in an ethical and good person becoming the new president of the ANC, then I think they have 18 months before the next elections and I think the ANC will win the next elections. If, on the other hand, a Zuma-ite or a Gupta-ite gets appointed as president of the ANC then we'll have another 18 months of looting and then the ANC will lose the 2019 elections.

CR16-NHL-456

Watchdogs. More of Zapiro's brilliant work available at www.zapiro.com.

And those 18 months of looting can they not be stopped in any way?

I think that will happen, Alec. Civil society has become more and more alert to these things and steps are being taken, even right now so, we're going to see more and more civil cases putting stops to this looting. I think what's happened is people are talking a lot more now, despite the conduct aimed at attacking whistleblowers. Look at what's happened to me. I've been arrested I don't know how many times and dragged off planes and have my offices searched illegally, all of it illegal, but I think those days are coming to an end soon and if they don't come to an end soon then the courts will force it to come to an end.

Just to close off with. This parliamentary enquiry, from the outside and given the history of how the State Capture process has been able to roll, how was it even possible for it to occur?

U16-NHL-457

Well, let's not worry about how it was possible. It happened and it would appear to me that the people running the enquiry are decent people. We can't tar everybody. We can't tar every single ANC MP as a criminal. That would be impossible. Some of them are good people and their hearts are in the right places. They just allowed themselves to be persuaded, for want of a better expression, as to how they should vote in certain issues, which should have been free votes but they weren't. I think that at the end of the day, even the ANC MPs themselves are starting to realise that this thing is getting out of hand. I do not see a situation where Jacob Zuma, regardless of who gets in, in December. I do not see a situation where Jacob Zuma will still be the president of this country by Easter next year.

You do however, or you did say that you expected to see arrests before December. Are you still sticking with that?

I'm saying, I'd like to see those arrests before December. I think, looking at the progress that's taken place on the investigations, it may not now happen but I'm not ditching it. I'm focusing on seeing at least one arrest before December. When I say, 'before December,' I think I've said before Christmas so, let's work on the end of the year.

Yes, and the final point. It's interesting to see that the SABC is now livestreaming this from parliament. That's quite a different SABC to the one that used to be around not long ago, under Hlaudi's reign.

Yes, it's nice because the SABC have got no money for programs and it doesn't cost any money to live stream from parliament so really, I guess, it's free

CR16-NHL-458

entertainment. But at the end of the day, I think the SABC is now pretty much uncaptured and we're going to see other institutions becoming uncaptured. I think it's fair to say that Eskom are in the process of becoming uncaptured. The same will happen at Transnet and Prasa, and SA Airways we know is already uncaptured. So, yes, I think the future does look good. I'm always very positive about the future. I believe that justice will prevail, and that good always triumphs over evil.

Paul O'Sullivan, talking to us from Johannesburg.

Statement by former Eskom chairman Zola Tsotsi to Parliament's Portfolio Committee on State Enterprises

I feel privileged to have been afforded the opportunity to appear before this committee so that I may make my contribution towards the unravelling of the issues that have contributed to current state of affairs at Eskom.

The lapses in good corporate governance that have been occasioned by poor decision making have opened up the company to exploitation by unscrupulous rent seekers.

U16-NHL-459

Those of us who have been and continue to be at the forefront of these events, including any who may have even peripheral knowledge thereof, have both the responsibility and moral obligation to voluntarily provide this knowledge to this Committee and the nation.

In accordance with the information I received that Eskom will make available any documentation I may require in support of my preparation for my appearance before this Committee,

I regret to say that, despite numerous requests, Eskom did not avail me a single document. I have therefore had to rely on my memory of the pertinent events during my tenure at Eskom. This is unfortunate as it limits my ability to support the work of this committee. Be that as it may, I am here committed to presenting my recollections to the best of my ability.

1. The TNA Contract

1.1 On my arrival at Eskom in 2011, there was an existing TNA (The New Age – a newspaper which was part of Gupta Media) contract which was in progress. It was due to expire in about June 2014. At the time of its expiry, Collin Matjila was Acting Chief Executive.

1.2 Mr Matjila acceded to the request that the contract be renewed. In so doing, he failed to apply a provision in the delegation of authority that enjoined him to deal

U16-NHL-460

with sponsorship through a Committee that was put in place to deal with such matters thus by-passing the process and acting outside of his delegation of authority. The finance Director among others in his management team raised objections to his actions, contending that he used the wrong delegation of authority, and that the correct one would require him to make the decision on sponsorship as part of a Committee.

1.3 Mr Matjila disputed this position and proceeded to sign the contract. A whistle blower reported this action to the chairperson of the Audit and Risk Committee, stating that the acting CE had flouted procurement regulations. The ARC chairperson then brought the matter to the attention of the Board which duly delegated the ARC to institute an audit inquiry into the matter.

1.4 The ARC appointed Sizwe Ntsaluba Gobodo who produced a report with a finding that Mr Matjila had interpreted his delegation of Authority incorrectly by using a wrong process to award the TNA contract, thereby infringing the provisions of the PFMA in that his authorised expenditure would then be irregular.

Collin Matjila. Photo taken from
http://www.destinyman.com

U16-NHL-461

1 .5 Mr Matjila then requested the Board to seek a legal opinion in this matter, to which the Board agreed.

1.6 The legal opinion was provided by the firm of Ledwaba Mazwai Attorneys who upheld the SNG findings that Mr Matjila had acted outside of his delegated authority and recommended that the Board discipline the Acting CE

At this point, Mr Matjila was no longer with the company as the substantive CE Mr Matona was then in office, so the Board could not institute disciplinary action after the fact. Further, the lawyers advised that cancellation of the contract would result in expensive litigation and serious losses to the company.

They also afforded the Board advice that meant accepting the contract, i.e, ratifying it meant accepting responsibility for Mr Matjila's breach. After deliberations the Board accepted this advice as an irregular expenditure finding was too ghastly to contemplate. The board then resolved to let the contract run the remaining few months of the extension.

2. IT Procurement

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

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

U16-NHL-462

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

3. The Duvha Boiler

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

> Just gets worse and worse! Zola Tsotsi says Salim Essa gave him list people to appoint to Eskom Board positions. He gave different list to Minister Brown for approval but list that came back to him from Minister was same as Essa's. #EskomInquiry
>
> — Anton Eberhard (@AntonEberhard) November 22, 2017

4. Suspension of four executives

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

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

4.3 In the period from the arrival of Minister Brown at Public Enterprises Department in May 2014 till the new Board was in place, I had been trying to cultivate a working relationship with the Minister and aspired to achieve one similar to how I related with the previous Minister Gigaba.

U16-NHL-463

> Tsotsi's evidence crucially places President Zuma as directly involved in meddling with SOE's and places witnesses "at the scene" #EskomInquiry
>
> — Annika Larsen (@AnnikaLarsen1) November 22, 2017

4.4 It became patently clear to me that I was not succeeding in this regard when the Minister called me to a meeting a day or two before the State of the Nation Address (SONA) in February 2015. At this meeting, she stated as follows:

"Chairman, I have received complaints from management and Board members that you are interfering in management. Please refrain from doing so, because if you don't, I shall have to find someone else to do your job!" My response was "Minister, most Board members hardly know what I look like, let alone not having worked with me yet. As for management, if scrutinising their decisions and behaviour and calling them to account constitutes interference with management, then I will happily continue doing so. If you had acceded to my request that we have regular briefing sessions, even this meeting would not have been necessary" where upon the Minister responded by saying, "Chairman, you go and do what you have to do, I will go and do what I have to, there is no reason for you and I to talk about anything." That is how the meeting ended.

U16-NHL-464

Tony Gupta

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

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

Shortly thereafter I received a call from the Acting DG to say that the Minister has asked that the meeting be postponed. When I asked for the reasons for the

U16-NHL-465

postponement, I was told that the Minister had not given any. I then had the postponement communicated to the Board members.

4. 7 The totality of these events had generated some apprehension in me about things to come. Hardly a week later, I was called by Dudu Myeni. She said that I should avail myself for an audience with the President, and declined to discuss any details over the phone.

4.8 On or about 7 March 2015, I arrived at the Durban Presidential residence and was met by Dudu Myeni, her son Talent, and a certain Mr Nick Lennell, who was introduced to me as a lawyer. Ms Myeni then proceeded to outline the purpose of the meeting, namely, that the situation of Eskom's financial stress and poor technical performance warrants that an inquiry into the company be instituted. She further elaborated that, in the course of the said enquiry, three executives namely, Acting CE Tshediso Matona, Group Executive for Group Capital Dan Marokane, and Group Executive for Commercial Matshela Koko, are to be suspended.

> So many questions arising from #EskomInquiry. Why was #DuduMyeni meddling? What agency did Tony Gupta have? What exactly is Minister Lynne Brown's relationship with Tony Gupta? If Tsotsi's testimony is true, heads must roll.
>
> — Mandy Wiener (@MandyWiener) November 22, 2017

4.9 I found this matter altogether shocking and proceeded to question the need for suspending these executives as I saw this as a recipe for inducing instability in the company. She retorted that even the War Room was experiencing frustration

U16-NHL-466

with the decline in performance of the Company, and that the enquiry was essential. In her view, the suspension of the executives will not create difficulties because it will be explained that they are not accused of wrongdoing, but are being asked to allow space for the enquiry to proceed unencumbered by their presence. Shortly hereafter the President entered. After some pleasantries, he requested to know what was up for discussion, whereupon Ms Myeni repeated what she had previously stated. The President then enquired if I knew who the executives are who were to be suspended, to which I responded that I would prefer that I consult the HR Rules of the company to check if there is provision for recusal rather than suspensions to achieve the same objective. Ms Myeni stated that Mr Lennell had assisted her with a similar situation at SAA and is being made available to assist. Mr Lennell then proposed that he draft a resolution for me to present to the Board setting out the rationale for the enquiry. The meeting ended.

4.11 I convened a Board meeting on 09 March 2015 where I presented the proposed resolution. The Board expressed its discomfort with this approach and instead proposed that the Minister be invited to engage on this matter with the Board.

4.12 The Board meeting with the Minister in attendance was convened on 11 March 2015.The Minister gave her support for the inquiry as well as for the suspensions of the 3 executives. The Board then resolved to proceed with both the inquiry and suspensions of the 3 executives. It also mandated the Audit and Risk Committee (ARC) to prepare the Terms of Reference for the inquiry, as well as the People and Governance Committee (P&G) to effect the suspensions.

4.13 At the inception of the P&G Committee meeting following the Board meeting, two astonishing events occurred. Firstly, Dr. Ben Ngubane stated that the name of the Financial Director must be added to the list of executives to be suspended. I immediately raised furious objections. For one, this executive's name was not among the names approved by the Board. More importantly, suspending the FD is

CR16-NHL-467

going to generate shock waves even internationally especially with our investors and lenders because the FD is seen as the custodian of their investments. Dr. Ngubane responded that the Minister had instructed that the FD's name be added. I immediately called the Minister to raise my concerns and objection, but she rebuffed me.

> I'm glad Zola Tsotsi is now talking. He told me those things about @SAPresident in two meetings in February, off the record #EskomInquiry
>
> — SikonathiMantshantsh (@SikonathiM) November 22, 2017

4.14 The second astonishing event had to do with the appointment of the executives who had to act for those suspended. Hardly an hour after the end of the Board meeting which decided on the suspensions, Ms Chwayita Mabude was announcing the names in the P&G of the executives who were going to act. I immediately protested that nobody in the Committee, Ms Mabude included, other than myself, would have known which executives were suitable replacements. Once again Dr, Ngubane stated that these names came from the Minister.

4.15 Mr. Lennell assisted P&G in drafting the suspension letters, which were then individually handed out. I was at pains to assure all the executives that had there been any provision for their recusal other than suspension, we would have preferred to apply it, and also that their suspension does not mean they have been found guilty of any wrongdoing.

4.16 The following morning, 12 March 2015 at 10h00, I addressed a press conference wherein I announced the suspension of the 4 executives and the Company's intention to institute an inquiry.

U16-NHL-468

4.17 The afternoon of the same day I was to have the most unpleasant and humiliating experience in all my tenure as Chairman. The head of Eskom Treasury informed me that our investors and lenders from across the world will be calling in to ask for an explanation of the actions of suspending the executives. Indeed I was on line with around 52 individuals trying to defend what essentially was an indefensible position.

> This should make the headlines: At parliament's #EskomInquiry ex Chairman Tsotsi outlines how President Zuma, Dudu Myeni, Minister Lynne Brown & Board members Ben Ngubane & Chwayita Mabude conspired to force his resignation & that of 4 executives (paving the way for more looting)
>
> — Anton Eberhard (@AntonEberhard) November 22, 2017

4.18 Hardly a week went by and l was faced with having to defend myself against accusations from several board members that I was not consulting the Board in the preparatory work on the inquiry. The Board engaged a law firm to trump up charges against me that I am not fit to be a director of the Company. On 23 March, in the dead of night, I was given an ultimatum by the Board to resign or be charged with lack of fitness to be a director. l resigned under duress.

4.19 The termination of the services of the executives who left Eskom occurred after I had left.

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

U16-NHL-469

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

Thank you.

(Visited 60 times, 2 visits today)

Share This Post

Sponsored Content



How $250 invested in a stock like Amazon creates an income and
Markets Guide

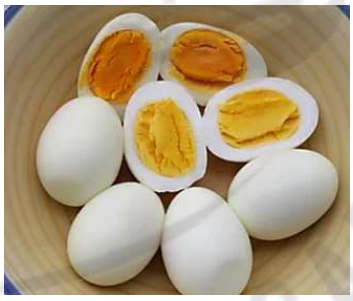

Surgeon: Tinnitus? When The Ringing Won't Stop, Do This
www.your-health-today.com


[Pics] Celine Dion Takes off Makeup, Leaves Us With No
Interesticle


Sting Buys Another Robert A.M. Stern-Designed New York
Mansion Global


Secluded Forts in Southern England List for £4 Million and £4.25
Mansion Global


[Pics] Mom Gets Strange Feeling About Future Son-In-Law,
Housecoast


Diabetics: Here's How to Lower Blood Sugar (It's Genius!)
www.your-health-today.com


These 5 Dating Sites are really working in Johannesburg
Top 5 Dating ZA

Recommended by

Cyril Ramaphosa: The Audio Biography

U16-NHL-470

Listen to the story of Cyril Ramaphosa's rise to presidential power, narrated by our very own Alec Hogg.

Get the Audiobook

Narration by Alec Hogg

6 Comments BizNews.com Disqus' Privacy Policy 1 Login
Recommend Tweet Share Sort by Best
Join the discussion…
LOG IN WITH
OR SIGN UP WITH DISQUS ?
Name

flyhigh@mweb.co.za • 3 years ago

Dudu Myeni, should be thrown in jail with Zuma
Zuma = Bob
Myeni = Grace
Let's get general Chiwenga down to sort it out?

2 • Reply • Share ›

Izz Thatso • 3 years ago • edited

Here's another smoking gun.

Eskom's suspended head of legal compliance,Suzanne Daniels, testified that she attended a meeting with Salim Essa at Trillian's office on the 10th March 2015, the day before the board took the decision, with Lynne Brown in attendance, to suspend the 3 executives .

Eskom's now suspended acting-CEO, Matshela Koko (who headed up the company's technology unit at the time) set up the meeting. Salima Essa told Suzanne Daniels that then Eskom CEO Ts[illegible] Matona, financial director Tsholofelo Molefe and two other executives would be suspended.

Obviously, Dudu Myeni, not too familiar with the execs at Eskom, failed to mention the financial

U16-NHL-471

Obviously, Dudu Myeni, not too familiar with the execs at Eskom, failed to mention the financial director (or her name was added later) to Tsotsi and hence the financial director was not suspended by the board. Lynne Brown, who claimed at the inquiry that Zuma did not call her about the Myeni/Totsi meeting, as promised, corrected the error by then instructing Ben Ngubane to add her name to the list of suspensions, after the board meeting.

This means that at the time of the directors meeting of 11th March 2015 when the 3 execs were suspended, only Salim Essa and Lynne Brown, and maybe the Guptas, Zuma and Myeni, knew that the financial director had to be suspended too.

Furthermore, according to Brown Zola Tsotsi is lying about the meeting with Tony Gupta and Salim Essa and that she does not know Salim Essa.

On the 23rd November 2015 an e-mail was sent to Denel in which she asks for an explanation of how Denel chose VR Laser Asia as a partner for Denel Asia, about the structure proposed for the new entity and for a breakdown of estimated operational costs with a five-year budget, indicating cost allocations for both parties. Salim Essa is the sole shareholder of VR Laser Asia.

1 ^ | v • Reply • Share ›

BN **DA MOVA - BANNED FROM EWN?** • 3 years ago

So are we closer now to getting just ONE conviction.....?

1 ^ | v • Reply • Share ›

BN **Thomas Edison** • 3 years ago

We missed the bus. When the ANC had their chances if dismissing Zuma, they propped him up in power. Who will ever believe anything coming from such a corrupt, criminal bunch. Getting rid of him now is almost impossible, which the ANC elective conference will prove in December. The people of SA have installed another BIG MAN OF AFRICA tinpot dictator and will dance in the streets when he is finally dislodged in twenty years time,

1 ^ | v • Reply • Share ›

BN **poo'bah** • 3 years ago

papvrot...

^ | v • Reply • Share ›

Avatar This comment was deleted.

BN **Geoff Coles** ↗ Guest • 3 years ago

Rather, much rather, a horrible cell!

1 ^ | v • Reply • Share ›

BizNews Radio

CU16-NHL-472

Generous bid for Phumelela; Distell profit fall; AYO's hefty fine; Massmart
27 AUG 7PM / BizNews Radio
00:00 03:34
56k
iono.fm

Playlist

Generous bid for Phumelela; Distell profit fall; AYO's hefty fine; Massmart 27 AUG 7PM / BizNews Radio	03:34
Business interruption claims fiasco: tourism, hospitality operators get set for court battle. LISTEN 27 AUG 3PM / BizNews Radio	04:51
Nedbank profits fall by 70%; zero-alcohol limit by December; Bidcorp; ICA 26 AUG 8PM / BizNews Radio	03:36
Covid-19 fall-out: South Africans are struggling, with many tipping into poverty and deeper into de... 26 AUG 2PM / BizNews Radio	11:07
Covid-19 angels: While Covidpreneurs profit, one charity organisation donates lifesaving equipmen... 26 AUG 9AM / BizNews Radio	12:30

BizNews App

Popular Posts


Duduzane Zuma, son of Jacob, steps back into...


Magnus Heystek: Allan Gray warning of SA death...


Capital controls, emigration, and the biggest threat...


How world sees SA: Covid-19 booze rules have...

U16-NHL-473



Cell C sheds stores, jobs; Tiger Brands; Naspers;...

BizNews Radio on Spotify

Get Daily Updates

Subscribe to our Newsletter to get daily updates on local affairs, with a global context.

First Name

Last Name

Email Address *

Get Daily Updates

Visit the BizNews Shop

The BizNews Shop

Everything from investing like Warren Buffett to the Audiobiography of Cyril Ramaphosa.

Visit the Shop

BizNews

Company

About BizNews

How To Support BizNews

Make us your Homepage

Contact BizNews Support

Advertisers

Advertising on BizNews

Sponsored Content Disclaimer

BizNews Premium

BizNews Premium

Biznews Premium FAQs

Login

Newsletter

First Name

Last Name

U16-NHL-476

Email Address *

Get Daily Updates

© 2020 BizNews, Inc. | The Rational Perspective Terms & Conditions Comments Policy



CR16-NHL-477

BizNews

Sign In Try BizNews Premium



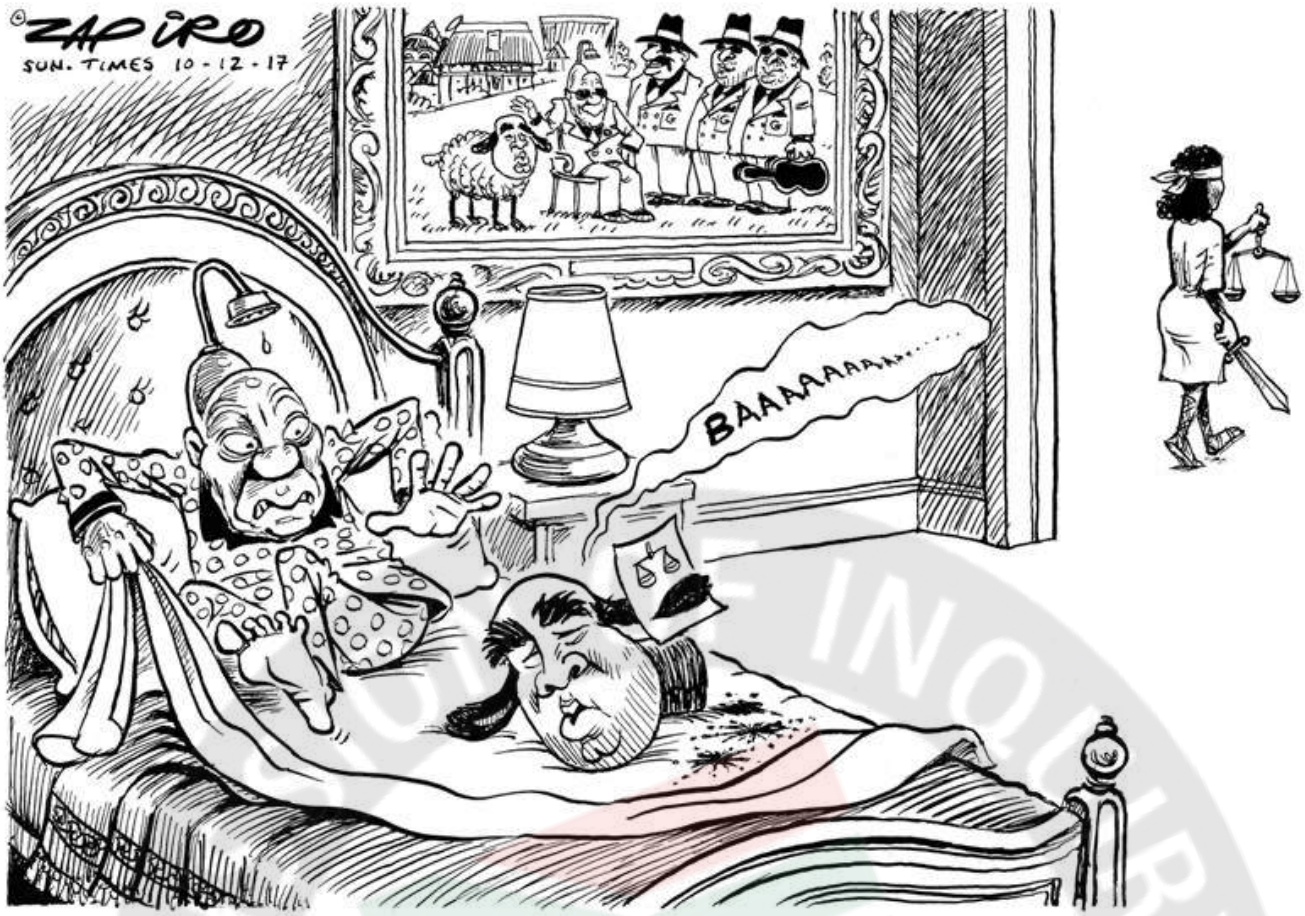
Dear Cyril: Warning! Shaun Abrahams has personal 'hit squad' – Paul O'Sullivan

18th January 2018 by Jackie Cameron

U16-NHL-478

EDINBURGH – There are signs that the wheels of justice are starting to turn in corruption-ridden South Africa now that Cyril Ramaphosa is leader of the ANC, with a major breakthrough in the form of the Asset Forfeiture Unit moving to grab assets from corrupt corporate McKinsey. But President Jacob Zuma is still at the helm of the country and his henchmen are scattered across state entities. Helping to keep Zuma and his friends out of prison, while also applying pressure on his critics and those fighting for good, is Shaun Abrahams, the National Prosecuting Authority (NPA) boss. Abrahams is known as Shaun the Sheep because he has blatantly carried out the corrupt wishes of Zuma and associates. Paul O'Sullivan, an independent forensic investigator who has clashed with pro-Zuma individuals and has been harassed and tortured as he works against corruption, has penned a letter to Ramaphosa. He explains why it is essential for Shaun Abrahams to be removed from the NPA. O'Sullivan believes a fresh group of investigators should go through every decision by Abrahams with a fine toothcomb. Under Abrahams, senior figures at the NPA have become integrated into the largest crime syndicate in the new democracy and Abrahams has his own personal political hit squad to protect Zuma and friends, warns O'Sullivan. – Jackie Cameron

U16-NHL-479



High court rules NPA head Shaun Abrahams must vacate position. More cartoon magic available at www.zapiro.com.

By Paul O'Sullivan*

Dear Cyril,

THE ROT AT THE NPA

You will note that I have copied you on some of my mails to Shaun Abrahams at the NPA. The below e-mail of 05 October 2017, is just one such mail.

I have read with interest that that steps are finally about to be taken, to bring an end to the 'capture' of the NPA. In order for the NPA to be uncaptured' it is important to first fully understand how it was captured and the effect of such capture.

U16-NHL-480

I do not propose to repeat what we have already placed in the public domain and therefor commend to you, the following data: https://www.forensicsforjustice.org/portfolio-posts/how-why-mafia-captured-criminal-justice-system/

In addition, I suggest looking at: https://www.forensicsforjustice.org/portfolio-posts/npa-propping-up-organised-crime-south-africa/



Paul O'Sullivan

Curiously, all the recipients of my harshly worded e-mails, have remained silent on the very serious allegations I have made against them, which allegations I have published. It is my suggestion that their silence is an admission of guilt on their part, as they cannot deny the allegations.

Under Shaun Abrahams, certain senior members of the NPA have become a part of the largest crime syndicate this country has ever seen, since the dawn of democracy. Between Abrahams and the incumbent President of the Republic, we have seen countless appointments at the level of Director of Public Prosecutions. Without exception each and every one of those appointments, is questionable and stand to be reviewed, as soon as Abrahams has been removed from office.

You will see that I have attached a copy of the Presidential Proclamation of March 2003, which breathed life into the so-called Priority Crime Litigation Unit 'PCLU'.

It is clear that the original intentions of this unit was to deal with Rome Statute matters.

Prior to his appointment as NDPP, Abrahams was the 'acting' head of the PCLU. After his appointment as NDPP, he bastardised the PCLU and has since used it as his personal hit-squad, in taking out the political enemies of Zuma. The only information available about the work of the PCLU, is available on line at: https://www.npa.gov.za/node/17 . This is historical and has not been updated since Abrahams moved from the PCLU to his current position.

The PCLU has been the weapon of choice of Abrahams and his accomplice, Michael Hulley. Together they have plotted and planned and used the PCLU to go after, not only myself, but also, Pravin Gordhan, Robert McBride, Anwar Dramat, Shadrack Sibiya, Glynnis Breytenbach, Gen Booysen. In order for this to be possible, Abrahams must have issued a memorandum identical to the one attached in respect of myself. If he did not issue such a memorandum, the conduct of the PCLU would have been ultra vires the 2003 Presidential Proclamation. The only thing I have in common with the person that have become criminal suspects in Abrahams eyes, is that we all have been engaged in exposing the dark underbelly of institutionalised corruption in South Africa. Gordhan was targeted, because he wanted to rid SAA of its corrupt chairman, Ms Dudu Myeni, and prevent her from looting the airline.

U16-NHL-482

National Director of Public Prosecutions Shaun Abrahams speaks during a media briefing in Pretoria.
REUTERS/Siphiwe Sibeko

It has since become public knowledge, and is the subject of my other dockets, that Myeni, assisted the Guptas in 'capturing' Eskom, which capture has brought that company to its knees. Evidence of the dockets against Myeni can be seen at https://www.forensicsforjustice.org/portfolio-posts/dudu-myeni-board-of-saa/ and also at https://www.forensicsforjustice.org/portfolio-posts/zuma-state-capture-smoking-gun/

In the case of myself, Abrahams issued the memorandum authorising the PCLU to investigate me, (copy attached) to disgraced former advocate Nomgcobo Jiba, against whom I had opened a criminal docket in 2012, for her role in protecting criminals. However, it soon became clear that the issuing of the memorandum to Jiba on 2016-04-12, was 12 days post factum the unlawful kidnapping and torture of myself for four days, at the hands of the captured Hawks, under Ntlemeza and Phahlane, for no other reason than I had stated I intended to call a press conference in London to expose Phahlane, Ntlemeza, Moonoo, Abrahams, Jiba, Mrwebi and Myeni and that at such press conference I would reveal the depth of

U16-NHL-483

the unlawful relationship between the Guptas and the Zuma family, and certain known criminals.

> Read also: Paul O'Sullivan on war with Phahlane: 'I'll expose these criminals with badges'

Subsequent to my arrest, a person who then masqueraded as an Advocate, and employed at the PCLU, mounted a series of malicious prosecutions against me. Without exception all of the malicious prosecutions have been carried out using the tainted evidence of criminals. Not one of the false prosecutions has yet borne fruit.

In that regard I should mention that I have opened multiple dockets against Myeni for fraud and corruption, and not one of them have been properly investigated or prosecuted, despite the lapse of several years. Notwithstanding the deliberate failure of the NPA to act against Myeni, they instead conspired with her and she opened a false docket against me alleging 'intimidation' and 'extortion' because I had demanded she resign from SAA, for being involved in corrupt practices. Despite Myeni's case being false and without merit, a fake advocate, Mlotshwa, of the PCLU, signed a J175, and charged me with Myeni's false allegations, on 2016-04-07, FIVE days BEFORE the PCLU were even sent the memorandum of Abrahams.

> Read also: Paul O'Sullivan: Why I'm now optimistic SA will win the war against crime

U16-NHL-484

Through a process of litigation in the High Court, it has emerged that the PCLU were involved in guiding dirty cops against me, long before the 12 April 2016, memorandum of Abrahams. Accordingly, all their conduct was unlawful.

Despite repeated requests for evidence that such investigations against the eminent persons named above, were lawful, Abrahams has simply chosen to remain silent, as he knows such evidence will be used to obtain an arrest warrant for him, as it will implicate him in racketeering, by deliberately targeting people that were exposing those near and dear to Zuma and Michael Hulley, to whom he owed his allegiance in breach of the Constitution and the NPA Act.

Anti-corruption inaction figures. More of Zapiro's brilliant work available at www.zapiro.com.

During 2017, it emerged that, despite ample prima facie evidence of criminal wrong doing, decisions were being taken, at the instruction of Abrahams, not to prosecute certain persons, where a prosecution was warranted.

As a case in point, it emerged during attempts by IPID to obtain agreement to charge certain police officials for serious offences, that there was a general

U16-NHL-485

instruction that had come down from Abrahams office, that in all 'high profile' cases, the decision to prosecute had been removed from the normal management line, to his office, resulting in a back-log of awaiting decisions. Upon him receiving the request for a decision, he would then delegate that work to people under his control, whom have been appointed during his watch, with an off the record instruction to decline to prosecute.

By this method, he has effectively stymied all prosecutions of high profile persons, including, but not limited to, Myeni, Lucky Montana, Phahlane, Ntlemeza, Jen Chi Huang, Moonoo, Yusuf Kajee, Mdluli, and many others.

It is therefore my contention that Abrahams stands to be charged with various serious offences of obstructing justice and breaching section 32 of the NPA Act. Furthermore, since his conduct was deliberately calculated to protect the largest crime syndicate this country has ever seen, he should also be charged with Racketeering.

> There have been reports and claims that #ShaunAbrahams tried to stymie the #StateCapture AFU cases.
> In fairness to him though, acting AFU head Molelle says Abrahams put pressure on team to finalize the cases.
> They wouldn't have gone to court without Abrahams signing off
>
> — Karyn Maughan (@karynmaughan) January 18, 2018

I therefore hope that you will not only remove him from his post as NDPP, but that you will cause an investigation into every single decision taken by him during his time as NDPP. In addition, the investigation needs to look into the vast sums of out

U16-NHL-486

of budget spend he has made on senior advocates in private practice, to attempt to prop up his unlawful conduct.

I also request that the you disband the so-called PCLU, which has been completely bastardised and reform it with people that can be trusted, and review each every politically motivated prosecution they have commenced and hold those persons accountable.

It goes without saying that Abrahams is not a fit and proper person to act as a prosecutor in any sphere and should NOT be returned to his previous position, but should be suspended from work altogether, pending the outcome of the necessary investigations. Every day that Abrahams remains in office, is a day too long. It may take decades for the NPA to recover from the damage he and Hulley have done.

In the interests of transparency, I have copied Abrahams and some of his accomplices.

Both myself and Forensics for Justice remain available should you require any further clarity about these very serious allegations I am laying at the door of the NDPP.

CC:

Dear Adv Mzinyathi,

I write to you (again) as the guardian of ethics at the NPA.

Please find the attached SIU report, which is self-explanatory and has been concealed for so long, until now.

U16-NHL-487

I understand that the persons implicated in this report have unlawfully been given 'protected' positions within the NPA, instead of being fired and having criminal charges preferred against them. I also understand that Adv Marshal Mogatle unlawfully issued a 'decline to prosecute' directive. I believe this to be the same Marshal Mogatle that issued a 'decline to prosecute' against the now disgraced Jiba and Mrwebi. It is clear he is nothing more than a puppet, amongst so many other captured puppets at the NPA.

This is yet another example of NPA's overt condonation of criminal conduct, whilst unlawfully pursuing fake criminal charges against persons exposing corruption.

I invite the NPA to explain why these people have been retained as employees, and reserve the right to call for a judicial review, or public enquiry of this patently unlawful (and corrupt) conduct, which amounts to the offence of racketeering.

Curiously this is the same Dawood Adam that attempted to have a state witness (against Radovan Krejcir) admitted to the witness protection program so that Lt General Moonoo (a paid employee of mafia kingpin Radovan Krejcir) could have him murdered and when I pursued the now suspended acting chief of police, I became the subject of intense criminal conduct by Moonoo's accomplices in the police, Hawks and NPA. This has not gone unnoticed.

U16-NHL-488

I have copied this e-mail to the GCB of South Africa and, in doing so, hereby formally request a thorough investigation into the fitness or otherwise to hold the position of Advocate of all those involved in capture of the NPA, starting with Adv Dawood Adam, and the fake advocate Mlotshwa. I have also copied the Public Protector and the Deputy President, in the interests of transparency.

South African Police Service (SAPS)

By way of example of the complicity of criminals in the NPA, Police and Hawks:

- I was arrested and dragged off a plane on 01 April 2016, for (lawful) use of my Irish passport. It is now common cause that I was forced to use my Irish passport, because of the systemic corruption within the police, which resulted in Radovan Krejcir conspiring with police officials, including Moonoo and his accomplices, to have me murdered.
- On 03 April 2016, Sello Maema, from the Priority (Political) Crimes Litigation Unit 'PCLU' refused to grant me police bail and went on to oppose such bail on 2016-04-04 at the Kempton Park court. Maema's side-kick, no doubt acting under the same hidden criminal controlling hand, went on to masquerade as an Advocate and try and prosecute me on various trumped up charges, all of which are now floundering. Despite the NPA being aware that Mlotshwa commits a criminal offence every time he dons an advocate's gown, he continues to do so. This means the NPA are condoning his criminal conduct.

CU16-NHL-489

- It is common cause, that the PCLU was set up by presidential proclamation in 2003 and was specifically established to ONLY focus on 'Rome Statute' matters. It has since become the go-to unit for politically generated unlawful actions, aimed at silencing those exposing corruption of the politically connected mafia, such as myself, McBride, Dramat, Sibiya, Gordhan and so on. The presidential proclamation makes it crystal clear that the PCLU may ONLY become involved in other matters, upon direction of the NDPP.
- Curiously, the NDPP only issued such an instruction concerning myself on 2016-04-12, TWELVE full days AFTER I was kidnapped from a plane and subjected to four days of torture at the hands of captured elements under the control of the now disgraced and dismissed Ntlemeza and Phahlane.
- This means that the PCLU was actively engaged in unlawfully bringing me down, BEFORE compliance with the presidential proclamation of 2003-02-25, effectively rendering their conduct *ultra vires*.

I have repeatedly requested sight of ALL of the NDPP memorandums, pertaining to ALL the political cases be provided, so that the country can be informed about how the PCLU has been bastardised to suit a corrupt agenda. This would include, but not be limited to: Generals Dramat, Sibiya and Booysen, Robert McBride, Glynnis Breytenbach and Julius Malema. My requests have been ignored.

The time is therefore right to increase the public pressure until the rot is exposed.

On 2016-01-09 the President, Mr J Zuma publicly stated:

> *'We all have a responsibility to fight corruption and expose corruption and expose corrupt people and report them to law enforcement'*

U16-NHL-490

Nowhere has the President said (in public at least) that the captured rogue elements in the Police, Hawks and NPA have a duty to unlawfully harass and intimidate people exposing corruption, in the way it has been doing over the last three years.

My R200m claim against the state will be served before the end of this year and I will pursue it with at least the same (lawful) vigour I have been (unlawfully) pursued.

In the meantime, I await with bated breath, an answer to the above serious points and invite Adv Breytenbach to raise these very serious issues in parliament.

Newly-elected ANC President Cyril Ramaphosa

My rights are reserved, as I fully expect to see the captured 'clowns with gowns' in the PCLU working hand in hand with captured 'criminals with badges' in the Hawks, to launch further unlawful attacks against me.

I would have thought that with Ntlemeza and Phahlane having been neutralised, the tide would have turned, but it seems the last kicks of a dying horse are at work

U16-NHL-491

here.

I'm ready to do for my country what I have been doing for more than 25 years, and will not be put off by a criminally captured criminal justice system.

Best wishes,

> Footnote from Paul O' Sullivan*: "I am of the opinion that this is a side diversion, to show the country that the NPA are doing something after all, when they've been sitting on their hands all this time. The guy that signed this affidavit, is the same guy that has been holding back on attaching the proceeds of crime in possession of Phahlane for almost a year.
>
> Meanwhile, it has been rumoured that the NPA are setting their sights on Brian Molefe, because he did not share his portion of the loot with someone higher up the food chain. It's also been rumoured that his driver has given it all up and is singing like a canary.
>
> The only actions planned in the foreseeable future are against Eskom/Trillian/McKinsey names. The current actions are intended to try and protect the sheep from being sent to the abattoir.

U16-NHL-492

The Guptas are left right out of it, and so too are the capturers of Eskom, ie Myeni and Zuma and their son (Thalente), as well as Nick Linnell the guy that masquerades as a lawyer. They are the ones that created the enabling environment for it all. See https://www.forensicsforjustice.org/portfolio-posts/zuma-state-capture-smoking-gun/

All NGOs and everybody else involved in the fight against corruption must not rest, or take the foot off the gas, as the victory that is coming will only be possible if we run the crooks clean over the cliff. If we rest, or take our foot off the gas, they will regroup and attempt to make a return. The tide is now flowing in the right direction and we must complete the job in hand.

NDPP Memorandum 2016-04-12

Presidential Proclamation PCLU

U16-NHL-494

Siu Owp Investgation Report Final

(Visited 71 times, 2 visits today)

Share This Post

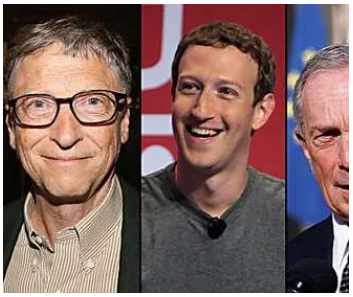
Sponsored Content

U16-NHL-496



Barack and Michelle Obama Reportedly Close Deal for $11.75

Mansion Global



Where Do The Richest Americans Live?

Mansion Global



Jeff Bezos Drops $16 Million on Another Manhattan Pad to

Mansion Global



A Turnkey Waterfront Villa on the Bahamas' Paradise Island

Mansion Global



This watch surprises the whole country. The price? Ridiculous! (only

News Gadget



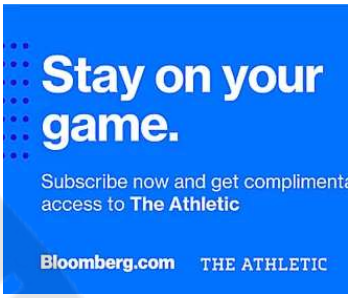
[Pics] Man Orders Pizza Every Day for 10 Years Until Employees Realize

Interesticle



Diabetics: Here's How to Lower Blood Sugar (It's Genius!)

Sugar Balance



Limited Time Offer - Get Exclusive Access To The Athletic For Free

Bloomberg.com

Recommended by

Cyril Ramaphosa: The Audio Biography

Listen to the story of Cyril Ramaphosa's rise to presidential power, narrated by our very own Alec Hogg.

Get the Audiobook

Narration by Alec Hogg

U16-NHL-497

Comments Community Privacy Policy 1 Login

Recommend 1 Tweet Share Sort by Best

Join the discussion…

LOG IN WITH

OR SIGN UP WITH DISQUS ?

Name

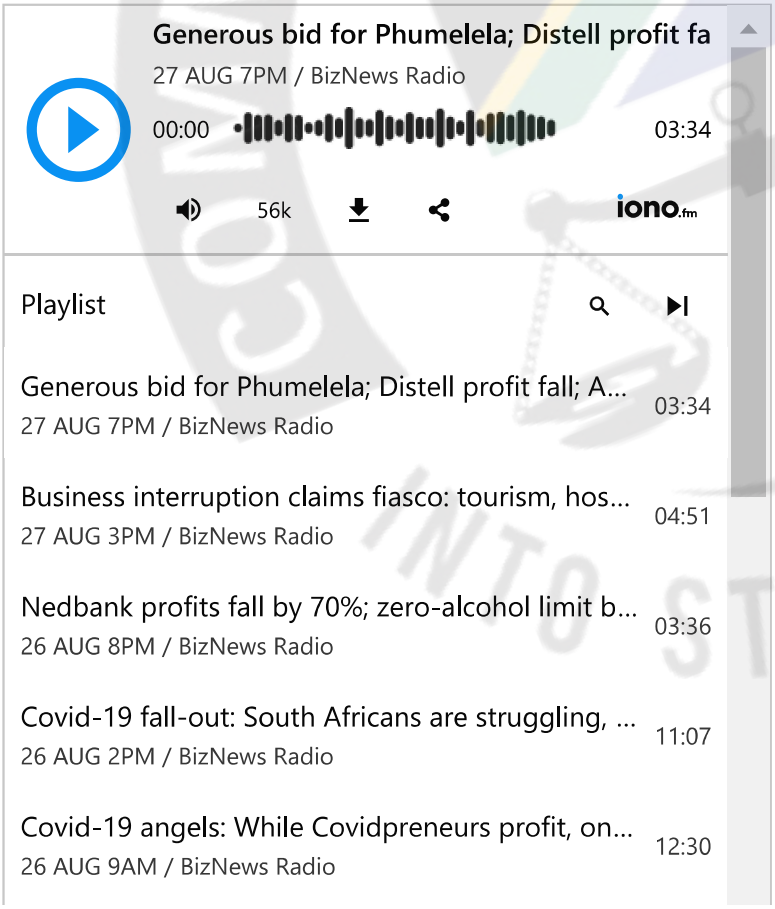
Christopher Mark V Lowe • 3 years ago

Thank you, Paul. Brilliant as ever. You're a mensch and, one day, South Africa will thank you. Bless you.

19 • Reply • Share ›

v_3 • 3 years ago

BizNews Radio



U16-NHL-498

BizNews App

Download on the App Store
(https://apps.apple.com/za/app/biznews-com/id1517392839)

GET IT ON

Popular Posts


Duduzane Zuma, son of Jacob, steps back into...


Magnus Heystek: Allan Gray warning of SA death...


Capital controls, emigration, and the biggest threat...


How world sees SA: Covid-19 booze rules have...



Cell C sheds stores, jobs; Tiger Brands; Naspers;...

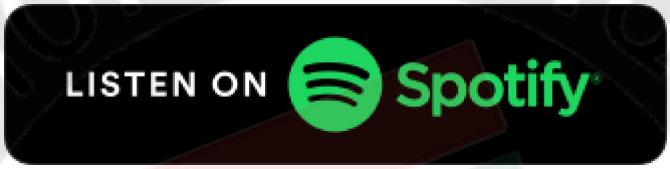
Business Unknown



U16-NHL-499



BizNews Radio on Spotify



U16-NHL-500



Get Daily Updates

Subscribe to our Newsletter to get daily updates on local affairs, with a global context.

First Name

Last Name

Email Address *

U16-NHL-501

Get Daily Updates



Visit the BizNews Shop

The BizNews Shop

Everything from investing like Warren Buffett to the Audiobiography of Cyril Ramaphosa.

Visit the Shop

BizNews

Company

About BizNews

How To Support BizNews

U16-NHL-502

Make us your Homepage

Contact BizNews Support

Advertisers

Advertising on BizNews

Sponsored Content Disclaimer

BizNews Premium

BizNews Premium

Biznews Premium FAQs

Login

Newsletter

First Name

Last Name

Email Address *

Get Daily Updates

© 2020 BizNews, Inc. | The Rational Perspective

Terms & Conditions Comments Policy

U16-NHL-503

To: Anoj Singh[SinghA3@eskom.co.za]; Anoj Singh[anoj.singh@icloud.com]
From: Zethembe Khoza
Sent: Thur 12/17/2015 7:25:04 AM (UTC)
Subject: Fwd: Invoice

U16-NHL-504

image001.jpg
ATT00001.htm
Invoice 1243 Eskom Enquiry 2015 .pdf
ATT00002.htm

Dear Anoj, please find the attached invoice as discussed earlier. I would appreciate if this matter can be settled before Christmas.

Kind regards, Zethembe Khoza

Begin forwarded message:

From: Nick Linnell <nickl@theprojectoffice.com>
Date: 16 December 2015 at 21:23:41 SAST
To: <khozazw@eskom.co.za>
Subject: Invoice

Hi Mr Khoza
Thanks for following up. I have attached the invoice together with the invoices reflected in the disbursements for your consideration
Kind regards
Nick
Nick Linnell

COMMISSION OF INQUIRY INTO STATE CAPTURE

The PROJECT Office
Business Improvement Delivery

22 Melkhout Crescent
Plattekloof 3 | 7500
Telephone Office 0861 140 141
Fax 086 617 5117

CT&A Project Management (Pty) Ltd
PO Box 15813 | Panorama | 7506
Company Reg: 99/15942/07
Vat No: 4430183535

16th December 2015

Tax Invoice
Invoice Number: 1243

The Chairman
Eskom Holdings SOC
Megawatt Park
Johannesburg

Attention Mr. Zethembe Khoza

Eskom Enquiry – March 2015

Date	Matter	Excl vat	Vat	Total incl.
Dec-15	**Eskom fees;**			
	Billing memorandum : Attending Board meeting, holding discussions with Audit and Risk chairperson. Meeting with executive and internal audit. Preparation of Terms of Reference and further discussions with Audit and Risk and Chairperson.	33 000,00	4 620,00	37 620,00
	Disbursements (below and attached)	30 721,68	4 253,41	34 975,09
	Total	63 721,68	8 873,41	**72 595,09**

Summary of disbursements (attached)

Disbursements	excluding	vat	Total
SAA flight CT to Durban 8th March 2015	1 350,07	186,72	1 536,79
Accommodation Beverly Hills 8th March 2015	3 326,48	427,91	3 754,39
SAA flight Dbn to Jhb 9th March 2015	2 135,51	296,68	2 432,19
Edward Nathan Sonnenberg Attorneyss	21 442,00	3 001,88	24 443,88
SAA flight Cpt to Jhb return 1st July (Mr Khoza)	2 467,62	340,22	2 807,84
Total disbursements	30 721,68	4 253,41	34 975,09

Please Note: Payment is due on presentation of invoice.
Interest will be charged at 1.6% per month on overdue amounts

Direct Payments: CT&A Project Management (Pty) Ltd.
Nedbank: Branch: 100909 Acc: 1009 698125

COMMISSION OF INQUIRY INTO STATE CAPTURE

South African Airways (SOC) LTD
Company Registration Number : 1997/0224444/07
Vat Registration Number : 4260 170 990

Private Bag x 13
JHB International Airport
1627

U16-NHL-506

Inv Number: 832122963383

COPY COMPUTER GENERATED TAX INVOICE

Ticket Issue Date: 2015/03/07

LINNELL/NICKMR
The Project office
22 Melkhout Crescent
Platteklоof
Cape

7500

Vat Registration No : 4430183535
Air Ticket Number : 832122963383
Original Air Ticket Number : N/A
Order No :
Cost Centre Number :
Card Number :

TICKET INFORMATION

Flight Information

FLIGHT	Leaving From	To	Departure Date
SA2102	CPT	DUR	2015/03/08

Passenger Details

PASSENGER NAME	EMAIL ADDRESS
LINNELL/NICKMR	LINNELL@IAFRICA.COM

DESCRIPTION

Airline Tickets - Reference Number : 2MBPER

FARE BREAKDOWN	Amount (Currency: ZAR)
Fare	710.00
VAT @ 14%	99.40
ZA - Passenger Service Charge inclusive of 14% VAT	127.00
YR - Fuel Levy charge inclusive of 14% VAT - only in respect of Domestic Travel	560.00
EV - Civil Aviation Aircraft Passenger Safety Charge VAT 14% not applicable	16.39
DV Fee- Voyager change/expediting fees inclusive of 14% VAT (International reservations - VAT not applicable)	.00
DU Fee- Change fees on Domestic Reservations inclusive of 14% VAT (International Reservations VAT not Applicable)	.00
OC Fee- Airport /City Office Service Charge inclusive of 14% VAT	.00
UM Fee - Passenger Security Charge - inclusive of 14% VAT	24.00
OE - Fee - Carbon Emission Contribution VAT 14% not applicable	.00
YQ - Fuel Levy charge inclusive of 14% VAT - only in respect of Domestic Travel on SA Express or SA Airlink	.00
OTHER- All other Passenger Service Charges VAT 14% not applicable	.00
TOTAL INCL. VAT	1,536.79
VAT CLAIMABLE	186.72

Note
A Tax Invoice where your ticket has been changed/upgraded will only reflect the additional amount paid/or zero amount if no amount
Only the first four legs of the itinerary will be displayed
Tax Invoice currency as per original purchase

Thank you for flying South African Airways

COMMISSION OF INQUIRY INTO STATE CAPTURE

Mr Nick Linnell
10 Parade Crescent
Contantia
Cape Town WCP
7806
South Africa

BEVERLY HILLS

TAX INVOICE

SunRands/Rate Code	:	/ BAR00	Room No.	:	0608
User ID	:	LOSHGOV	Arrival	:	08/03/15
			Departure	:	09/03/15
			Folio No./ Inv No	:	75882 /
			No. of Guests	:	1
			Page No.	:	1 of 1
			Confirmation No.	:	4173698359 / 7855087-64938
			VAT Reg. No.	:	4010113001

Date	Text		Charges ZAR	Credits ZAR
08/03/15	Telephone	16:20 Room# 0608 : Dialed# 0119781111 National [00:09:06] National	13.78	
08/03/15	Telephone	19:49 Room# 0608 : Dialed# 0217942211 National [00:13:12] National	8.04	
08/03/15	R/Serv Dinner Food	Room# 0608 : CHECK# 0034016	95.00	
08/03/15	R/Serv Dinner Bev	Room# 0608 : CHECK# 0034016	25.00	
08/03/15	Accommodation		3,312.00	
08/03/15	Tourism Levy		30.57	
09/03/15	Light House Cabs	016500 Transfer from hotel to KSIA	270.00	
09/03/15	Master Card			3,754.39
		Total	3,754.39	3,754.39

Balance Due	0.00	ZAR
Vatable Total	3,484.39	ZAR
VAT	427.91	ZAR
Net Amount	3,056.48	ZAR
Non Vatable Total	270.00	ZAR
Total Incl. VAT	3,754.39	ZAR

Guest Signature: _____

South African Airways (SOC) LTD
Company Registration Number : 1997/0224444/07
Vat Registration Number : 4260 170 990

Private Bag x 13
JHB International Airport
1627

Inv Number: 832122971539

COPY COMPUTER GENERATED TAX INVOICE

Ticket Issue Date: 2015/03/09

LINNELL/NICK
CTA Project Management Pty Ltd
PO BOX 15813
PANORAMA

7506

Vat Registration No : 4430183535
Air Ticket Number : 832122971539
Original Air Ticket Number : N/A
Order No :
Cost Centre Number :
Card Number :

TICKET INFORMATION

Flight Information

FLIGHT	Leaving From	To	Departure Date
SA534	DUR	JNB	2015/03/09

Passenger Details

PASSENGER NAME	EMAIL ADDRESS
LINNELL/NICK	aletta@tbdsa.co.za

DESCRIPTION

Airline Tickets - Reference Number : 2OB2BQ

FARE BREAKDOWN	Amount (Currency: ZAR)
Fare	1,320.00
VAT @ 14%	184.80
ZA - Passenger Service Charge inclusive of 14% VAT	127.00
YR - Fuel Levy charge inclusive of 14% VAT - only in respect of Domestic Travel	560.00
EV - Civil Aviation Aircraft Passenger Safety Charge VAT 14% not applicable	16.39
DV Fee- Voyager change/expediting fees inclusive of 14% VAT (International reservations - VAT not applicable)	.00
DU Fee- Change fees on Domestic Reservations inclusive of 14% VAT (International Reservations VAT not Applicable)	.00
OC Fee- Airport /City Office Service Charge inclusive of 14% VAT	200.00
UM Fee - Passenger Security Charge - inclusive of 14% VAT	24.00
OE - Fee - Carbon Emission Contribution VAT 14% not applicable	.00
YQ - Fuel Levy charge inclusive of 14% VAT - only in respect of Domestic Travel on SA Express or SA Airlink	.00
OTHER- All other Passenger Service Charges VAT 14% not applicable	.00
TOTAL INCL. VAT	2,432.19
VAT CLAIMABLE	296.68

Note
A Tax Invoice where your ticket has been changed/upgraded will only reflect the additional amount paid/or zero amount if no amount
Only the first four legs of the itinerary will be displayed
Tax Invoice currency as per original purchase

Thank you for flying South African Airways

COMMISSION OF INQUIRY INTO STATE CAPTURE

edward nathan sonnenbergs inc

registration no 2006/018200/21
johannesburg cape town durban stellenbosch
p o box 783347 sandton 2146 south africa
p o box 2293 cape town 8000 south africa
tel +2711 269 7600 fax +2711 269 7899
tel +272 1 410 2500 fax +2721 410 2555
info@e n s.co.za www.e ns .co.za
vat r egistration n o 4760231193

tax invoice 638841

THE PROJECT OFFICE
PO BOX 13488
MOWBRAY
7705

our ref 0392438 / 274857
Fritz Malan
your vat reg no 4430183535
date 31 March 2015

MR NICK LINNELL

RE: ESKOM - SUSPENSIONS

Date	Description - WORK DONE	
09/03/15	Consultation on a new matter and traveling to Eskom	
09/03/15	Attending consultation	
09/03/15	Attending to research law re suspension	
11/03/15	Attending to settling briefing note and suspension letter, perusing resolution and meeting with Nick Linnel	
12/03/15	Attending to SMS advice on suspension	
Total FEES		21,442.00
VAT		3,001.88
Total due for FEES (including VAT)		**R 24,443.88**

Description - COSTS (DISBURSEMENTS)	VAT in Rand	Amount in Rand
Total COSTS (DISBURSEMENTS)	0.00	0.00
Total due for COSTS (Disbursements) (including VAT)		**R 0.00**

TOTAL DUE FOR THIS INVOICE (including VAT)	**R 24,443.88**

This account relates to professional fees and/or disbursements. It is due and payable on presentation.
Please quote 0392438 in all documentation relating to this matter and/or invoice.

edward nathan sonnenbergs inc

registration no 2006/018200/21
johannesburg cape town durban stellenbosch
p o box 783347 sandton 2146 south africa
p o box 2293 cape town 8000 south africa
tel +2711 269 7600 fax +2711 269 7899
tel +272 1 410 2500 fax +2721 410 2555
info@e n s.co.za www.e ns .co.za
vat r egistration n o 4760231193

Detail of account - 31 March 2015	Amount in Rand
Balance brought forward	0.00
LESS Payments received/credits	*0.00*
PLUS Total of current invoice fees and costs	24,443.88
LESS Transfers from Trust in payment of this Invoice	*0.00*

AGEING				
0 - 30 days	31 - 60 days	61 - 90 days	91 - 120 days	121 + days
24,443.88	0.00	0.00	0.00	0.00
TOTAL AMOUNT NOW DUE				**R 24,443.88**

✂ ----------

remittance advice

OUR REFERENCE: 0392438 / 274857	Amount due in Rand R 24,443.88
Matter: ESKOM - SUSPENSIONS	

edward nathan sonnenbergs
p o box 783347 sandton 2146
p o box 2293 cape town 8000
telephone +2711 269 7600 fax +2711 269 7899 docex 152 randburg
telephone +2721 410 2500 fax +2721 410 2555 docex 14 cape town

Electronic transfers and deposits

Our banking details are **FNB , A DIVISION OF FIRSTRAND BANK LIMITED**,
account no. **621 1632 6366** , *branch code* **250655** *swift code* **FIRNZAJJ**

- **Please enter our reference details (above) in the relevant section on the deposit slip**
- **Please fax a copy of the deposit slip with our reference details (above) for the attention of the Client Accounts Department on +2711 269 7899 (jhb) /+2721 410 2555 (cpt)**
- **or email same to clientaccounts@ns.co.za**

This account relates to professional fees and/or disbursements. It is due and payable on presentation.
Please quote 0392438 in all documentation relating to this matter and/or invoice.

South African Airways (SOC) LTD
Company Registration Number : 1997/0224444/07
Vat Registration Number : 4260 170 990

Private Bag x 13
JHB International Airport
1627

Inv Number: 832123547594

COMPUTER GENERATED TAX INVOICE

Ticket Issue Date: 2015/06/29

LINNELL/NICHOLASMR
THE PROJECT OFFICE
THE PROJECT OFFICE
22 MELKHOUT CRESCENT
PLATTEKLOOF 3

7500

Vat Registration No : 4430183535
Air Ticket Number : 832123547594 -CONJ
Original Air Ticket Number : N/A
Order No :
Cost Centre Number :
Card Number :

TICKET INFORMATION

Flight Information

FLIGHT	Leaving From	To	Departure Date
SA308	CPT	JNB	2015/07/01
SA353	JNB	CPT	2015/07/01

Passenger Details

PASSENGER NAME	EMAIL ADDRESS
LINNELL/NICHOLASMR	NICKL@THEPROJECTOFFICE.COM

DESCRIPTION

Airline Tickets - Reference Number : 76YG8L

FARE BREAKDOWN	Amount (ZAR)
Fare ZAR	1,160.00
VAT @ 14%	162.40
ZA - Passenger Service Charge inclusive of 14% VAT	254.00
YR - Fuel Levy charge inclusive of 14% VAT - only in respect of Domestic Travel	1,146.00
EV - Civil Aviation Aircraft Passenger Safety Charge VAT 14% not applicable	37.44
DV Fee - Voyager change/expediting fees inclusive of 14% VAT (International reservations - VAT not applicable)	.00
DU Fee - Change fees on Domestic Reservations inclusive of 14% VAT (International Reservations VAT not Applicable)	.00
OC Fee - Airport /City Office Service Charge inclusive of 14% VAT	.00
UM Fee - Passenger Security Charge - inclusive of 14% VAT	48.00
OE - Fee - Carbon Emission Contribution VAT 14% not applicable	.00
YQ - Fuel Levy charge inclusive of 14% VAT - only in respect of Domestic Travel on SA EXPRESS or SA AIRLINK	.00
OTHER - All other Passenger Service Charges VAT 14% not applicable	.00
TOTAL INCL. VAT	2,807.84
VAT CLAIMABLE	340.22

Note
A Tax Invoice where your ticket has been changed/upgraded will only reflect the additional amount paid/or zero amount if no amount
Only the first four legs of the itinerary will be displayed

Thank you for flying South African Airways

CONJ-Multiple Tickets were issued for this itinerary. Taxes are collected on the first ticket only.

From: Chwayita Mabude <MabudeC@eskom.co.za>
Sent: Monday, 16 March 2015 22:36
To: viroshini naidoo
Subject: FW: Names proposed for the Investigation

Good evening,

Please see below as discussed.

Regards
ChM

From: Neo Tsholanku
Sent: Monday, March 16, 2015 11:44 AM
To: Chwayita Mabude
Subject: RE: Names proposed for the Investigation

Good Morning Sisi,

Denton's is an international firm and have merged with a Cape Town Law firm – The Cape Town law firm is Kapdi Thwala. They are not on our panel and have not engaged them in the past. They also are representing Areva in the fight we have with Westinghouse. To be able to do this type of work, they may have to use international lawyers as I doubt if the Cape Town merged firm would have the capacity. Another firm that is not on our panel that could be used is Werksmans.

Hope this helps

Kind regards

From: Chwayita Mabude
Sent: Sunday, March 15, 2015 9:19 PM
To: Neo Tsholanku
Subject: RE: Names proposed for the Investigation

Good evening,

I have noted the email Neo and I would you to check the involvement of a company called Dentons in Eskom.

Regards
ChM

From: Neo Tsholanku
Sent: Friday, March 13, 2015 9:42 AM
To: Chwayita Mabude
Subject: Names proposed for the Investigation

Dear Chairperson,

During the previous Board discussion where the enquiry into the workings of certain areas in Eskom was discussed, It was proposed that ENS (Edward Nathan and Sonnenberg) should be tasked to do the enquiry. In a discussion with me later that afternoon, you had indicated that BG (Bowmann Gillfilian) and Harvey Wainer and Associates were two other firms recommended by Committee members. With regards to the conflict issues I was supposed to have

checked for the committee, I can safely say: Considering that one of the areas to be looked at is Group Capital, in particular the build programme – both BG and ENS will have potential conflicts at they are intricately involved in the build programme. They are two of the 4 firms that were instructed to work on the build programme (that is Medupi, Ingula and Kusile) . To this end I am of the opinion that because some of their lead practitioners who are involved in the Build Projects may be part of the people to be interviewed, it may not be prudent to involve them in the enquiry.

With regards to Harvey Weiner and Associates I have no information about them – they are also not on my legal panel – I will try and source information about them.

Hope this helps.

Kind regards

To: Zethembe Khoza[KhozaZW@eskom.co.za]; Anoj Singh[SinghA3@eskom.co.za]
From: Maya Bhana
Sent: Fri 12/18/2015 10:42:15 AM (UTC)
Subject: RE: Invoice

U16-NHL-514

Dear Zethembe
We will sort the payment by next week.
May you have a blessed Christmas.
Kind regards
Maya

From: Zethembe Khoza
Sent: Thursday, December 17, 2015 9:25 AM
To: Anoj Singh; Anoj Singh
Subject: Fwd: Invoice
Dear Anoj, please find the attached invoice as discussed earlier. I would appreciate if this matter can be settled before Christmas.

Kind regards, Zethembe Khoza
Begin forwarded message:

> **From:** Nick Linnell <nickl@theprojectoffice.com>
> **Date:** 16 December 2015 at 21:23:41 SAST
> **To:** <khozazw@eskom.co.za>
> **Subject: Invoice**
>
> Hi Mr Khoza
> Thanks for following up. I have attached the invoice together with the invoices reflected in the disbursements for your consideration
> Kind regards
> Nick
> **Nick Linnell**

COMMISSION OF INQUIRY INTO STATE CAPTURE

State Capture enquiry – Eskom

Additional submission by Nick Linnell 30th August 2020

This information is provided in response to specific questions raised at our discussions 27th August

Para	Affidavit Reference	Query/ Documents requested	Comments
1.	4	1. Was there any need for this enquiry? 2. If there was why did that not fit the remit of the war room established December 2014.	Media reports are included in annexures at the end of this submission. These are a small reflection of the public discourse at the time. Eskom diesel costs were billions over budget, the two new power plants were billions over budget and years late, the cost to the GDP was hundreds of billions and employment loses could exceed one million jobs. The highest risk was that of a possible total blackout such would practically collapse the economy for weeks. The role of the war room was also published in the cabinet 5-point plan which is well documented. (**Page 10**) Its objectives did not cover that of the enquiry although there might have been overlaps. The war room continued for months after and its successes in this space are also well documented.
2.	14 and 24	Company documents	Delegations of Authority was emailed to me by Tsotsi on Sunday 8th March at 11.59am. **(page 11 and12)** Disciplinary code was emailed to me by Myeni on the 10th March. (**page 13)** I requested a copy of the MOI only on the 21st – I am not clear as to whether I ever received that **(page 14)** In the event I relied on none of these in the development of the board memorandum.
3.	15-18 and 66	Reference to Jabu	1. 15-18 are correct that I first met Jabu at the meeting on the 8th in Durban. 2. I have been unsure of his involvement thereafter. I have stated that I believed Jabu was the person who provided the

			information about the Directors' meeting on the 16th.(para 41) but comment further on that below. 3. I stated that Jabu likely arranged my meeting with the 2 Eskom staffers which would have been on the evening of the 9th March. That meeting was pretexted on the understanding that they had additional information of wrongdoing at Eskom. They did relate some events which would not have been material to the scope of the planned enquiry and I have retained no record of those. However, they were in HR and subsequently provided a copy of the disciplinary codes for me. (on the 11th) which I forwarded to ENS. 4. I have found 3 emails between Jabu and myself after the meeting of the 8th. They are attached. a. One from Jabu to me dated 20th March 2015 at 16.15pm (**page 14**)and conveys input to Tsotsi's letter to the Minister (para 66). b. The second is Jabu to me dated 20th March at 16.30pm (**Page 15**) and is a list of questions he wished to be put to the Minister possibly in the same proposed letter. c. The third on 20th March 19.08pm (**page 16**) from me to Jabu with a responding suggested letter for the Chairman to the Minister. d. As a sequel at 21.47pm (**Page 17**) that same evening I sent my draft of the that letter to Tsotsi (para 66 affidavit) which was further adapted from my suggestion in the email at 19.08 to Jabu. 5. The sequence of these emails now creates some doubt in my mind about who suggested the letter to the Minister (para 66). This sequence suggests it might have been Jabu or Tsotsi who suggested this, and I drafted it. There must have been verbal communication between me, Jabu and Tsotsi around this at that time on this matter. 6. What occurs to me now is what appears from these emails as sustained interest and support from Jabu to the enquiry. He is challenging the board and the minister and

			supporting Tsotsi. I had not recollected that before.
4.	15-21	Do I have any additional documents provided on or before the 8th	I have only found the 2 documents referenced already. I recall other documents being shown at the meeting, but I don't have these. My recollection is that the briefing was not documentary as such but verbal. Documents shown were to substantiate and elaborate.
5.	15	Tsotsi email address	I was asked why I had consistently used Tsotsi's private email address and not his formal Eskom address. In his email to me on the 8th at 11.59am attaching the D0A documents (**Page 11 and 12**)) he uses his Eskom address. The trailing email from Leo Dlamini to Tsotsi uses both his Eskom and private liquid fire address. I would thereafter have emailed him using the address used before (Eskom). To have used his private address would have required me to be asked to do so - I would not have picked that private address up from Dlamini email .
6.	24	Proposed Board memorandum and resolutions	I was asked how I was able to create these board documents within a few hours on the 8th March in Durban and whether I had not created them beforehand and with other assistance/ documents. 1. These documents were created by me at 9.46am on the 8th March and emailed to Tsotsi at 18.37pm same day .(**Pages 15-21 main affidavit**) 2. Para 14 main affidavit states that on 7th March 2015 I requested company documents from Tsotsi. 3. Tsotsi emailed to me the Eskom Delegations of Authority on Sunday 8th March at 11.59am. (**pages 11 and12**) These were not required nor referenced in my documents. 4. I would been able from my own knowledge to have created these documents. 5. I was asked for reference to the Companies Act – see S73(5) Companies act. The 7 days is standard reasonable notice. At this time, I had not had sight of the Eskom MOI. 6. I requested the Eskom MOI from Tsotsi on 21st March 2015 via email attached (**Page 14**). I cannot recall whether I ever received them.

7.	24	Did I not already have the company documents to draft these documents.	I have referred above to the Delegations of authority which I did not refer to at the time. In addition, I received a copy of the disciplinary code but only on the 11th. (**Page 13**) These were provided to me by the Eskom HR person (email attached) whom I have referred that I met on about the 10th in Sandton. I forwarded this to ENS on 11th March (**Page 18**)
8.	29	Media briefing of enquiry and my appointment	There was a formal media briefing by the Board to which the media and senior staffers were invited. The enquiry was announced, and I was referred to as the coordinator. 1. M&G report 13th March referring to media briefing morning of Thursday 12th March 2. City Press 15th March. 3. Minister Brown issued press release on the 12th to same effect.(**Page 19)**
9.	32	Board Recovery and Build Programme Review Committee (BRBPR)	The discussions conflated two different committees (BPBPR and A&RC) having different purposes. I was invited and uninvited to both. In respect of BPBPR: I was invited by Naidoo for meetings on the 19th and 20th March via numerous emails from Naidoo and Kulsum Crookes on the 13th March.(**Page 20 and 21**) I was uninvited by the early morning email from Thulo Selele on the 17th March (**Pages 22-23**) (referred to main affidavit paragraph 42.)
10.	40 of affidavit and 26 of statement	Email to Company secretary with 1st draft of TOR 15th March 2015	1. Paragraph 26 of statement references an "attached" TOR. That document included in the statement is the version emailed to Mabude and Tsotsi on 18th at 09.21am and not that emailed on the 15th. The document included is the wrong version. 2. Para 40 of the affidavit correctly references the TOR that is attached to the 18th email and included in the **affidavit at folio 43**. 3. Below, I track the evolution of the TOR. Simply there were two versions – one an Eskom short 4-page version and one my amendments to that being 7 pages. Both evolved independently of each other. 4. The TOR sequence begins with an email on Saturday 14th at 11.22am from Malesela to me with draft TOR (subsequently referred to as "TOR 14th March") attached for comment. It required me to provide comments by Sunday 15th pm.(**Page 24 - 28**)

			5. I amended their document and sent it back to Maesela and Mabude on Sunday 15th at 19.04pm. (**Pages 29-37**). Subsequently referred to as "TOR 15th March" 6. On Monday evening 16th I had a meeting/discussion with Mabude and probably Tsotsi about the TOR and we had a distancing of views on the scope and approach. 7. On the 17th March at 11.17am Neo Tsholanku email ed me referencing TOR on instruction of Malesela - trailing email with a reference to attached TORs (plural). Malesela asks Neo to get comments from Tsotsi and Mabude and himself.(**Page 38**) 8. Neos email the resulting TOR on the 17th at 19.05pm refers to the "*draft TOR that was prepared on the instruction of Ms Mabude*". This attachment is referenced "15th March " but is in fact the 14th March version. It bears no resemblance to my "15th March" version submitted to Maesela on Sunday 15th The document being circulated on instruction from Mabude now is like the very short Eskom Sunday "14th March" version.(**Page 39 -43**) 9. My "15th March" Sunday draft TOR then evolved through several further drafts into a new document completed at 05.44am on 18th March. This was sent to Mabude and Tsotsi at 9.21am 18th March 2015. (**folio 43 main affidavit**) 10. Amongst other improvements it now contains reference to the retired judge to oversee the independence of the investigation. As I recall this was always mooted but not included in the earlier Sunday draft. 11. The first refence to named potential judges was documented by me at 18.40pm on the 17th March (**folio 30 of affidavit)**. This list was put together by me after consultations with others not connected to the enquiry on the morning of the 17th March. 12. My original Sunday 15th TOR then resurfaces as attachments to the A&R Committee meeting invite for the 23rd. See 14 below
11.	42-44 and statement 30	Uninvited from BPBPR	Email from 17th March 18.55pm (**Page 22-23**)

12.	44	Enquiries made	The phrase used by me in the affidavit "enquiries made" is overstating how this came about. I had had a discussion or meeting with Mabude on the evening of the 16th – either a telephone call or meeting, if a meeting then that would have been at Tsotsi's house. This discussion/meeting had not progressed well as the principles of the proposed TOR were rebuffed. I seem to think I met with Mr Tsosti at his house that evening – either with Mabude or after that. The information about the directors meeting (**para 41 of the affidavit**) must have been given to me that evening as I recall is was that a meeting was underway as opposed to one that had taken place. I am not clear but when I read the email that uninvited me (**pages 22-23**) next morning, I came to that subjective conclusion that they were linked. I did not as I recollect make deliberate enquiries rather, I linked the information previously given to me to the subsequent email. However I would have discussed this and my assumptions with Tsotsi on the 17th. I have assumed that Jabu provided the information about the meeting on the 16th but I am not certain, and it might equally have been Tsotsi. Clearly it was someone who had a contact in or around the meeting or planning of the meeting – a source. It is more likely that I heard about this meeting during the evening of the 16th and before the arrival of the email on the 17th
13.	46.1	Retired judge	Cant recall what you required of me here – please advise. It might have been related to Minister Brown's objection.
14.	61	Audit and Risk meeting	At the meeting with Mabude and Tsotsi at Tsotsi's house on the evening of the 18th when my 18th March TOR were discussed. Mabude stated she would invite me to present my TOR to the A&RC. **(paragraphs 59-61 of the affidavit)** I received an invite to the Special Meeting of the Board A &R committee meeting on 18th March at 19.59pm scheduled for 19th March 16.00pm.

			The Agenda - Reconciliation of the Terms of Reference; and Discussion of the Draft Media Statement. The meeting was cancelled just prior to the scheduled meeting. (**Invite and cancellation -Page 44**) Three documents were attached to the invite. • My Sunday 15th draft now titled 14th March (NB- not the 18th version) (**Pages 45-61**) • The original Eskom draft TOR now titled 15th March (**Pages 62-65**); • The proposed Media release circulated on the 18th. **(Pages 66-68)** The cancelled meeting was then rescheduled on the 23rd March at 11.04am for the same 23rd at 4pm. (**Page 69**) I respond saying I will dial in. This invite now excludes the media document and only has the 2 draft TOR previously circulated (**Pages 45-61 and 62-65**) At 13.06 on the same 23rd Kulsum emails me saying the meeting is likely to be called off and that "*She (Mabude) will also most likely contact you directly to discuss your involvement*". (**Page 70)** I am not contacted again by Mabude or Kulsum.. I think that was the end of my formal engagement and to the best of my knowledge I did not receive and further communication from Mabude or ARC. On the 2nd April I wrote to Mabude asking if Eskom had any further instructions for me. (**Page 71**). I received no reply. A media report released on the 2nd by Eskom stated that my appointment had been terminated.(**Page 72**)
15.	61	A&R Committee	Counsel has queried where was I – in Jhb or CT over this period. I was in Jhb for another client between 9th-12th and 16th-20th I was therefore available in Jhb for the Eskom matter during those periods. Outside those I was in Cape Town.

			I would therefore have been available for the scheduled but postponed A&R meeting on the 19th in Jhb but would have had to attend remotely from CT for the 23rd meeting which was cancelled.
16.	67	Email to Tsotsi with suggested letter to Portfolio Chairperson	Email of 13th March with attachment provided (**Pages 73-76**)
17.	70.2	I was asked for the authority on Constitutional Court dicta that the President is held accountable for executive functions of the state	*Economic Freedom Fighters v Speaker of the National Assembly; Democratic Alliance v Speaker of the National Assembly [2016] ZACC 11; 2016 (3) SA 580 (CC); 2016 (5) BCLR 618 (CC)* The Chief Justice described the President in these terms: "The President is the head of state and head of the national executive. ..... Only upon him has the constitutional obligation to uphold, defend and respect the Constitution as the supreme law of the Republic been expressly imposed. .... Whoever and whatever poses a threat to our sovereignty, peace and prosperity he must fight. To him is the executive authority of the entire Republic primarily entrusted. ..... ."[64] [**my underlining**] The reason I reference this in my affidavit is that my view of things is that it was lawful and proper to accept the then President's brief to conduct the enquiry. It was his executive duty to act. If we discriminate on the basis of who we don't like or whose reputation we don't like then we have a form of anarchy. A constitutionally lawful authority must act and it is proper to act on those instructions - as long as that action itself is lawful and proper and for the right (lawful) reasons. There was nothing at the time to suggest that this brief was for any other (wrongful) purpose. I followed lawful and proper procedures in what I did thereafter. This judgement was subsequent to March 2015 but it is what most would expect.
18.	46.3 statement	Effect of suspensions	Article by De vos attached and others

Various media reports of the enquiry are attached.

Blank page

11 Dec 2014

Govt's 5-point plan for Eskom

Cape Town - Government is leaning strongly on the private sector to help it achieve a five-point turnaround plan for the embattled power monopoly Eskom.

This includes garnering loans, extending cogeneration, tapping into waste energy and importing gas, it emerged at a cabinet briefing on Thursday.

Public Enterprises Minister Lynne Brown said – at a briefing in Pretoria beamed to Cape Town – that: “Eskom has enough money to provide diesel (for its current needs).”

Eskom turns to diesel powered turbines when it is having difficulties with its coal-fired plants.

Brown noted that Eskom’s cash-flow would be fine for the next two months: “I am quite comfortable that to January 2015 Eskom’s cash flow will be fine.”

However, after that it would not be plain sailing.

Pressed on whether the diesel powered option was now a long term option, Brown was adamant that this could not be the case. That would bankrupt Eskom, she said: “Eskom would not be able to afford that.”

What government had to do in the longer term was to ensure that the state power monopoly had enough money to cater for its needs. This could take the form of guarantees or providing “the (fiscal) space” for Eskom to garner loans and “raise its own money. That would be a combination of financial processes.”

Meanwhile, Minister in the Presidency Jeff Radebe said cabinet “remains concerned” over the disruptive effect of the recent power outages on the lives of South Africans and its impact on households and businesses “across the country”.

One of the five points was to extend the cogeneration “opportunity” through the extension of existing contracts with the private sector, he said.

Energy Minister Tina Joemat-Pettersson said at present about 1 400 MW was supplied to the grid through cogeneration – through power purchase agreements with the private sector. These agreements expired in March, but they would be extended in January to ensure “that this capacity is ensured” in line with the Electricity Regulation Act.

Government would start procurement processes for an additional 1 000 MW, which Joemat-Petterson hoped would be brought on line within 18 months – the middle of 2016. She expressed hope that the additional electricity supply’s costs would be contained through “extensive contract management and oversight”.

She said government was also hopeful that another thousand megawatts would be brought on stream by using gas.

This was another key element of the five point plan, noted Radebe. Government would accelerate the programme “for substitution of diesel with gas to fire up the diesel power plants”.

Radebe noted there were significant opportunities for the importation of gas. While he did not specify, he was believed to be alluding to the gas fields of Mozambique, South Africa’s eastern neighbour.

A third element of the five point plan was the “retrofitting energy efficient technologies” at the 183 municipalities around the country. This would also apply to commercial and residential buildings, Radebe pledged.

The fourth element of the turnaround plan was launching a coal-independent power producer programme. The focus is expected to be on harnessing waste energy from the sugar, paper, and pulp industries. The latter is expected to produce about 1 000 MW.

The fifth element of the turnaround plan was to achieve the various interventions “in the period over the next 30 days”, the cabinet statement said.

Cabinet decided to put Deputy President Cyril Ramaphosa in charge of overseeing the turnaround of Eskom as well as that of South African Airways and the embattled South African Post Office.

From: Zola Tsotsi
To: nickl@theprojectoffice.co.za
Subject: Fwd: Delegation of Authority
Date: 08 March 2015 11:59:19
Attachments: DoA_Policy.pdf
ATT00001.htm
delegated_powers.pdf
ATT00002.htm

Hi Nick,

Further docs herewith.

ZAT

Sent from my iPad

Begin forwarded message:

> **From:** "Leo Dlamini" <DlaminLB@eskom.co.za>
> **To:** "Zola Tsotsi" <TsotsiZ@eskom.co.za>, "ztsotsi@liquifire.biz" <ztsotsi@liquifire.biz>
> **Subject: Delegation of Authority**
>
> Hi Chairman,
>
> Herewith Delegation of Authority Document.
>
> Regards
> Leo
>
> Senior General Manager
> Office of the Chairman
> Eskom Holdings SOC Limited
> Tel +27 11 800 4786
> Fax +27 86 665 2010
> Cell +27 83 260 3029
> Email: leo.dlamini@eskom.co.za

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

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

From: Zola Tsotsi
To: nickl@theprojectoffice.co.za
Subject: Fwd: Documents
Date: 08 March 2015 11:57:57
Attachments: ATT00001.htm

Hi Nick,

Herewith are the docs as discussed.

Regards,

Zola

Sent from my iPad

Begin forwarded message:

> **From:** "Leo Dlamini" <DlaminLB@eskom.co.za>
> **To:** "Zola Tsotsi" <TsotsiZ@eskom.co.za>, "ztsotsi@liquifire.biz" <ztsotsi@liquifire.biz>
> **Subject: Documents**

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

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

From: Senzosenkosi Myeni
To: nickl@theprojectoffice.com; Tshililo Stephen Maphari
Subject: Eskom DC Procedure
Date: 10 March 2015 21:03:31
Attachments: 32-197 Eskom Disciplinary Procedure.doc

Hi Nick

It was nice meeting you, herewith attached is DC Procedure as promised.

Regards
Senzo

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Jabu Linkfin
To: nickl@theprojectoffice.com
Subject: document
Date: 20 March 2015 16:15:01

We have been given a sensitive mandate by the South African public to institute an independent enquiry on Eskom. The intent of the board to conduct their own Investigation under the audit and risk committee will fail the independency of this enquiry. The independence of such an enquiry will be characterised by the following:

- An appointment of a retired judge to supervise the enquiry
- An appointment of forensic specialist firms to carry out engineering, commercial and financial forensic investigations.
- Approval of terms of reference that covers the scope and objectives of the enquiry
- Establishment of an independent whistle blower hotline to allow the public to bring forth any information that might be of assistance to the enquiry

The current coordinator, Mr Linell should be retained as we do not have reasons why we should terminate his services. He started well and the drafted terms of reference were good.

The current board has made it clear that they will not allow an independent enquiry to be carried out; instead the board recommends an internal enquiry with a limited scope. The Minister has publicly expressed her frustration with the leadership of Eskom and the lack of credible information. In addition, the Minister has raised her concerns in regard to the load shedding and there has been lack of clarity in regard to Eskom's challenges.

This current situation and the reluctance of the board to carry out an independent enquiry on Eskom are clearly giving indications that the current Eskom board has become dysfunctional. Such a dysfunctional situation hinders the board in carrying out its mandate.
I humbly submit and recommend as the chairman of the Eskom board that the Minister of Public Enterprises to disband this board and allow the shareholder to establish a new board that will carry out its mandate without any hindrances.
As the Chairperson of the Board I do not support the internal inquiry, which could be challenged by the South African Community in terms of its credibility.

I hope that the Minister will consider this request and disband the board.
Yours faithfully

From: Nick Linnell
To: ztsotsi@liquifire.biz
Subject: MOI
Date: 21 March 2015 07:26:00
Attachments: image003.jpg

Hi Chair
Can you urgently obtain a copy of the Eskom MOI
Thanks
nick

Nick Linnell



email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell| M Green
Postal Add PO Box 15813 | Panorama | 7506

COMMISSION OF INQUIRY INTO STATE CAPTURE

Nick Linnell

From: Jabu Linkfin <jabu@linkfin.co.za>
Sent: 20 March 2015 16:29
To: nickl@theprojectoffice.com
Subject: Questions

Categories: Green Category, Red Category, Blue Category

1. Is the Minister aware of the acquisition of Pornography material worth 100.000, by one Executive during his trip to Netherlands using an Eskom Business Card/Credit Card
2. Is true that Dan Marokana is a shareholder in Shanduka Food and Beverages, and does it concern you as the Minister?

3 The Sunday Times Article is on record with an allegation of a currently suspended Executive Dan Marokana, driving and pushing that the Eskom approves a coal deal from Optimum Coal, worth almost 4 Billion rand? Shanduka has a 40 % stake in the same Coal Company.

From: Nick Linnell
To: "Jabu Linkfin"
Subject: RE: document
Date: 20 March 2015 19:08:00

Here is my suggestion

At the emergency Board meeting held last night (Thursday 19th), the board discussed in my absence the matter of whether I should be removed from the Board. The Board then informed me that they would be meeting you shortly to ask that I be suspended.

Madam Minister I am on record as having insisted on an open and thorough enquiry. In fact this approach is totally aligned with your recently quoted statement in the Business Day. I agree with your view and I have argued the same before the Board. I am of the opinion that the actions of the Board and their representations to you have ulterior purpose which you are obliged to address fairly and objectively.

It is clear to me that the Board is intent of frustrating the need for an open and independent enquiry. Such an enquiry has also been demanded by the public which if one takes the weight of media commentary has now totally lost faith in the Board.

It has been made known to me that certain executives have participated in gross and possibly unlawful conduct. It is also understood that members of the Board have recently met with the suspended executives after their suspension. This is particularly alarming and needs to be placed before the independent enquiry and it is a matter that I request that you address prior to taking action against me.

I am now informed by you that you wish me to be removed from the Board. This action by you is I believe unlawful and unjust. I reserve my rights in that regard.

In my opinion your action has aided those who wish to ensure that the maladministration and unlawful action of members of the executive and possibly Board members who have been in active communication with them prior to the meeting last evening, goes undetected. I request that you address this matter fairly and in the interests of the Company.

Yours faithfully

We have been given a sensitive mandate by the South African public to institute an independent enquiry on Eskom. The intent of the board to conduct their own Investigation under the audit and risk committee will fail the independency of this enquiry. The independence of such an enquiry will be characterised by the following:

- An appointment of a retired judge to supervise the enquiry

- An appointment of forensic specialist firms to carry out engineering, commercial and financial forensic investigations.

- Approval of terms of reference that covers the scope and objectives of the enquiry

- Establishment of an independent whistle blower hotline to allow the public to bring forth any information that might be of assistance to the enquiry

The current coordinator, Mr Linell should be retained as we do not have reasons why we should terminate his services. He started well and the drafted terms of reference were good.

The current board has made it clear that they will not allow an independent enquiry to be carried out; instead the board recommends an internal enquiry with a limited scope. The Minister has publicly expressed her frustration with the leadership of Eskom and the lack of credible information. In addition, the Minister has raised her concerns in regard to the load shedding and there has been lack of clarity in regard to Eskom's challenges.

This current situation and the reluctance of the board to carry out an independent enquiry on Eskom are clearly giving indications that the current Eskom board has become dysfunctional. Such a dysfunctional situation hinders the board in carrying out its mandate.
I humbly submit and recommend as the chairman of the Eskom board that the Minister of Public Enterprises to disband this board and allow the shareholder to establish a new board that will carry out its mandate without any hindrances.
As the Chairperson of the Board I do not support the internal inquiry, which could be challenged by the South African Community in terms of its credibility.

I hope that the Minister will consider this request and disband the board.
Yours faithfully

From: Nick Linnell
To: Fritz Malan (fmalan@ensafrica.com)
Subject: 32-197 Eskom Disciplinary Procedure.doc
Date: 11 March 2015 10:14:00
Attachments: 32-197 Eskom Disciplinary Procedure.doc

Attached as requested

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Suite 301, Infotech Building1090 Acadia Street Hatfield, 0083 Private Bag X15 Hatfield 0028
Tel: (012) 431 1000 Fax: 086 501 2624 / 086 501 0629

To: All Media

Date: 12 March 2015

For Immediate release

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

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

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

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

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

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

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

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

Issued by Ministry of Public Enterprises

12 March 2015

Nick Linnell

From: Pat Naidoo <pat@patnaidoo.co.za>
Sent: 13 March 2015 12:36
To: Kulsum Crookes
Cc: nickl@theprojectoffice.com; Malesela Phukubje; Thulo Selele; baldwin ngubane; Zola Tsotsi; chwayitam@yahoo.com
Subject: Re: Revised Agenda - Board Recovery and Build Programme Review Committee (BRBPR)

Good Day

Thank you; do send Nick a full agenda for day 1 and day 2; do invite Nick to join us for both days.

In the interest of time, let us get the project details out by next week Thursday. If all ready, we can request Chair of BTC to host BTC at BRBP. If not ready, we can go one more week and at the Board breakaway, which is the following week, we hold a brief BTC and get the approvals for the appointment of the independent service providers for the Eskom Deep Dive Exercise.

This is an urgent and priority project but we have no need to drop the processes, procedures and practices of Eskom.

Do discuss with Company Secretary and start to involve the BTC Secretariat in the process; let us share with Nick the full procurement process and requirements of Eskom. Do it smartly and carefully by involving the commercial specialists at Eskom.

On Fri, Mar 13, 2015 at 12:18 PM, Kulsum Crookes <CrookeK@eskom.co.za> wrote:

> Good day,
>
> Will update the agenda accordingly and communicate with Mr Linnell, iro the Eskom format of the required submission.
>
> Regards
>
> Kulsum
>
> **From:** Pat Naidoo [mailto:pat@patnaidoo.co.za]
> **Sent:** 13 March 2015 11:57 AM
> **To:** Kulsum Crookes; Thulo Selele; Malesela Phukubje
> **Cc:** nickl@theprojectoffice.com; Zola Tsotsi; chwayitam@yahoo.com
> **Subject:** Re: Revised Agenda - Board Recovery and Build Programme Review Committee (BRBPR)

Good Day from Parktown

I am working quietly in my study.

I have one more agenda item for Day 1 : Eskom Recovery.

Agenda Item Number 7.1

Eskom Recovery : Independent Fact Finding Enquiry

Specialist Advisor Mr. Nick Linnell

The Project Office

26-28 Hammersmith Grove

London, W6 7 BA, UK

Nick's email details are : nickl@theprojectoffice.com

Kindly share a copy of our agenda with Nick and communicate with Nick and receive his submission. Do share with Nick the format of the required submission. Our emphasis at BRBP will be on the project details such as time, cost and quality parameters supported by a risk register, with assessment and mitigating strategies, and recommended plans for the enhancement of project performance.

The Submission will be by the Chairman of the Eskom Board supported by the Chairman of Audit, Risk and Compliance Committee.

Thank you.

From: Nick Linnell
To: "leo.dlamini@eskom.co.za"; Malesela Phukubje (PhukubM@eskom.co.za); "zola.tsotsi@eskom.co.za"
Subject: Media release
Date: 18 March 2015 12:01:00
Attachments: Media release 18032015. v3docx.docx
image003.jpg

Dear Leo/Malesela
The Chair has asked that this media release (to be formatted as you would normally do) be sent to you with the request that it be released immediately. Could you also send it to all Board members and to the Minister.
Kind regards
Nick

Nick Linnell

email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell| M Green
Postal Add PO Box 15813 | Panorama | 7506

Nick Linnell

From: Thulo Selele <SeleleTP@eskom.co.za>
Sent: 17 March 2015 04:50
To: Nick linnell
Cc: Malesela Phukubje; Kulsum Crookes
Subject: RE: Accepted: FW: Board Recovery and Build Programme Committee (Recovery Programme)

Importance: High

Categories: Green Category

Good day Nick

Please note that Board Audit, Risk and Compliance Committee will be attending to the matter relating to the Forensic Fact Finding Inquiry, as per advice. Consequently, your attendance will not be required at this week's Board Recovery and Build Programme Committee.

Apologies for any inconvenience caused.

Kind regards

Thulo Selele
Office of the Group Executive
Group Capital
Eskom Holdings SOC Limited
Tel (ZA) +27 11 800 5560
Tel (UK) +44 20 7193 0641
Cell +27 82 631 8777
Fax +27 86 662 2235
E-mail seleletp@eskom.co.za

.
.

-----Original Appointment-----
From: Nick linnell [mailto:linnell@iafrica.com]
Sent: 14 March 2015 06:17 AM
To: Thulo Selele
Subject: Accepted: FW: Board Recovery and Build Programme Committee (Recovery Programme)
When: 19 March 2015 09:00 AM-05:00 PM (UTC+02:00) Harare, Pretoria.
Where: Huvo-Nkulu Boardroom, D3 Executive, Megawatt Park

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

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

Nick Linnell

From: Malesela Phukubje <PhukubM@eskom.co.za>
Sent: 14 March 2015 11:20
To: nickl@theprojectoffice.com
Cc: chwayitam@yahoo.com
Subject: DRAFT TORS INQUIRY 14 MARCH 2015
Attachments: DRAFT TORS INQUIRY 14 MARCH 2015.docx

Categories: Green Category

Dear Mr. Lennell,

I refer to the above matter and attach the Draft Terms of Reference for your perusal and comment. Please let us have your comments by 18h00 tomorrow.

Kind regards,

Malesela

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

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

DRAFT

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

1.1. For the past 2 (two) years, the Office of the Chairman and the Eskom Board of Directors (both the new and the old Boards) have been inundated with complaints and concerns raised by various sources internal and external to Eskom with regards to escalating build project costs, escalating maintenance costs, high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. To this end, the Board of Directors have resolved to institute an enquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute this enquiry to the Audit and Risk Committee under the Chairmanship of Ms Chwayita Mabude. Included in the authority to institute this enquiry, is also the authority to:

- Appoint a service provider
- Manage the costs of executing the enquiry, and
- Ensuring that the service provider delivers on its mandate within the prescribed time lines.

2. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

2.1. In the exercise of its authority as delegated by the Board, the Audit Committee has appointed……to assist with the enquiry.

3. SCOPE OF THE INVESTIGATION

The Service Provider will investigate and report on the following:

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

3.2. Unnecessary load shedding

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

3.4 Review of processes of raising bonds and reporting thereof

4. PROCESS

The Service Provider will follow the guidelines below in conducting the investigation:

4.1. Conduct interviews with employees in its investigation.

4.2. In addition to employees, mentioned in terms of clause 4.1 above, the Service Provider may further conduct interviews with any other party/ies or person/s who may have information regarding this enquiry.

4.3. Obtain and analyse, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by an employee or any other person interviewed in accordance with 4.1 to 4.2 above.

4.4. At the end of the enquiry, present to the Audit and Risk Committee a report.

The aforementioned report will contain the following:

4.4.1. Documents relied upon during the investigation,

4.4.2. Details of evidence submitted by the Parties and/ or employees interviewed,

4.4.3. Analysis of the evidence and documentation referred to in 4.3 above as presented by the Parties and/ or employees, and

4.4.4. Conclusion/s and recommendation/s.

6. DURATION OF THE ENQUIRY

6.1. The enquiry will be concluded in a period of three (3) months commencing no later than two (2) days after the signing of these terms of reference by the Party signing last.

6.2. Notwithstanding the provisions of clause 4.4 above, the Service Provider will provide to the Audit and Risk Committee a progress report every two weeks. The first progress report will be due two weeks from the date of the signing of these terms of reference by the Party signing last.

7. **THE OUTCOME OF THE ENQUIRY**

7.1. The conclusion/s and recommendation/s in the report will be final l.

8, **FEES**

8.1 The Parties will negotiate and agree the fees that Eskom will pay to the Service Provider, which fees will take into account the imperatives of the Business Productivity Programme that Eskom is presently embarking on.

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____
Name of Signatory

_____
Designation of Signatory

For and on behalf of
[Service Provider]

_____
Signature

_____
Name of Signatory

_____
Designation of Signatory

DRAFT

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. **PREAMBLE**

1.1. For the past 2 (two) years, the Office of the Chairman and the Eskom Board of Directors (both the new and the old Boards) have been inundated with complaints and concerns raised by various sources internal and external to Eskom with regards to escalating build project costs, escalating maintenance costs, high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. To this end, the Board of Directors have resolved to institute an enquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute this enquiry to the Audit and Risk Committee under the Chairmanship of Ms Chwayita Mabude. Included in the authority to institute this enquiry, is also the authority to:

- Appoint a service provider
- Manage the costs of executing the enquiry, and
- Ensuring that the service provider delivers on its mandate within the prescribed time lines.

2. **APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER**

2.1. In the exercise of its authority as delegated by the Board, the Audit Committee has appointed……to assist with the enquiry.

3. **SCOPE OF THE INVESTIGATION**

The Service Provider will investigate and report on the following:

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

3.2. Unnecessary load shedding

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

3.4 Review of processes of raising bonds and reporting thereof

4. **PROCESS**

The Service Provider will follow the guidelines below in conducting the investigation:

4.1. Conduct interviews with employees in its investigation.

4.2. In addition to employees, mentioned in terms of clause 4.1 above, the Service Provider may further conduct interviews with any other party/ies or person/s who may have information regarding this enquiry.

4.3. Obtain and analyse, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by an employee or any other person interviewed in accordance with 4.1 to 4.2 above.

4.4. At the end of the enquiry, present to the Audit and Risk Committee a report.

The aforementioned report will contain the following:

4.4.1. Documents relied upon during the investigation,

4.4.2. Details of evidence submitted by the Parties and/ or employees interviewed,

4.4.3. Analysis of the evidence and documentation referred to in 4.3 above as presented by the Parties and/ or employees, and

4.4.4. Conclusion/s and recommendation/s.

6. DURATION OF THE ENQUIRY

6.1. The enquiry will be concluded in a period of three (3) months commencing no later than two (2) days after the signing of these terms of reference by the Party signing last.

6.2. Notwithstanding the provisions of clause 4.4 above, the Service Provider will provide to the Audit and Risk Committee a progress report every two weeks. The first progress report will be due two weeks from the date of the signing of these terms of reference by the Party signing last.

7. **THE OUTCOME OF THE ENQUIRY**

7.1. The conclusion/s and recommendation/s in the report will be final l.

8, **FEES**

8.1 The Parties will negotiate and agree the fees that Eskom will pay to the Service Provider, which fees will take into account the imperatives of the Business Productivity Programme that Eskom is presently embarking on.

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____
Name of Signatory

_____
Designation of Signatory

For and on behalf of
[Service Provider]

_____
Signature

_____
Name of Signatory

_____
Designation of Signatory

From: Nick Linnell
To: "Malesela Phukubje"; "nickl@theprojectoffice.com"
Cc: "chwayitam@yahoo.com"
Subject: RE: DRAFT TORS INQUIRY 14 MARCH 2015
Date: 15 March 2015 18:59:00
Attachments: DRAFT TORS INQUIRY 14 MARCH 2015 2.docx
image003.jpg

Dear Malesela
Please find a further version of the ToR for consideration by the A&R committee
Kind regards
Nick

Nick Linnell

email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell| M Green
Postal Add PO Box 15813 | Panorama | 7506

From: Malesela Phukubje [mailto:PhukubM@eskom.co.za]
Sent: 14 March 2015 11:20 AM
To: nickl@theprojectoffice.com
Cc: chwayitam@yahoo.com
Subject: DRAFT TORS INQUIRY 14 MARCH 2015

Dear Mr. Lennell,

I refer to the above matter and attach the Draft Terms of Reference for your perusal and comment. Please let us have your comments by 18h00 tomorrow.

Kind regards,

Malesela

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

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

DRAFT

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

For the past 2 (two) years, the Office of the Chairman and the Eskom Board of Directors (both the new and the old Boards) have received complaints and concerns raised by various sources, both internal and external to Eskom with regards to sufficiency and reliability of supply of electricity; escalating build project costs; escalating maintenance costs; high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. In addition the board has recognised the need for independent assessment of the state of the company's capability and performance

To this end, the Board of Directors have resolved to institute an enquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute an independent enquiry to the Audit and Risk Committee under the Chairmanship of Ms Chwayita Mabude. Included in the authority to institute this enquiry is also the authority to:

- Appoint service providers as needed
- Ensure that the service providers deliver on their mandate within prescribed time lines;
- Manage the costs of executing the enquiry;

2. OBJECTIVE/PURPOSE

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

3. APPROACH

The enquiry shall focus separately on technical, commercial and financial facets of the Company through distinct investigation teams each having appropriate skills under a program co-ordinator whose responsibility it shall be to ensure effective collaboration and coordination of the overall enquiry and the delivery of the objective/ purpose of the enquiry.

The investigation teams shall have access to all documentation and other data belonging to the Company deemed by the investigators to be necessary for the enquiry and shall be permitted to interview any employee and supplier as necessary.

Each investigative team shall be selected having regard to its independence and absence of any undue influence from any other party and shall be selected on the basis of appropriate skills and experience for the investigation required.

Each investigative team shall be required to provide a plan of action (approach) to the Audit and Risk Committee.

4. TIMING

The enquiry shall commence on the 16th March 2015 and shall provide its final report and recommendations to the Board not later than 19th June 2015

5. RESOURCES

5.1. Each team and the enquiry coordinator shall have access to all premises, all personnel and suppliers of the Company at all reasonable time and upon reasonable notice;
5.2. The Company shall provide a meeting room sufficient to house 6 persons and shall provide access as required to interview rooms.
5.3. The internal audit department will provide assistance as agreed from time to time with the Head of Internal audit department.
5.4. The Audit and Risk committee shall provide appropriate and necessary assistance to the investigators as requested from time to time.
5.5. Board and board committee agenda packs and minutes shall be available to each team on request.
5.6. All prior investigations and reports in connection with matters included in this scope shall be made available to the enquiry.

6. SCOPE OF INVESTIGATION

The scope below may be limited in consultation with the Audit and Risk committee having regard to the budget and time available on the basis of what the teams' deem in their discretion to be "material" in the circumstances of the evidence available.

6.1. Technical

6.1.1. In respect of all generating plants' (+/-87), benchmark maximum output capacity, planned capacity and actual output for the immediate past 36 months;

6.1.2. Review current status of all generating plants and provide opinion on the causes and contributory factors for sub optimum output (in excess of 33 require major repair);

6.1.3. Review all major incidents at plants and their causes and any avoidable factors not acted upon (including communications between plant and executive);

6.1.4. Review maintenance requirements of all generating plants assessing actual vs planned maintenance and review all contracts and service level agreements and compliance to the same as well as costs relative to plan. Have particular regard to all unplanned failures and review in context of maintenance conducted/not conducted;

6.1.5. Review all 3rd party electricity supply available to the grid (including proposals received but not acted on) and compare to actual supply connected to the grid for the past 36 months. Provide an opinion on the technical reasons and cost implications for not having connected when possible. Review all information including correspondence, negotiations and contracting with regard to that supply and reasons for less than optimum connected supply. In addition, consider the available potential of supply from both Zimbabwe and Mozambique and determine any reasons for supply (from time to time) less than that potential and consider any reasons thereof;

6.1.6. Specifically review the principle causes of failure at Majuba and Duvha and determine any culpability or lessons from such. In so doing have regard to management reports and independent insurance/assessor reports and determine the degree of transparency of reporting to the Board and have regard to the reasons for any late submissions of these reports to the Board.

6.1.7. Conduct high level reviews of the new builds at Medupi and Kusile and determine the causes and contributory factors to the overruns of cost and time.

6.1.7.1. To determine whether any person or entity (internal or external) bears fault for these overruns. The degree of depth of this report to be agreed between the subcommittee and the investigation team bearing in mind the time available.

6.1.7.2. To determine whether appropriate contingency plans were in place and acted upon at the earliest possible instance;

6.1.8. In collaboration with the Financial and Commercial investigative teams to the review the supply of primary energy (coal, diesel, gas, water) to all plants over the past 36 months and determine whether supplies met specification, quality and delivery requirements (also have regard to any incorrect specifications provided).

6.1.9. Review the causes of disruption of power to two Rand Water pumps at Rand Water in September 2014 paying special attention to any lack of proactive or reactive management response i.e. were there warning and how effectively did we react;

6.1.10. To consider the impact of weather on the performance of any of the plants and to provide an opinion as to whether these risks could have been mitigated;

6.1.11. Do risk management and contingency plans exist sufficient to negate any generation risk and at times of plant failure were these implemented effectively.

6.2. Commercial

6.2.1. Review all procurement and other contracts for capital projects, primary energy supplies and operational services (exceeding R1 million or such figure as varied with agreement with the subcommittee) for the past 48 months and determine adherence to supply chain policy and business case approvals. Have special regard to any contracts and payments made but not matched to specification (cost, time and quality). Have regard to any rolling or renewed contracts that have cumulative value above the threshold;

6.2.2. Review all contracts related to Medupi and Kusile from inception. Review these in context to the original business case and adherence to tender and supply chain requirements. The focus to be on commercial matters and not technical. The team to coordinate their investigation with the Technical and financial teams.

6.2.3. Review employee and contractor contracts and payments made to employees and contractors and identify any that bear *prima facie* concern.

6.2.4. Undertake electronic assessment of all company email correspondence, identifying certain key words to be proved by the subcommittee, for the last 24 months, and where appropriate undertake interviews with internal and external parties to probe where indicated.

6.2.5. Review a random sample of internal correspondence between project leaders and plant/project management on Medipi, Kusile, Majuba and Duvha and identify whether plant management foresaw problems and communicated risk upwards. Review management reactions;

6.2.6. Similarly (plants as per above) review all correspondence between suppliers and company in which disputes are debated. Interview suppliers as necessary.

6.2.7. Review new posts created over past 36 months and provide a schedule of position and TCC.

6.2.8. Review all executive and Board reports pertaining to new builds and summarise material implications and decisions.

6.2.9. Review contracts and recruitments of employees with TCC >R1.5m per annum for last 24 months;

6.2.10. Review a sample of senior employee suspensions, disciplinary hearings and dismissals (and reinstatements) of employees last 36 months (filter those earning >R1 000 000 p.a.).

6.2.11. Review summaries of internal audit reports over the last 36 months and management responses and any action taken on material risks identified;

6.2.12. Review internal audit programs – schedule of audits and risk analysis and review Internal audit reports of the same and review actions taken;

6.2.13. Review draft external audit reports for the past 3 years (2012-2014) and identify risks noted and not in final reports and determine reasons for such

6.2.14. Interview sustainability executive for insight to risks not identified;

6.2.15. Review correspondence from insurers of major claims submitted (to be objectively assessed by the team) and premium adjustments for those and reasons for them for past 36 months.

6.2.16. To review the organismal model and consider the implication on the performance of the company and make recommendations as required.

6.2.17. To consider the implementation of any policy decisions and their impact on the performance of the Company. To coordinate with Financial and Technical enquiry teams to ensure appropriate consideration by each.

6.3. Financial

6.3.1. Review the approved financial statements of the Company as at 30th September 2014 and provide a summarised "red flag" report on material concerns. Review the current management report forecast for the year ending March 2015 and provide similar comments and in particular to any variations not anticipated in September 2014.

6.3.2. Review material funding facilities/contracts /bonds of any nature and provide an opinion of the terms relative to the market and the company's risk.

6.3.3. Review all steps taken by the Company to recover unpaid "government/municipal" debt (debtors) currently estimated at R4.7 billion. Provide commentary on the impact on the financial standing of the company on such unpaid debt.

6.3.4. Review all non- government trade debtors (customers) and provide a similar review and in particular to steps taken to secure payment;

6.3.5. Conduct (together with Commercial team) a review of all primary energy supplies over the past 36 months and determine the cost implications of any contracts "not for value";

6.3.6. Determine the lost revenue and/or penalty cost implications of all non-implemented 3rd party electricity supply opportunities.

6.3.7. Determine the net wasted cost (and reasons therefore) of payments made to primary energy suppliers for materials not received but paid for over the past 36 months.

6.3.8. Review all non-government major electricity-user sales contracts (together with their business cases) and determine the value of lost revenue over time and, together with commercial, provide an opinion on the proprietary/commercial wisdom of such contracts at the time.

6.3.9. Review all contracts and payment of pre-sold electricity "buy-backs" and access the cost/benefit of such decisions.

6.3.10. Together with Technical teams provide an estimated cost to the company of the cost (increased costs) and time (lost revenue) overruns at Medupi and Kusile;

6.3.11. To consider asset management policies and practices;

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

6.4. Coordination

6.4.1. The enquiry coordinator shall have responsibility for the delivery of the scoped work of each investigative team and of the final consolidated report;

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

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

7. REPORTING

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

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

7.3. At the end of the enquiry, present to the Audit and Risk Committee a report.

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

8. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

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

9. FEES

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

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____

Name of Signatory

_____

Designation of Signatory

For and on behalf of

[Service Provider]

_____

Signature

_____

Name of Signatory

_____

Designation of Signatory

Nick Linnell

From: Neo Tsholanku <TsholaNK@eskom.co.za>
Sent: 17 March 2015 15:16
To: nickl@theprojectoffice.com
Subject: RE: DRAFT TORS INQUIRY 15 MARCH 2015
Attachments: ERCC Terms of Reference 2015 Draft Rev 3 20150313 - DJ RW JM comments in....docx

Categories: Green Category

Afternoon Nick,

As per my telephonic discussion with Chairman this afternoon, I forward to you the draft TOR that was prepared on the instruction of Ms Mabude.

Kind regards

From: Malesela Phukubje
Sent: Sunday, March 15, 2015 6:23 PM
To: Neo Tsholanku
Subject: DRAFT TORS INQUIRY 15 MARCH 2015

Dear Sir,

As discussed telephonically earlier today, please find the Draft TORs for finalization.

Kindly peruse and send them to the Chairman, copying Chwayita and myself as well as Leo. Please ask the Chairman to have a look at these and make his input at his earliest convenience but in any event by 13h00 tomorrow so that the process can move forward.

Best regards,

Malesela

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

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

Nick Linnell

From: Neo Tsholanku <TsholaNK@eskom.co.za>
Sent: 17 March 2015 19:04
To: nickl@theprojectoffice.com
Subject: DRAFT TORS INQUIRY 15 MARCH 2015 (3)
Attachments: DRAFT TORS INQUIRY 15 MARCH 2015 (3).docx

Categories: Green Category

Again, I must apologise for forwarding to you a wrong document.

Kind regards

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

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

DRAFT

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. **PREAMBLE**

1.1. For the past 2 (two) years, the Office of the Chairman and the Eskom Board of Directors (both the new and the old Boards) have been inundated with complaints and concerns raised by various sources internal and external to Eskom with regards to the unreliable power supply, escalating build project costs, escalating maintenance costs, high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. To this end, the Board of Directors have resolved to institute an enquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute this enquiry to the Audit and Risk Committee under the Chairmanship of Ms Chwayita Mabude. Included in the authority to institute this enquiry, is also the authority to:

- Appoint a service provider
- Manage the costs of executing the enquiry, and
- Ensuring that the service provider delivers on its mandate within the prescribed time lines.

2. **APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER**

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

3. **SCOPE OF THE INVESTIGATION**

The Service Provider will investigate and report on the following:

3.1. the integrity of the procurement processes and their compliance with legislation as well as Eskom's procurement policies;

3.2 management of price escalations in contracts as well as the cost of contract modifications with specific references to causes of delays in contract implementation, and the penalty costs arising therefrom;

3.3 the capacity within Eskom to manage implementation of the contracts;

3.4 security failures and accountability at Eskom as a key national point;

3.5. capacity for fleet maintenance and reasons therefor;

3.6. the effectiveness of Eskom Board oversight and its ability to exercise oversight over management;

3.7. primary energy, with focus on coal and diesel, such as but not limited to costs related thereto

3.8. Unreliable power supply, including unnecessary load shedding

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

3.10 Review of processes of raising bonds and reporting thereof

3.11 Recommendations on identified shortcomings and strong points

4. **PROCESS**

The Service Provider will follow the guidelines below in conducting the investigation:

4.1. Conduct interviews with employees in its investigation.

4.2. In addition to employees, mentioned in terms of clause 4.1 above, the Service Provider may further conduct interviews with any other party/ies or person/s who may have information regarding this enquiry.

4.3. Obtain and analyse, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by an employee or any other person interviewed in accordance with 4.1 to 4.2 above.

4.4. At the end of the enquiry, present to the Audit and Risk Committee a report.

The aforementioned report will contain the following:

4.4.1. Documents relied upon during the investigation,

4.4.2. Details of evidence submitted by the Parties and/ or employees interviewed,

4.4.3. Analysis of the evidence and documentation referred to in 4.3 above as presented by the Parties and/ or employees, and

4.4.4. Conclusion/s and recommendation/s.

6. **DURATION OF THE ENQUIRY**

6.1. The enquiry will be concluded in a period of three (3) months commencing no later than two (2) days after the signing of these terms of reference by the Party signing last.

6.2. Notwithstanding the provisions of clause 4.4 above, the Service Provider will provide to the Audit and Risk Committee a progress report every two weeks. The first progress report will be due two weeks from the date of the signing of these terms of reference by the Party signing last.

7. **THE OUTCOME OF THE ENQUIRY**

7.1. The conclusion/s and recommendation/s in the report will be final l.

8, **FEES**

8.1 The Parties will negotiate and agree the fees that Eskom will pay to the Service Provider, which fees will take into account the imperatives of the Business Productivity Programme that Eskom is presently embarking on.

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____
Name of Signatory

_____
Designation of Signatory

For and on behalf of
[Service Provider]

_____
Signature

_____
Name of Signatory

_____
Designation of Signatory

From:	Malesela Phukubje
To:	chwayitam@yahoo.com; Romeo Kumalo; norman baloyi; viroshini naidoo; nazia.c@vodamail.co.za; Neo Tsholanku; nickl@theprojectoffice.com; Kulsum Crookes; Nomusa Mazibuko; Malesela Phukubje
Cc:	Nick linnell
Subject:	Canceled: SPECIAL ARC MEETING
Start:	19 March 2015 16:00:00
End:	19 March 2015 19:00:00
Location:	MARANG BOARDROOM, MEGAWATT PARK THIRD FLOOR
Attachments:	DRAFT TORS INQUIRY 14 MARCH 2015 2.docx DRAFT TORS INQUIRY 15 MARCH 2015.docx ESKOM BOARD MEDIA STATEMENT 18 MARCH 2015.doc
Importance:	High

Dear Audit and Risk Members,

Kindly avail yourselves for a Special Audit and Risk Committee Meeting which is scheduled to start at 16h00-19h00 tomorrow afternoon. Please advise of your available times as it is intended that all members be accommodated in terms of time. The two Terms of Reference as well as the Draft Media Statement are attached for your ease of reference.

The Agenda is as follows:

1. Reconciliation of the Terms of Reference; and
2. Discussion of the Draft Media Statement.
3. Any Other Business.

Kind regar ds,

Malesela

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

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

DRAFT

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. PREAMBLE

For the past 2 (two) years, the Office of the Chairman and the Eskom Board of Directors (both the new and the old Boards) have received complaints and concerns raised by various sources, both internal and external to Eskom with regards to sufficiency and reliability of supply of electricity; escalating build project costs; escalating maintenance costs; high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. In addition the board has recognised the need for independent assessment of the state of the company's capability and performance

To this end, the Board of Directors have resolved to institute an enquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute an independent enquiry to the Audit and Risk Committee under the Chairmanship of Ms Chwayita Mabude. Included in the authority to institute this enquiry is also the authority to:

- Appoint service providers as needed
- Ensure that the service providers deliver on their mandate within prescribed time lines;
- Manage the costs of executing the enquiry;

2. OBJECTIVE/PURPOSE

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

3. APPROACH

The enquiry shall focus separately on technical, commercial and financial facets of the Company through distinct investigation teams each having appropriate skills under a program co-ordinator whose responsibility it shall be to ensure effective collaboration and coordination of the overall enquiry and the delivery of the objective/ purpose of the enquiry.

The investigation teams shall have access to all documentation and other data belonging to the Company deemed by the investigators to be necessary for the enquiry and shall be permitted to interview any employee and supplier as necessary.

Each investigative team shall be selected having regard to its independence and absence of any undue influence from any other party and shall be selected on the basis of appropriate skills and experience for the investigation required.

Each investigative team shall be required to provide a plan of action (approach) to the Audit and Risk Committee.

4. TIMING

The enquiry shall commence on the 16th March 2015 and shall provide its final report and recommendations to the Board not later than 19th June 2015

5. RESOURCES

5.1. Each team and the enquiry coordinator shall have access to all premises, all personnel and suppliers of the Company at all reasonable time and upon reasonable notice;
5.2. The Company shall provide a meeting room sufficient to house 6 persons and shall provide access as required to interview rooms.
5.3. The internal audit department will provide assistance as agreed from time to time with the Head of Internal audit department.
5.4. The Audit and Risk committee shall provide appropriate and necessary assistance to the investigators as requested from time to time.
5.5. Board and board committee agenda packs and minutes shall be available to each team on request.
5.6. All prior investigations and reports in connection with matters included in this scope shall be made available to the enquiry.

6. SCOPE OF INVESTIGATION

The scope below may be limited in consultation with the Audit and Risk committee having regard to the budget and time available on the basis of what the teams' deem in their discretion to be "material" in the circumstances of the evidence available.

6.1. Technical

6.1.1. In respect of all generating plants' (+/-87), benchmark maximum output capacity, planned capacity and actual output for the immediate past 36 months;

6.1.2. Review current status of all generating plants and provide opinion on the causes and contributory factors for sub optimum output (in excess of 33 require major repair);

6.1.3. Review all major incidents at plants and their causes and any avoidable factors not acted upon (including communications between plant and executive);

6.1.4. Review maintenance requirements of all generating plants assessing actual vs planned maintenance and review all contracts and service level agreements and compliance to the same as well as costs relative to plan. Have particular regard to all unplanned failures and review in context of maintenance conducted/not conducted;

6.1.5. Review all 3rd party electricity supply available to the grid (including proposals received but not acted on) and compare to actual supply connected to the grid for the past 36 months. Provide an opinion on the technical reasons and cost implications for not having connected when possible. Review all information including correspondence, negotiations and contracting with regard to that supply and reasons for less than optimum connected supply. In addition, consider the available potential of supply from both Zimbabwe and Mozambique and determine any reasons for supply (from time to time) less than that potential and consider any reasons thereof;

6.1.6. Specifically review the principle causes of failure at Majuba and Duvha and determine any culpability or lessons from such. In so doing have regard to management reports and independent insurance/assessor reports and determine the degree of transparency of reporting to the Board and have regard to the reasons for any late submissions of these reports to the Board.

6.1.7. Conduct high level reviews of the new builds at Medupi and Kusile and determine the causes and contributory factors to the overruns of cost and time.

6.1.7.1. To determine whether any person or entity (internal or external) bears fault for these overruns. The degree of depth of this report to be agreed between the subcommittee and the investigation team bearing in mind the time available.

6.1.7.2. To determine whether appropriate contingency plans were in place and acted upon at the earliest possible instance;

6.1.8. In collaboration with the Financial and Commercial investigative teams to the review the supply of primary energy (coal, diesel, gas, water) to all plants over the past 36 months and determine whether supplies met specification, quality and delivery requirements (also have regard to any incorrect specifications provided).

6.1.9. Review the causes of disruption of power to two Rand Water pumps at Rand Water in September 2014 paying special attention to any lack of proactive or reactive management response i.e. were there warning and how effectively did we react;

6.1.10. To consider the impact of weather on the performance of any of the plants and to provide an opinion as to whether these risks could have been mitigated;

6.1.11. Do risk management and contingency plans exist sufficient to negate any generation risk and at times of plant failure were these implemented effectively.

6.2. Commercial

6.2.1. Review all procurement and other contracts for capital projects, primary energy supplies and operational services (exceeding R1 million or such figure as varied with agreement with the subcommittee) for the past 48 months and determine adherence to supply chain policy and business case approvals. Have special regard to any contracts and payments made but not matched to specification (cost, time and quality). Have regard to any rolling or renewed contracts that have cumulative value above the threshold;

6.2.2. Review all contracts related to Medupi and Kusile from inception. Review these in context to the original business case and adherence to tender and supply chain requirements. The focus to be on commercial matters and not technical. The team to coordinate their investigation with the Technical and financial teams.

6.2.3. Review employee and contractor contracts and payments made to employees and contractors and identify any that bear *prima facie* concern.

6.2.4. Undertake electronic assessment of all company email correspondence, identifying certain key words to be proved by the subcommittee, for the last 24 months, and where appropriate undertake interviews with internal and external parties to probe where indicated.

6.2.5. Review a random sample of internal correspondence between project leaders and plant/project management on Medipi, Kusile, Majuba and Duvha and identify whether plant management foresaw problems and communicated risk upwards. Review management reactions;

6.2.6. Similarly (plants as per above) review all correspondence between suppliers and company in which disputes are debated. Interview suppliers as necessary.

6.2.7. Review new posts created over past 36 months and provide a schedule of position and TCC.

6.2.8. Review all executive and Board reports pertaining to new builds and summarise material implications and decisions.

6.2.9. Review contracts and recruitments of employees with TCC >R1.5m per annum for last 24 months;

6.2.10. Review a sample of senior employee suspensions, disciplinary hearings and dismissals (and reinstatements) of employees last 36 months (filter those earning >R1 000 000 p.a.).

6.2.11. Review summaries of internal audit reports over the last 36 months and management responses and any action taken on material risks identified;

6.2.12. Review internal audit programs – schedule of audits and risk analysis and review Internal audit reports of the same and review actions taken;

6.2.13. Review draft external audit reports for the past 3 years (2012-2014) and identify risks noted and not in final reports and determine reasons for such

6.2.14. Interview sustainability executive for insight to risks not identified;

6.2.15. Review correspondence from insurers of major claims submitted (to be objectively assessed by the team) and premium adjustments for those and reasons for them for past 36 months.

6.2.16. To review the organismal model and consider the implication on the performance of the company and make recommendations as required.

6.2.17. To consider the implementation of any policy decisions and their impact on the performance of the Company. To coordinate with Financial and Technical enquiry teams to ensure appropriate consideration by each.

6.3. Financial

6.3.1. Review the approved financial statements of the Company as at 30th September 2014 and provide a summarised "red flag" report on material concerns. Review the current management report forecast for the year ending March 2015 and provide similar comments and in particular to any variations not anticipated in September 2014.

6.3.2. Review material funding facilities/contracts /bonds of any nature and provide an opinion of the terms relative to the market and the company's risk.

6.3.3. Review all steps taken by the Company to recover unpaid "government/municipal" debt (debtors) currently estimated at R4.7 billion. Provide commentary on the impact on the financial standing of the company on such unpaid debt.

6.3.4. Review all non- government trade debtors (customers) and provide a similar review and in particular to steps taken to secure payment;

6.3.5. Conduct (together with Commercial team) a review of all primary energy supplies over the past 36 months and determine the cost implications of any contracts "not for value";

6.3.6. Determine the lost revenue and/or penalty cost implications of all non-implemented 3rd party electricity supply opportunities.

6.3.7. Determine the net wasted cost (and reasons therefore) of payments made to primary energy suppliers for materials not received but paid for over the past 36 months.

6.3.8. Review all non-government major electricity-user sales contracts (together with their business cases) and determine the value of lost revenue over time and, together with commercial, provide an opinion on the proprietary/commercial wisdom of such contracts at the time.

6.3.9. Review all contracts and payment of pre-sold electricity "buy-backs" and access the cost/benefit of such decisions.

6.3.10. Together with Technical teams provide an estimated cost to the company of the cost (increased costs) and time (lost revenue) overruns at Medupi and Kusile;

6.3.11. To consider asset management policies and practices;

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

6.4. Coordination

6.4.1. The enquiry coordinator shall have responsibility for the delivery of the scoped work of each investigative team and of the final consolidated report;

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

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

7. REPORTING

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

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

7.3. At the end of the enquiry, present to the Audit and Risk Committee a report.

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

8. APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER

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

9. FEES

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

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____

Name of Signatory

_____

Designation of Signatory

For and on behalf of

[Service Provider]

_____

Signature

_____

Name of Signatory

_____

Designation of Signatory

DRAFT

TERMS OF REFERENCE FOR A FORENSIC FACT FINDING ENQUIRY

AT

ESKOM HOLDINGS (SOC) LIMITED

TERMS OF REFERENCE

1. **PREAMBLE**

1.1. For the past 2 (two) years, the Office of the Chairman and the Eskom Board of Directors (both the new and the old Boards) have been inundated with complaints and concerns raised by various sources internal and external to Eskom with regards to the unreliable power supply, escalating build project costs, escalating maintenance costs, high costs of primary energy and the inordinately high costs of the bond programmes that Eskom has participated in recently. To this end, the Board of Directors have resolved to institute an enquiry into all of these concerns. Having so resolved, the Board of Directors delegated the authority to institute this enquiry to the Audit and Risk Committee under the Chairmanship of Ms Chwayita Mabude. Included in the authority to institute this enquiry, is also the authority to:

- Appoint a service provider
- Manage the costs of executing the enquiry, and
- Ensuring that the service provider delivers on its mandate within the prescribed time lines.

2. **APPOINTMENT OF AN INDEPENDENT SERVICE PROVIDER**

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

3. **SCOPE OF THE INVESTIGATION**

The Service Provider will investigate and report on the following:

3.1. the integrity of the procurement processes and their compliance with legislation as well as Eskom's procurement policies;

3.2 management of price escalations in contracts as well as the cost of contract modifications with specific references to causes of delays in contract implementation, and the penalty costs arising therefrom;

3.3 the capacity within Eskom to manage implementation of the contracts;

3.4 security failures and accountability at Eskom as a key national point;

3.5. capacity for fleet maintenance and reasons therefor;

3.6. the effectiveness of Eskom Board oversight and its ability to exercise oversight over management;

3.7. primary energy, with focus on coal and diesel, such as but not limited to costs related thereto

3.8. Unreliable power supply, including unnecessary load shedding

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

3.10 Review of processes of raising bonds and reporting thereof

3.11 Recommendations on identified shortcomings and strong points

4. **PROCESS**

The Service Provider will follow the guidelines below in conducting the investigation:

4.1. Conduct interviews with employees in its investigation.

4.2. In addition to employees, mentioned in terms of clause 4.1 above, the Service Provider may further conduct interviews with any other party/ies or person/s who may have information regarding this enquiry.

4.3. Obtain and analyse, inter alia, minutes, letters, written reports, e-mails, and also determine the bona fides of the allegations and questions and evidence raised by an employee or any other person interviewed in accordance with 4.1 to 4.2 above.

4.4. At the end of the enquiry, present to the Audit and Risk Committee a report.

The aforementioned report will contain the following:

4.4.1. Documents relied upon during the investigation,

4.4.2. Details of evidence submitted by the Parties and/ or employees interviewed,

4.4.3. Analysis of the evidence and documentation referred to in 4.3 above as presented by the Parties and/ or employees, and

4.4.4. Conclusion/s and recommendation/s.

6. **DURATION OF THE ENQUIRY**

6.1. The enquiry will be concluded in a period of three (3) months commencing no later than two (2) days after the signing of these terms of reference by the Party signing last.

6.2. Notwithstanding the provisions of clause 4.4 above, the Service Provider will provide to the Audit and Risk Committee a progress report every two weeks. The first progress report will be due two weeks from the date of the signing of these terms of reference by the Party signing last.

7. **THE OUTCOME OF THE ENQUIRY**

7.1. The conclusion/s and recommendation/s in the report will be final l.

8, **FEES**

8.1 The Parties will negotiate and agree the fees that Eskom will pay to the Service Provider, which fees will take into account the imperatives of the Business Productivity Programme that Eskom is presently embarking on.

Signed at _____ on this the day _____2015

For and on behalf of Eskom

Signature

_____
Name of Signatory

_____
Designation of Signatory

For and on behalf of
[Service Provider]

_____
Signature

_____
Name of Signatory

_____
Designation of Signatory

MEDIA STATEMENT

Wednesday, 18 March 2015: On Wednesday, 11 March 2015, the Chairperson of the Eskom Board, Mr Zola Tsotsi, released a media statement and held a media conference announcing the Board's decision to mandate an inquiry into the current state of the company. Understandably there has been considerable interest in the inquiry, and much expectation has been created. There have also been numerous media reports variedly reporting the inquiry and these have led to some confusion. The purpose of this communication is to provide the public with further details on the inquiry and to lessen the space for further confusion.

Operational inefficiencies, financial challenges and poor decision-making processes are evident for all to see. What has failed must be fixed. What is wrong must be put right. Where misconduct and inefficiency exist, they will be rooted out. Organisational weaknesses will be corrected. If this is not done with determination and effectiveness, the status quo will continue. We will work towards restoring the service and the performance (financial and operational) of Eskom to where these are expected to be. Some of the major infrastructural and systemic issues may take time to fix, but the process of improvement will start immediately and will be sustained. We are committed to this improvement.

The purpose of the inquiry is to provide the Board and Shareholder with an assessment of the current state of Eskom and, in particular, to eradicate any misdirection and inefficiencies that might exist; to determine the reasons for the current lack of, and inconsistency/unreliability of, supply of electricity to customers; to determine the causes of engineering failures, delays, and cost overruns; to review the cost and quality of primary energy supply; to review the financial solvency, liquidity, and the cost of funding of Eskom; and to provide recommendations with regard to required actions. The inquiry must be free of all influence or interference and shall be so structured as to ensure that independence is seen to exist.

To achieve this purpose, we need to identify what is wrong and what it will require to fix it. We recognise that this must be credible if it is to be effective. The process and our actions must be transparent. The Board has, therefore, recognised the need for independent assessment of the state of the company's capability and performance. To ensure that this proceeds quickly and without hindrance or interference, we have taken a number of steps. The Board has delegated the authority to institute the inquiry to the Board Audit and Risk Committee which shall oversee the process. There will be three distinct areas of enquiry:

Issued by: Eskom Media Desk
Tel: +27 11 800 3304/3309/3343/3378
Cell: +27 82 805 7278
Fax: 086 664 7699
Email: mediadesk@eskom.co.za

- A commercial forensic inquiry led by a reputable and leading legal forensic entity. Their scope will, inter alia, be to review all commercial transactions.
- A financial inquiry led by a large accounting firm. They will consider a wide range of financial performance issues more fully detailed in their scope of work.
- A technical inquiry led by an engineering team, which will also be recognised for its capacity to do the job. This will review the operational performance of the company and also enquire into some of the major failures that we have experienced.

The Board has also decided to appoint a retired judge to ensure that the inquiry is free and, importantly, is seen to be free from influence and bias. This eminent person will not run the inquiry, but will have oversight of its governance and will have the authority to investigate any complaints of interference or bias and report these to the Board.

The Board has appointed an inquiry coordinator who shall be responsible for the implementation of the inquiry as mandated in the terms of reference. He will effectively project-manage the inquiry. We have already appointed a business consultant, Mr Nick Linnell, to fulfil this role.

Some speculation has arisen as to the overlap of the Board's inquiry and what might appear to be parallel initiatives. The Board's inquiry focuses on operational matters that have affected our performance and on identifying some key remedial actions. The terms of reference have been drafted and are currently being negotiated with the entities that will be appointed to lead the three streams of the inquiry. The scope is wide and it shall be as deep as the inquiry teams deem material and necessary to pursue. At risk is the danger of scope creep and an extended inquiry. We will manage this on the basis of risk and importance and should certain issues require further attention, the Board will authorise further inquiry. However, there will be a report within three months.

The Board will provide the public with details of the terms of reference and those persons engaged to undertake the inquiry. We shall do this before the end of business on Friday, 20 March. The inquiry will begin on Monday, 23 March.

Finally, we need to refer to the request by the Board to certain senior executives to step aside during this inquiry. This inquiry is about identifying what is wrong with this organisation. We need to create the space for the inquiry teams to have unfettered access to the company, its people, its systems, and its suppliers. In any organisation, its executive has situational influence - just through its presence. The executive team would not be leaders otherwise. We have asked them to acknowledge this, and we believe that they do. The speculation around their absence from the business is without cause. This inquiry is not about them, but about the organisation as a whole. It has a single purpose to

Issued by: Eskom Media Desk
Tel: +27 11 800 3304/3309/3343/3378
Cell: +27 82 805 7278
Fax: 086 664 7699
Email: mediadesk@eskom.co.za

restore this company's ability to meet its mandate. Any culpability, regardless of a person's position, will be dealt with appropriately.

The Board has attracted some criticism regarding this inquiry from various sectors. We believe that is more due to a failure to adequately engage our many and varied stakeholders. For this inquiry to have credibility, we need to convey to every stakeholder what we are doing. We will ensure regular and meaningful updates of progress. If we do this right, only good will flow from it. This initiative has the complete support of our shareholder, the Minister of Public Enterprises Ms Lynne Brown.

ENDS

Issued by: Eskom Media Desk
Tel: +27 11 800 3304/3309/3343/3378
Cell: +27 82 805 7278
Fax: 086 664 7699
Email: mediadesk@eskom.co.za

From:	Kulsum Crookes
To:	chwayitam@yahoo.com; romeo.kumalo@vodacom.co.za; ntbaloyi@hotmail.com; naidooviroshini@gmail.com; nazia.c@vodamail.co.za; nickl@theprojectoffice.com
Cc:	Malesela Phukubje; Nomusa Mazibuko
Subject:	Special ARC Meeting - today at 16:00
Date:	23 March 2015 11:04:29
Attachments:	DRAFT TORS INQUIRY 15 MARCH 2015.docx DRAFT TORS INQUIRY 14 MARCH 2015 2.docx

Dear ARC Members,

Please be advised that there will be a Special ARC Meeting this afternoon at 16:00 to finalise/ reconcile the two draft Terms of Reference.

Attached for your perusal:

1. **Draft Terms of Reference dated 14 & 15 March 2015.**

The venue for the meeting is Huvo Nkulu Boardroom. I will arrange a teleconference for those who cannot travel to Megawatt. Kindly confirm your availability.

Regards
Kulsum Crookes
Senior Manager - Secretariat
Link Block C3 S35, Megawatt Park
5 Maxwell Drive, Sunninghill
Office : 011 800 6706
Cell: 082 553 7621

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

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

From:	Kulsum Crookes
To:	Nick Linnell
Cc:	Malesela Phukubje; Nomusa Mazibuko; chwayitam@yahoo.com; romeo.kumalo@vodacom.co.za; ntbaloyi@hotmail.com; naidooviroshini@gmail.com; nazia.c@vodamail.co.za
Subject:	RE: Special ARC Meeting - today at 16:00
Date:	23 March 2015 13:06:18
Attachments:	image001.jpg

Good Day Mr Linnell,

Thank you for your response.

Most members are either not available or only available from 18:00. I am awaiting a response from the Chairman of ARC (Ms Mabude) iro whether the meeting will proceed.

She will also most likely contact you directly to discuss your involvement.

Regards
Kulsum

From: Nick Linnell [mailto:nickl@theprojectoffice.com]
Sent: 23 March 2015 12:50 PM
To: Kulsum Crookes; chwayitam@yahoo.com; romeo.kumalo@vodacom.co.za; ntbaloyi@hotmail.com; naidooviroshini@gmail.com; nazia.c@vodamail.co.za; nickl@theprojectoffice.com
Cc: Malesela Phukubje; Nomusa Mazibuko
Subject: RE: Special ARC Meeting - today at 16:00

Dear Kelsum
I am available but would also prefer 6pm– could you please let me have dialling-in details.
Kind regards
Nick

Nick Linnell

email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Platteklоof 3 | 7500
Directors: N H Linnell| M Green
Postal Add PO Box 15813 | Panorama | 7506

From: Kulsum Crookes [mailto:CrookeK@eskom.co.za]
Sent: 23 March 2015 11:04 AM
To: chwayitam@yahoo.com; romeo.kumalo@vodacom.co.za; ntbaloyi@hotmail.com; naidooviroshini@gmail.com; nazia.c@vodamail.co.za; nickl@theprojectoffice.com

Cc: Malesela Phukubje; Nomusa Mazibuko
Subject: Special ARC Meeting - today at 16:00

Dear ARC Members,

Please be advised that there will be a Special ARC Meeting this afternoon at 16:00 to finalise/ reconcile the two draft Terms of Reference.

Attached for your perusal:

1. **Draft Terms of Reference dated 14 & 15 March 2015.**

The venue for the meeting is Huvo Nkulu Boardroom. I will arrange a teleconference for those who cannot travel to Megawatt. Kindly confirm your availability.

Regards
Kulsum Crookes
Senior Manager - Secretariat
Link Block C3 S35, Megawatt Park
5 Maxwell Drive, Sunninghill
Office : 011 800 6706
Cell: 082 553 7621

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

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

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

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

Nick Linnell

From: Nick Linnell <nickl@theprojectoffice.com>
Sent: 02 April 2015 11:27
To: Chwayita Mabude (MabudeC@eskom.co.za)
Subject: Enquiry

Dear Chwayita
Would you let me know if the subcommittee has any further instructions for me
Kind regards
Nick

Nick Linnell

The PROJECT Office
Business Improvement Delivery

email: nickl@theprojectoffice.com
cell: 083 488 1000
tel: 021 447 0154
fax: 086 272 1456

www.theprojectoffice.com
The Project Office
Company Registered Office 22 Melkhout Crescent | Plattekloof 3 | 7500
Directors: N H Linnell| M Green
Postal Add PO Box 15813 | Panorama | 7506

COMMISSION OF INQUIRY INTO STATE CAPTURE

New Eskom board to be appointed - Nene

April 2 2015 at 07:45am
By Banele Ginindza and Sechaba ka'Nkosi Comment on this story
INDEPENDENT MEDIA The minister of finance, Nhlanhla Nene. Photo: Simphiwe Mbokazi

Public Enterprises Minister Lynne Brown is working on replacing the board of embattled power utility Eskom.

In an exclusive interview with Business Report on Wednesday, Finance Minister Nhlanhla Nene said that Brown had indicated to him that "she is working on appointing a full board for Eskom not just a replacement of the individuals but a full board of Eskom".

The replacement of the full Eskom board could potentially add to the power utility's instability, creating a leadership vacuum. Nene did not provide further details.

A brand new board could endanger Eskom's credit rating too. The suspension of four top Eskom officials was the final straw that led ratings agency Standard & Poor's to slash Eskom's long-term credit rating to BB+, below the key investment grade level, last month.

Eskom's board looks like it is following in the footsteps of SAA. In October, SAA chief executive Monwabisi Kalawe was suspended amid allegations of misconduct.

In June last year, Brown, who became public enterprises minister in May, warned that heads were going to roll at the national carrier.

By October, a number of SAA board members had resigned and Brown had put in a new board.

Brown said that her intervention was aimed at stabilising SAA.

Nene commented about Eskom on the sidelines of the SA Revenue Service revenue-collection announcement in Pretoria yesterday.

"We are ensuring Eskom is fully functional, we are ensuring energy in the country does not restrain our economy and we are working with all relevant structures to do that.

"It is for that reason that we have taken the initiative to ensure Eskom is going to collect all its money from municipalities… making sure that Eskom is going to move towards a cost-effective tariff, that's the package we have taken," he said.

The Treasury was working with Deputy President Cyril Ramaphosa's team on restoring the Eskom board and the power utility's financial sustainability, he said.

Nene side-stepped a question about whether the departure of Eskom board chairman Zola Tsotsi would have an impact on the utility.

"We as individuals get appointed today and we leave tomorrow, so when you leave an institution there must not be an impact on the establishments of the institutions. That is what we are doing with Eskom."

Nene added that there were time frames to each action Eskom was taking and that all time frames revolved around the five-point plan the government had put to each and everyone of the interventions.

Asset sale

On another note, Nene said the government had identified the assets that would be sold to raise the R23 billion for Eskom's short-term needs and this money would be disbursed from June.

However, he declined to give further details.

Meanwhile, Eskom is set to announce a new external consulting firm to drive its probe after the board decided to terminate Tsotsi's preferred company Nick Linell.

Eskom spokesman Khulu Phasiwe yesterday confirmed that a decision had been taken to terminate Nick Linell's appointment to provide services as proper procurement processes had not been followed.

Phasiwe said the board would make known the new company's name and its terms of reference once it had completed its discussions on the direction the inquiry should take.

"The new company has fulfilled all our internal processes so once the board meets with them, and explains the new mandate, then the name and the terms of reference will be made public," said Phasiwe.

https://www.youtube.com/watch?v=gaeNSUzfBH8&feature=youtu.be

Board media conference appointing linnell

http://www.eskom.co.za/news/Pages/ChairResign.aspx

Tsotsti resigns

From: Nick Linnell
To: ztsotsi@liquifire.biz
Subject: Portfolio chairman2 .docx
Date: 13 March 2015 11:56:00
Attachments: Portfolio chairman2 .docx

Dear Chair
You will have seen a comment in the news yesterday that the portfolio committee had not been informed of the decisions announced yesterday.
I think it would be appropriate for you to address a communication to the chair urgently to keep her as stakeholder in parliament supportive of the board's actions. Please amend as you feel would make it more personal.

Could you confirm – my last record is Ms Letsatso- Duba is the chairperson

Kind regards
Nick

COMMISSION OF INQUIRY INTO STATE CAPTURE

From: Nick Linnell
To: ztsotsi@liquifire.biz
Subject: Portfolio chairman2 .docx
Date: 13 March 2015 11:56:00
Attachments: Portfolio chairman2 .docx

Dear Chair
You will have seen a comment in the news yesterday that the portfolio committee had not been informed of the decisions announced yesterday.
I think it would be appropriate for you to address a communication to the chair urgently to keep her as stakeholder in parliament supportive of the board's actions. Please amend as you feel would make it more personal.

Could you confirm – my last record is Ms Letsatso- Duba is the chairperson

Kind regards
Nick

COMMISSION OF INQUIRY INTO STATE CAPTURE

The Honourable Chairperson
Portfolio Committee of Public Enterprises
Parliament of South Africa

Dear Ms Dipuo Bertha Letsatsi-Duba

Eskom - Developments

Firstly may I apologise to you for having not communicated with you earlier and not having appraised you of developments and decisions that the Board was considering earlier this week. I had meant to do so but regrettably the letter that I drafted was never sent before the decision was taken. This was remiss of me and I apologise for that error.

I would respectively like to inform you of recent developments and the surrounding influences to our recent decisions

1. Background

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

1.2. Risk assessment companies are advising commerce and industry that there is a risk of a total blackout (even if it is slight) and that in such an event the whole network could be down for up to 10 days. In that time all communication networks will fail, transport will fail, the banking sector will collapse, food processing etc. The country will come to a stand-still and our currency relegated to junk status. Even now the rating agencies have warned that Eskom is a financial risk to the country. These are grave risks.

1.3. Much of the blame has been laid at lack of maintenance of existing plants and distribution capacity and the delay in Medupi. It is also blamed on government “policy”. However there is no definitive explanation as to the causes and accountability. Are all outages due to these factors? It is incomprehensible that we are without fault, that everyone else is to blame but not Eskom. If there is no accountability for the failures then there is no rectification. The situation will inevitably deteriorate further.

1.4. Medupi and Kusile are years behind schedule and tens of billions over budget. Do we really know the reasons?

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

2. Current oversight

2.1. The Board is charged with oversight of the Company. The Board is required to report to Parliament on the performance of the Company.

2.2. Currently consultations between the shareholder department and the executive are more common than with the Board;

2.3. Decisions have been taken in consultation with the shareholder and the “war room” without consultation with the Board;

2.4. In this environment it is unlikely the Board will achieve the expectation required of it.

3. The need for factual assessment

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

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

3.3. Rumours are plentiful in times of crisis. One hears of “man-made” failure, deliberate and negligent acts involving maintenance, deliberate delays in new builds. Which of these are true? Are these rumours themselves “sabotage” of Eskom’s reputation or is there some element of truth in them. Do we know the answer?

4. Recent initiative

4.1. Last week the President spoke firstly with the Minister responsible and then me as Chairperson.

4.2. His message was clear that the current situation at Eskom was having a major impact on the country. Investment was at risk. Manufacturing production was affected and government growth policies were being denied. Any further currency downgrade would have a devastating long term effect on the nation.

4.3. He stated that he had consulted widely and was of the view that it was essential and urgent that the Board understands the causes and effects of this situation. He was concerned that unless this was conducted by external and independent sources it was lack objectivity and be meaningless. If management oversaw it - it would lack legitimacy.

4.4. I thereafter spoke to the Minister who advised me of her discussions with the President and expressly informed me that his initiative had her full support.

4.5. I then called an urgent Board meeting to consider this initiative and resolve how to proceed. When we met on the 9th March I informed the Board of the Minister’s support and sort their support. The Board declined to take the matter forward without direct Ministerial support.

4.6. After the meeting further discussions have taken place with the Minister and the Minister attended a special Board meeting on Wednesday 11th March. At this meeting she made clear to the Board that an independent enquiry was absolutely necessary and she agreed that in order for that to be independent she supported the view that the senior executives ought not to remain at the posts during the investigation. Should they be at work there would always be a perception if influence.

4.7. The Board duly resolved to mandate an independent enquiry and to suspend the executives concerned.

4.8. The implementation of that resolution is now being implemented. We expect to have results within three months.

5. The purpose of this communication

5.1. The Board has a responsibility to you in your capacity a Portfolio Chairperson.

5.2. I am bound to keep you appraised of the situation and of matters that might affect the stability of the company and the nation.

5.3. I totally support the initiative of the President and believe that we ought to urgently conduct an independent enquiry and to determine the causes and thereby identify solutions. Where there might have been deliberate acts of sabotage or wilful or negligent acts or omission then the sooner they are identified the sooner we can do what the country expects of us.

With greatest respect,

Zola Tsotsi

CHAIRPERSON

COMMISSION OF INQUIRY INTO STATE CAPTURE

U16-NHL-591

THE FULL STORY. ALL THE FACTS. YOU DECIDE.

City Press

TO SUBSCRIBE SMS 'SUBS' TO 33117

'I'm not getting 'credible information' out of Eskom – Brown

Dewald van Rensburg @City_Press

15 March 2015 15:00

Like 3 Tweet 8



NUUS BEELD Eskom CEO Tshediso Matona briefs media on the power system and a forecast for the festive season regarding loadshedding ... ... foto CORNEL VAN HEERDEN . storie Pauli Van Wyk

It was the so-called war room headed by Deputy President Cyril Ramaphosa that leaned on the Eskom board to do something drastic this week.

But according to Public Enterprises Minister Lynne Brown, the decision to suspend half the Eskom executive came from the board itself.

The shock suspension this week of CEO Tshediso Matona; finance director Tsholofelo Molefe; the man in charge of building Medupi and Kusile, Dan Marokane; and technology head Matshela Koko was decided on after a marathon Eskom board meeting that ended at 9pm

TALKING POINT



--O:% (&%:&

%kikvcoo kiucvkqp vhvvq iq/dxveqvv eqxcf dh c vpci

Although government appears to have finally made a decision on the digital television migration process, it is still not clear where the funding will come from.Sentech's chief operating officer, Kganki Matabane, told the portfolio committees on communications and telecommunications and postal services this week it only had funding for one year of dual illumination.

PquhWconkpiSqkpvv

WE LIKE

4 Sizwe Nxasana: CEOs shouldn't be in position

U16-NHL-592

on Wednesday.

According to Brown, the Eskom CEO is supposed to connect to the war room.

Matona evidently did not do this, leaving the high-level task team more or less ignorant about the thing it was supposed to be solving.

Brown told City Press on Thursday she was simply not getting "credible information" out of Eskom.

It was, however, a "cumulation of things" that led to the intervention.

The regular Eskom board meeting on February 27 had been postponed by Brown, who was out of the country.

The board was instead instructed to deal with "matters affecting Eskom emerging fromthewarroom before the board considered its strategic plan and shareholder compact for the 2015/16 fiscal year", read an official Eskom response.

Brown then attended Wednesday's meeting, where she "raised her frustrations" and left by 11.30am.

At 9pm on Wednesday, she got a call informing her of the plan to launch an inquiry and suspend the four executives, she told City Press.

According to her, this was the board's solution, not her or the war room's.

"I was told the removal of the four is not punitive. I'm satisfied with that. They must just step aside," Brown told City Press.

She is, however, not happy with the innocuous way Eskom chairperson Zola Tsotsi tried to describe the coming probe to journalists.

He strained to frame the audit as purely a "fact-finding mission".

"There is no investigation. There is no culpability involved here. It is an honest inquiry to establish facts," he told journalists at a hastily convened press conference on Thursday morning.

Brown said: "I would really like an in-depth investigation. I say, do a deep investigation."

Brown blames Eskom for the fact that she has ended up making public pronouncements that turn out to be just plain wrong – from Medupi's switch-on date to the idea that Eskom will almost immediately "run out of money".

"I need a real answer, not just 'we didn't plan for it'," she said about the massive delays and cost overruns at Medupi and

for more than 10 years

5 **Tech: Mark Shuttleworth's Ubuntu phones**

6 **Pressing Issues: Angels fear to tread near the coaching dugout**

7 **Sex on the side: What the man says**

8 **Music awards come of age**

VOTE

Eskom chief executive Tshediso Matona has been suspended as well as three other executives and a full inquiry is to be launched.

- **A drastic change is what is needed in the ailing parastatal**
- **Hope the inquiry will bring a solution to load shedding**
- **Why suspend these executives if apartheid is to blame?**
- **The inquiry will be a waste of money**

Yqvh Ykhz

Uhvxovv

Polls Archive

U16-NHL-593

The grey areas Brown and, by extension, the war room, want more information about cover virtually every aspect of Eskom's operations.

From coal supply to its true financial situation, maintenance progress and the building of Medupi – government is concerned it really doesn't know anything at all.

At face value, it means the financial and technical situations at Eskom might be worse than is publicly known. The suspension of Marokane, in particular, suggests concerns around the state of Medupi, which is supposed to imminently deliver an added 600 megawatts to the grid.

This latest three-month investigation will hopefully fare better than the two Brown has already ordered.

In April last year, Brown gave Eskom three months to conduct an investigation into the explosion of a boiler at Duvha Power Station near Witbank. She still doesn't have the report.

In October, she set a three-month deadline for the investigation into the collapse of a coal silo at Majuba Power Station.

That deadline has also come and gone.The inability of Eskom to properly account for these disasters was part of the reason for this week's suspensions, Brown told City Press.

While the team to investigate Eskom fromthe bottom up has not yet been appointed, Tsotsi said on Thursday the process would be led by turnaround specialist Nick Linnell.

His company, The Project Office, is billed as an all-purpose business consultancy with services that include investigations. The Project Office's website says the company has worked for Shoprite, HSBC, Naspers and the National Union of Metalworkers of SA's investment arm.

War room

Eskom is clearly failing to meet the most immediate demand to come out of the war room: to reduce the spiralling unplanned outages at power plants.Parliament's portfolio committee on energy received a presentation outlining the war room's priorities on Wednesday.

The immediate focus is on maintenance because, "on average", 8 000MW of Eskom's power generation is offline due to unplanned breakdowns.

The target is to push the unplanned outages to less than 7 000MW.

"The key objective of the war room is to facilitate the creation

U16-NHL-594

of space to effect the maintenance to improve plant performance," reads the presentation.As if on cue, the level of unplanned outages on Thursday spiked up to 8 217MW, leaving the country short on power again.

According to the presentation, the only thing more important than fixing the stations is sorting out the diesel supply for Eskom's emergency plants in the Western Cape.After that, it is mostly about getting Medupi up and running within the latest deadline, which is the end of June.

Staff turnover

The churn of top executives at Eskom was already impressive before this week's suspensions.

Of the 10-strong executive team Eskom had in 2013, only three people remain.This follows the resignations of Steve Lennon and Erica Johnson last year, shortly after Eskom lost Brian Dames as CEO, Paul O'Flaherty as financial head and human resources boss Bhabhalazi Bulunga, who went on "early retirement".

Most of the board has also recently been replaced.

CEO

Eskom CEO Tshediso Matona only joined Eskom in October last year. If this suspension sticks, he would have lasted less than five months in what is possibly the country's most stressful job.

Contrary to tradition, Matona had no Eskom experience and had been director-general of the department of public enterprises before the move.

His replacement for at least the next three months, Zethembe Khoza, has even less Eskom experience.

Khoza was parachuted into Eskom as a nonexecutive director in December as part of Brown's overall reshuffling of the major state-owned enterprise boards.

Khoza has spent 27 years at Telkom, most recently as head of customer services.

The other three new acting executives are all old Eskom hands with at least 14 years at the company.Public enterprises minister says a 'culmination of things' led to the suspension of Eskom's CEO and others fromthe ailing parastatal

U&-DW&% -IPNV

» **Committee 'concerned' by suspensions at Eskom**

» **Execs suspended as Eskom**

U16-NHL-595

launches inquiry into its 'challenges'

» Restructure Eskom, DA urges

» Eskom plans to get its R4.7bn from councils

» '2 to 3 years for Eskom to get back on track'

CONTRIBUTE TO THIS STORY: Send us a tip Suggest a correction

Like 3 Tweet 8

COMMENTS

U16-NHL-596

4 Comments City Press Login

Recommend Share Sort by Best

Join the discussion…

gumpy51 • 3 hours ago
I guess these past months of ANC/Eskom mismanagement will just have to be
written off to apartheid again.
• Reply • Share ›

Mark Turing • 4 hours ago
I had a suspicion that there was more rot at Eskom than what we were being told. At least Minister Lynne Brown is finally calling the shots and it sounds more like the truth than what we have previously been fed. One has to wonder how a business like Eskom was buying critical supplies from beauty therapists and dentists given that we need power to feed 50 million people. Complete Insanity!! Procurement contracts are in a mess, maintenance is in a mess, new build is in a mess, finance is in a mess and the board is suspending itself - Something urgent needs to be done before the whole thing just implodes! If the newspapers can find out about the bit they have, I hate to think what a detailed audit is going to reveal.
• Reply • Share ›

Rambo • 5 hours ago
Perhaps Minister Brown & Chairman Zola should be load shedded too. It will take a lot of weight off Eskom.
• Reply • Share ›

the-TRUTH • 6 hours ago
The Big Question: How is Ms Lynne Brown supposed to secure credible information from Eskom when her ANC and ZANC are pro cadre deployment? This nepotism and cadre deployment is one of the causes why SA government and its agencies are failing to deliver what we taxpayers cough out taxes expecting quality service delivery..
• Reply • Share ›

ALSO ON CITY PRESS WHAT'S THIS?

We owe the state at least R180bn

Infighting could dilute eThekwini ANC's influence

U16-NHL-597



15 March 2015 18:00

P q ejcoohpih hqu\koh/dxv uceh kv qp hqu qvjhuvqs %D lqdv



15 March 2015 15:00

Ip€ijvkpi eqxcf fkoxvh hWjhnz kpk DP FŸvkpòxhpeh



15 March 2015 15:00

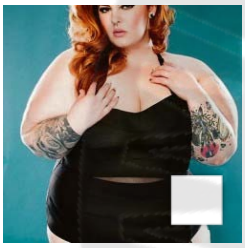
Suhvvkpi Lvvxhv= Dpihovhhcuvq vuhcf phcuvjh eqcejkpi fxiqxv



15 March 2015 15:00

P xvke cz cufv eqo h qhcih

HOW TO



6 March 2015 7:00

Kqz vq jcxh {qxudhvvvhz



9 February 2015 8:00

Kqz vq o czko kvh{qxu uhvkuho hpv vcxkpiv



1 February 2015 15:00

Kqz vq cff sxpej vq që eh o hhvkpiv



25 January 2015 15:00

Kqz Wq 111 o cpcih{qxu kpdqz cvz qun

POWSOSX-DU

» Woman arrested over stabbing of Skwatta Kamp's Flabba

» 'I loved him. I didn't mean to kill him' –

U16-NHL-598

Sindisiwe Manqele

- » Andile Mngxitama hits out at EFF suspensions
- » Zuma's guards ditch R12m Nkandla digs
- » Minister Collins Chabane killed in car crash

POWERPOINT

- » Nigeria can teach SA to chill out, says diplomat
- » Is this SA's dodgiest chief executive?
- » Zuma: I never dodged Nkandla questions
- » Paying back the money never crossed my mind, says Zuma
- » In defence of Jacob Zuma

EXCLUSIVE VIDEO

MORE Opvjho cunhvB

SUGGESTED: Ikpf{qxu fuhco jqoh

WATCH - qqn/dqqn/iq$

O-[F-DVVLVW&%V Iuhh eccvvk€hfv

NEWSPAPERS Pxvle/ dqqnvcpfoquh

%DWLP(

TO SUBSCRIBE SMS 'SUBS' TO 331

U16-NHL-599

THE FULL STORY. ALL THE FACTS. YOU DEC

CAREERS AT CITY PRESS

ADVERTORIALS

PARTNERS

CONTACT US

TERMS & CONDITIONS

CALL US

How to get hold of City Press

RSS FEEDS

News delivered really simply

ADVERTISE

Your brand in City Press

SUBSCRIBE

Subscribe to City Press

© 2015 City Press. All Rights Reserved.

U16-NHL-600

Print this page

Power crisis too big for Medupi, says Eskom

Sep 1, 2014 | Carol Paton

Load shedding unavoidable as utility lags with maintenance

ELECTRICITY supply will be highly constrained for at least the next five years, due to drastic deterioration in the state of Eskom's power stations brought about by lack of maintenance.

While attention has been on a date for the first unit of Medupi to start operating — now set for June next year — as being key to alleviating the pressure, the reality is its 800MW will make little difference to supply constraints, a presentation prepared by Eskom management shows.

The presentation says that since March 2010, when SA adopted a policy of "keep the lights on" Eskom's energy availability factor (EAF) — the percentage of the fleet available after breakdowns and planned maintenance — has dropped from 85% to 75%.

This is equal to a loss of 4,200MW in five years — almost as large as the 4,800MW that will eventually be generated by the entire Medupi station.

Best international practice is to achieve 90% plant availability, with 10% down at any given moment, through planned and unplanned outages. This ratio has dropped in SA over the years, reaching 85% in 2010 and plummeting to 75% this year.

While Public Enterprises Minister Lynne Brown has tried to reassure the public with promises that Medupi's first unit — unit 6 — will generate power by next June, a far more important priority is restoring Eskom's existing fleet to health. Energy analyst Chris Yelland said Eskom's "real problem" was that the energy availability factor had dropped dramatically.

"Even though Eskom has brought in more capacity, by returning mothballed stations to service, the total availability of their plant is less than when they started doing that," he said.

Eskom was now paying the price of its "keeping the lights on at all costs" policy, he said.

Acting CE of Business Unity SA Cas Coovadia said business was extremely concerned about the short-to medium-term power crisis and was compiling a strategy document on how to proceed. "We have held two workshops, including with Eskom, and are putting together a document, after which we hope to meet the ministers involved. We want to release the capacity of the different parts of industry to deal with the power situation," he said on Sunday.

Eskom said on Friday it had a plan to restore plant availability over five years, reaching 85% by 2018, but falling short of the 90% benchmark. Electricity supply would remain severely constrained until then, it said. "As most … power stations are older than 30 years, and are being run very hard, they will be prone to unplanned outages. It is thus likely that while generating capacity includes a significant number of older power stations, the system EAF is unlikely to improve above 85%," Eskom said.

Achieving these targets will not be easy. The company is in a vicious cycle, the presentation points out, as due to plant breakdowns it lacks space to do maintenance. To complete the maintenance it should undertake in 2015 would require that 7,400MW be added to the grid.

Mr Yelland said apart from problems with its plant, Eskom also has a skills problem and often fails to bring plants back up on time after maintenance, further lowering plant availability.

Among strategies in the plan to reach sustainability are redeploying technical staff from head office to power stations and giving managers of power stations a greater say in determining the time for maintenance.

"Managers … have been told to do the right thing rather than to keep the lights on. The strategy seems to have

changed and Eskom appears to be saying that if that leads to load shedding, so be it," said Mr Yelland.

As well as sharing its position with politicians and the government, Eskom said two weeks ago it had revised its load-shedding schedules to prepare for a planned reduction in load.

The company said on Friday Medupi unit 6 would come on stream next June, followed by unit 5 in August and Kusile unit 1 in December. But there is widespread speculation that Medupi unit 5 will not meet its deadline, as resources had been diverted to meet the deadline for unit 6. The deadline for unit 6 has shifted several times from the initial plan to produce power by late 2012.

~ o O o ~

Creamer article – does Eskom have a maintenance plan

When the Eskom board suspended four executives in March, Public Enterprises Minister Lynne Brown based her support for the move largely on what she perceived as a lack of "credible information" flowing from the managers on a range of issues, including plant instability and maintenance. In the public imagination, this left the strong impression that the State-owned utility did not have an appropriate plan to arrest what had been a precipitous decline, since 2010, in the performance of its coal-fired power stations. A range of justifiable questions immediately arose: Is there indeed a maintenance plan? If it does exist, does Eskom have the skills and resources to implement the programme? By when, if ever, is the situation likely to improve? Why doesn't Eskom do higher levels of maintenance and raise certainty by conducting daily load-shedding on a pre-defined schedule? For how long will South Africans be expected to endure confidence-sapping and growth-threatening power cuts? Is there now a real danger of a total blackout? At this stage, none of these questions can be answered with a high degree of certainty. But Eskom has started to offer some insight into the extent of the maintenance backlog, while also sharing some of the remedies it is pursuing. THE DIAGNOSIS Following an analysis of its generation assets, the utility has broken the performance of its 121 producing units into four colour-coded categories: good (green), not so good (yellow), bad (orange) and very bad (red). In Eskom's own assessment (it will be interesting to see if the Dentons-led inquiry finds differently), only 49 units are in the green, with the 72 others falling into the other far more worrying categories. Fourteen are considered to be in the yellow, while 26 are in a 'bad' condition and 32 in a 'very bad' state. The net result is that the energy availability factor (EAF) across the fleet has fallen from 90% in 2001 – the year Eskom was voted the world's best utility – to closer to 70%, with unplanned breakdowns having surged to around 15% this last summer. In other words, while Eskom has a theoretical dispatchable capacity of 43 500 MW (this figure excludes all renewable-energy projects, which cannot be dispatched, as output is based on natural phenomena such as the sun and wind), a combination of plant breakdowns, planned maintenance and partial load losses means it has been struggling to meet a daily demand peak of less than 30 000 MW. As a consequence there were 12 consecutive days of load-shedding in April and, in May, the number of consecutive days of load-shedding materially breached 20. But why has it deteriorated to this point? The internal analysis shows a strong, yet lagged correlation, between the current high level of plant breakdowns and delayed implementation of planned outages, spanning all the way back to 2006. In fact, it shows that the maintenance underspending actually started in 1997, but that from 2006 to 2014 the sum of the outage days delayed increased materially as the system became increasingly constrained. WHAT IS BEING DONE? The focus of the maintenance plan is to arrest the unplanned losses in 2015/16, move to consolidate and stabilise EAF in 2016/17 and accelerate those gains by materially changing the balance between proactive and reactive maintenance from 2017/18 onwards. The three-year "turnaround programme" has been facilitated primarily by a change in policy away from "keeping the lights on" to operating and maintaining the generation assets to agreed "availabilities, capacities, reliabilities and efficiencies". It involves 14 project interventions, ranging from deploying maintenance engineers from head office to the actual power stations to improving outage planning and management. However, the plan does not involve a major increase in the volume of planned maintenance, which has been increased

from 7% to 10% instead of the 15% level initially envisaged. This is because Eskom's analysis indicates that it does not have the people, the parts and spares, the finances or the reserve margin to make such a step change. Instead, the aspiration is to focus on the quality of the maintenance programme through improving planning processes and project execution. The theory is that, once Eskom has reduced the capacity lost, it will have more space available for proactive maintenance, which will trigger a virtuous circle and shift in the balance in favour of proactive and preventative activities. THE PROGNOSIS The immediate outlook, however, is not good. Eskom's own statistical model shows that, for 2015, there is a probability of load shedding for 25% of the days in a year, or for over 90 out of 365 days. The risk is lower in winter when planned maintenance tapers and the prospect of partial losses associated with high temperatures and wet coal falls. Nevertheless, the threat of load-shedding in winter remains, as it does on any day when the gap between available capacity and demand shrinks to below 5 500 MW, including a 2 000 MW operating reserve. When the gap falls below that level, Eskom has a protocol of deploying various resources to close it, with rotational load-shedding used as a last resort to sustain grid-system frequency at 50 Hz. It begins with the expensive diesel-fuelled open-cycle gas turbines and its peaking hydropower schemes, before pulling short-term supply and the demand-response levers it has contracted with the private sector. Over the medium-term the gap should be bolstered through the injection of some new Eskom capacity, but primarily through non-Eskom supply and demand-side management. With the introduction of Medupi Unit 6 from July, followed by the Department of Energy peaker projects later in the year and the first unit of the Ingula pumped-storage scheme in early 2016, the dispatchable installed base should rise to over 45 000 MW. However, the system's vulnerability to load-shedding is only expected to ease in the latter parts of next year and only if these capacity additions are supplemented with aggressive demand-response schemes. Until then, the probability of load-shedding remains high, but difficult to predict, owing to Eskom's approach of only resorting to load-shedding as a last resort, rather than as a standard operating procedure. WHAT ABOUT A BLACKOUT? Eskom is more confident, however, in its ability to prevent a catastrophic blackout, stressing that load-shedding is used deliberately to ensure that such a scenario does not materialise. As is now well understood by all South Africans, Eskom has broken its load-shedding model into four stages, with stage one involving 1 000 MW of cuts and stage four 4 000 MW. During stage four, only 81% of demand is being met by the utility. But what would happen if even more than 4 000 MW of load-shedding is required? Eskom has a protocol known as "unscheduled load-shedding", which would be deployed to sustain system frequency at 50 Hz and prevent an uncontrolled tripping of the network. However, under even more extreme conditions power stations could also be "islanded" from the network to ensure that some capacity is sustained in order to restart the entire system over days. As a final safety net, the utility also ensures that diesel and dam reserves are never fully depleted so that these could be used as a "battery" in the event that the system has to be restarted. The utility is adamant that it has a plan in place to deal with a maintenance backlog that is resulting in the poor performance of the coal fleet. But it is going to take time to yield results and it is also becoming increasingly clear that system stability is going to hinge increasingly on new non-Eskom generation and vastly upscaled demand-side management and response programmes.

It is our preference that if you wish to share this article with others you should please use the following link:

http://www.miningweekly.com/article/does-eskom-have-a-maintenance-plan-2015-05-26

COMMISSION OF INQUIRY
INTO STATE CAPTURE

Creamer article – does Eskom have a maintenance plan

When the Eskom board suspended four executives in March, Public Enterprises Minister Lynne Brown based her support for the move largely on what she perceived as a lack of "credible information" flowing from the managers on a range of issues, including plant instability and maintenance. In the public imagination, this left the strong impression that the State-owned utility did not have an appropriate plan to arrest what had been a precipitous decline, since 2010, in the performance of its coal-fired power stations. A range of justifiable questions immediately arose: Is there indeed a maintenance plan? If it does exist, does Eskom have the skills and resources to implement the programme? By when, if ever, is the situation likely to improve? Why doesn't Eskom do higher levels of maintenance and raise certainty by conducting daily load-shedding on a pre-defined schedule? For how long will South Africans be expected to endure confidence-sapping and growth-threatening power cuts? Is there now a real danger of a total blackout? At this stage, none of these questions can be answered with a high degree of certainty. But Eskom has started to offer some insight into the extent of the maintenance backlog, while also sharing some of the remedies it is pursuing. THE DIAGNOSIS Following an analysis of its generation assets, the utility has broken the performance of its 121 producing units into four colour-coded categories: good (green), not so good (yellow), bad (orange) and very bad (red). In Eskom's own assessment (it will be interesting to see if the Dentons-led inquiry finds differently), only 49 units are in the green, with the 72 others falling into the other far more worrying categories. Fourteen are considered to be in the yellow, while 26 are in a 'bad' condition and 32 in a 'very bad' state. The net result is that the energy availability factor (EAF) across the fleet has fallen from 90% in 2001 – the year Eskom was voted the world's best utility – to closer to 70%, with unplanned breakdowns having surged to around 15% this last summer. In other words, while Eskom has a theoretical dispatchable capacity of 43 500 MW (this figure excludes all renewable-energy projects, which cannot be dispatched, as output is based on natural phenomena such as the sun and wind), a combination of plant breakdowns, planned maintenance and partial load losses means it has been struggling to meet a daily demand peak of less than 30 000 MW. As a consequence there were 12 consecutive days of load-shedding in April and, in May, the number of consecutive days of load-shedding materially breached 20. But why has it deteriorated to this point? The internal analysis shows a strong, yet lagged correlation, between the current high level of plant breakdowns and delayed implementation of planned outages, spanning all the way back to 2006. In fact, it shows that the maintenance underspending actually started in 1997, but that from 2006 to 2014 the sum of the outage days delayed increased materially as the system became increasingly constrained. WHAT IS BEING DONE? The focus of the maintenance plan is to arrest the unplanned losses in 2015/16, move to consolidate and stabilise EAF in 2016/17 and accelerate those gains by materially changing the balance between proactive and reactive maintenance from 2017/18 onwards. The three-year "turnaround programme" has been facilitated primarily by a change in policy away from "keeping the lights on" to operating and maintaining the generation assets to agreed "availabilities, capacities, reliabilities and efficiencies". It involves 14 project interventions, ranging from deploying maintenance engineers from head office to the actual power stations to improving outage planning and management. However, the plan does not involve a major increase in the volume of planned maintenance, which has been increased

from 7% to 10% instead of the 15% level initially envisaged. This is because Eskom's analysis indicates that it does not have the people, the parts and spares, the finances or the reserve margin to make such a step change. Instead, the aspiration is to focus on the quality of the maintenance programme through improving planning processes and project execution. The theory is that, once Eskom has reduced the capacity lost, it will have more space available for proactive maintenance, which will trigger a virtuous circle and shift in the balance in favour of proactive and preventative activities. THE PROGNOSIS The immediate outlook, however, is not good. Eskom's own statistical model shows that, for 2015, there is a probability of load shedding for 25% of the days in a year, or for over 90 out of 365 days. The risk is lower in winter when planned maintenance tapers and the prospect of partial losses associated with high temperatures and wet coal falls. Nevertheless, the threat of load-shedding in winter remains, as it does on any day when the gap between available capacity and demand shrinks to below 5 500 MW, including a 2 000 MW operating reserve. When the gap falls below that level, Eskom has a protocol of deploying various resources to close it, with rotational load-shedding used as a last resort to sustain grid-system frequency at 50 Hz. It begins with the expensive diesel-fuelled open-cycle gas turbines and its peaking hydropower schemes, before pulling short-term supply and the demand-response levers it has contracted with the private sector. Over the medium-term the gap should be bolstered through the injection of some new Eskom capacity, but primarily through non-Eskom supply and demand-side management. With the introduction of Medupi Unit 6 from July, followed by the Department of Energy peaker projects later in the year and the first unit of the Ingula pumped-storage scheme in early 2016, the dispatchable installed base should rise to over 45 000 MW. However, the system's vulnerability to load-shedding is only expected to ease in the latter parts of next year and only if these capacity additions are supplemented with aggressive demand-response schemes. Until then, the probability of load-shedding remains high, but difficult to predict, owing to Eskom's approach of only resorting to load-shedding as a last resort, rather than as a standard operating procedure. WHAT ABOUT A BLACKOUT? Eskom is more confident, however, in its ability to prevent a catastrophic blackout, stressing that load-shedding is used deliberately to ensure that such a scenario does not materialise. As is now well understood by all South Africans, Eskom has broken its load-shedding model into four stages, with stage one involving 1 000 MW of cuts and stage four 4 000 MW. During stage four, only 81% of demand is being met by the utility. But what would happen if even more than 4 000 MW of load-shedding is required? Eskom has a protocol known as "unscheduled load-shedding", which would be deployed to sustain system frequency at 50 Hz and prevent an uncontrolled tripping of the network. However, under even more extreme conditions power stations could also be "islanded" from the network to ensure that some capacity is sustained in order to restart the entire system over days. As a final safety net, the utility also ensures that diesel and dam reserves are never fully depleted so that these could be used as a "battery" in the event that the system has to be restarted. The utility is adamant that it has a plan in place to deal with a maintenance backlog that is resulting in the poor performance of the coal fleet. But it is going to take time to yield results and it is also becoming increasingly clear that system stability is going to hinge increasingly on new non-Eskom generation and vastly upscaled demand-side management and response programmes.

It is our preference that if you wish to share this article with others you should please use the following link:

http://www.miningweekly.com/article/does-eskom-have-a-maintenance-plan-2015-05-26

COMMISSION OF INQUIRY
INTO STATE CAPTURE

U16-NHL-608

Print this page (#)

'Black' coal backfires on Eskom

Feb 8, 2015 | Loni Prinsloo

Coal mining companies are not black enough to supply Eskom, which has allegedly sparked an epidemic of fronting as these miners are now using black traders as go-betweens to sell coal to the utility.



Dozens of trucks waiting to deliver coal at Majuba power station. 10 December2014.
Photograph by: Simphiwe Nkwali

"

"

These sensational claims emerged on the sidelines of the McCloskey coal conference in Cape Town, which focused largely on how traders are subverting the spirit of empowerment to get coal to the country's largest buyer, Eskom.

"We can all see it happening in the industry, but there is nothing to be done really," said one senior source inside Eskom.

"Black coal traders are colluding with some mining companies to secure coal supply contracts for mining companies with Eskom. Some of the black traders are not even involved in the business and only get a salary to ensure the mines get a supply contract from Eskom, but we have no formal evidence yet."

To mine coal in South Africa, mining companies need to be 26% black-empowered in line with the mining charter. But to supply Eskom, the biggest user of coal, companies need to be 50% black owned.

To get around this, some coal mining companies have brought in "middlemen" or black trading companies, which then buy the coal from the companies and on-sell to Eskom at a premium. So taxpayers are effectively subsidising these extra payments for coal while helping coal firms subvert the empowerment rules.

This is an unintended consequence of Eskom's strategy of bringing in black traders to advance transformation in the industry.

Asked about claims of fronting this week, Eskom replied that it did "financial reviews" and checked for valid BEE certificates as part of its due-diligence procedures.

U16-NHL-609

Eskom presentations leaked to *Business Times* confirm the utility's strategy of increasing black participation in the coal mining industry.

The documents show that the plan was to use its purchasing leverage to demand that coal suppliers be 50% black-empowered, which would bring new black traders into the industry.

To make sure this happened, Eskom appointed a work team to change its internal policy and procurement procedures.

The cash-strapped utility also approved making financial contributions to a mining development fund.

The leaked presentation shows that this fund would "sacrifice some enterprise value in favour of new entrant black emerging miners by only taking minority equity positions".

The government recently agreed to give Eskom a R20-billion bailout to help finance its R225-billion shortfall.

But at the same time, the difference between mining licence requirements and supply conditions has made it difficult for the utility to secure future coal supply agreements.

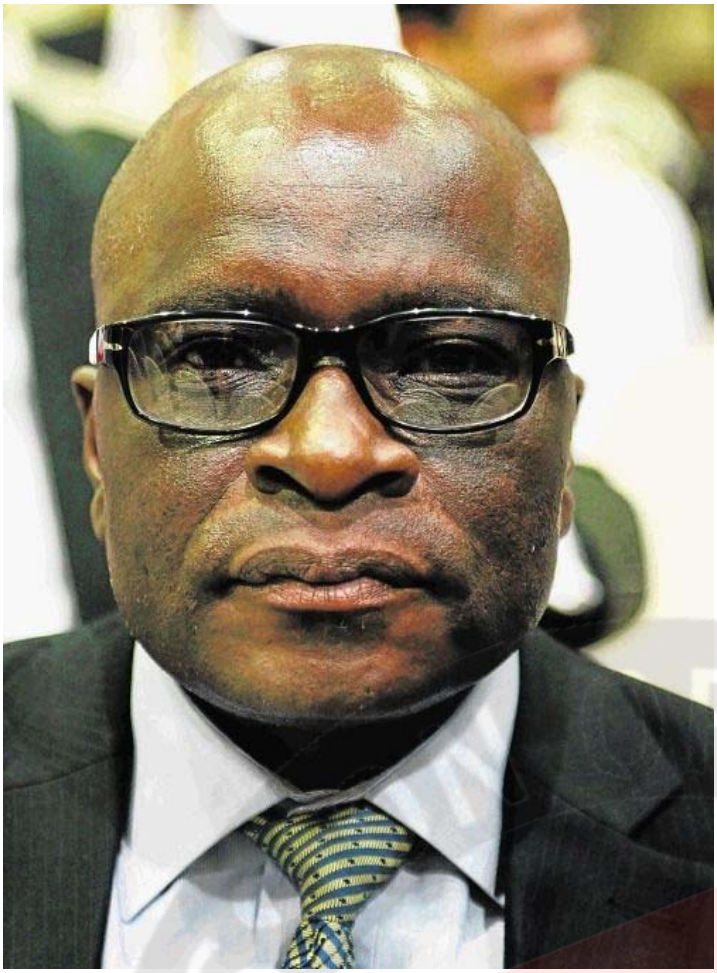
In the next 10 years Eskom will need about 4billion tons of coal, of which more than half - at least 2.17billion tons - has not been secured.

The empowerment rules have made life difficult for a number of companies, including Anglo American's Nyosi Coal, which has been battling to secure a contract with Eskom to provide coal to the new Kusile power station from its New Largos project. The main hurdle between Anglo and Eskom is empowerment.

Anglo Nyosi is 73% owned by Anglo and 27% by the Nyosi BEE consortium headed by Pamodzi Holdings and Lithemba Investments. Eskom is trying to force Anglo to up its black shareholding in Anglo Nyosi and the contract negotiations have now run over schedule.

Kusile is to start generating power from its first unit this year, but Anglo has not yet started construction of the New Largo Colliery.

U16-NHL-610



This week, Mineral Resources Minister Ngoako Ramatlhodi (above) said a memorandum of understanding was signed in December between Anglo and Eskom. Ramatlhodi admitted that there had been similar empowerment problems with companies trying to mine in the Waterberg area.

"There is no way that a company like the Waterberg Coal Company will get a supply contract with Eskom without having that 50% plus one share black ownership, which has proven to be a challenge for the Australians trying to mine in the Waterberg," said an industry source.

Waterberg Coal Company is 26% black-empowered through Sekoko Coal - in line with the mining charter, but short of Eskom's targets.

Referring to the contradiction in black ownership, Ramatlhodi said that government talking with "two voices" needed to be corrected.

He said the ministers of public enterprises, energy, environmental and water affairs and mineral resources were in discussions to try to align policies.

The issue could also be addressed through amendments to the Mineral and Petroleum Resources and Development Act to declare coal a strategic resource and place restrictions on exports of coal. The controversial act was recently sent back to parliament.

Ramatlhodi said there were no plans to increase the BEE requirement from 26% to 51% - the original goal under the Mining Charter.

~ o O o ~

U16-NHL-611

Print this page

Eskom opts for 'crazy' coal deal

Mar 8, 2015 | Loni Prinsloo and Isaac Mahlangu

Where will Eskom get the money to snap up 5 million tons of export-quality coal from Glencore's Optimum Coal?

IN yet another unusual and pricey move by Eskom to secure coal supplies, the utility is trying to snap up 5 million tons of export-quality coal from Glencore's Optimum Coal.

Details of the potential deal come amid a multibillion-rand government bailout for the struggling utility.

"I think it is the most crazy thing ... in the past century," said an industry expert who could not be named due to sensitive contracts with the parties.

"That coal is not suitable for Eskom use; it could be used if blended down," he said.

South Africa's power stations cannot burn such high grades of coal, which means it would have to be blended down, a costly process. The 5 million tons of the expensive, export-quality coal from Glencore will cost the utility $318.5-million (R3.76-billion) a year.

The power utility was reluctant to answer questions about the deal on Friday, saying that talks were "confidential" and the deal "is still being negotiated and remains subject to approval by the Eskom and Optimum boards".

Where will Eskom get the money, especially at a time when the government announced that it would bail out the power utility with R10-billion by June, another R10-billion in December and yet another R3-billion next year?

It appears the utility is becoming desperate to secure coal at any price.

Energy expert Chris Yelland confirmed this, saying it was "a bit of a surprise" that Eskom would enter into such a deal, and that Eskom could be struggling to get enough coal from its current contracts with coal mines in the area.

Eskom is trying to push through legislation to declare coal a "strategic" resource. This would mean import controls if and when Eskom needed it.

On a national level, this makes sense, but the move would deter companies investing in coal mining at a time when some are trying to get out of the sector.

Eskom said it would need about 22 million tons of coal a year from new supply contracts over the next decade, but it could be as much as 40 million tons a year, according to some mining bosses.

The utility wants the majority of this to be supplied by black-owned companies, and it now requires companies with 50% plus one share black ownership to supply it, instead of the 26% black ownership needed for coal mines to secure licences.

Big companies such as AngloAmerican and BHP Billiton are trying to exit the domestic coal market. As a result, Eskom might have to enter into very expensive agreements for export-quality coal -as is now being contemplated with Glencore.

In 2012, Glencore partnered with Cyril Ramaphosa to buy a stake in Optimum Coal.

Ramaphosa, who is deputy president, is now overseeing Eskom's turnaround and trying to fix the country's electricity crisis. There is no indication that Ramaphosa, who no longer holds directorships, stands to benefit from any deal.

Eskom's contract with Optimum Coal for the supply of middling grade coal to its Hendrina power station in Mpumalanga was due to expire. It said that it might be able to extend the life of Hendrina, and was looking to secure a coal contract with Optimum Coal to supply the power station in the future.

Glencore spokesman Charles Watenphul said that the company was always in negotiations with Eskom.

An inside source said that Eskom executive Dan Marokane had taken the proposal for the Optimum export coal to the utility's board.

For Glencore's Ivan Glasenberg it is a perfect deal. Glencore announced late in January that it was looking to reduce its overall South African production by at least 5million tons of coal.

That followed a review of its Optimum Coal operations that have been running at a loss for more than two years, due to the continuing decline inexport coal prices. The move would result in 1 000 permanent employees and 500 contractors losing their jobs.

If the deal goes ahead, Glencore will be able to offload its seaborne coal — most likely at a higher price.

Asked if the deal was intended to save jobs at Glencore's Optimum Coal mine in Mpumalanga, where the company intended to retrench workers, Eskom said the negotiations were focused on the security of its coal supply.

"If the options being explored are viable and sustainable, then job losses can be avoided.

"It is important that whatever agreement is reached, that the outcome is sustainable for all parties," the company said.

• *This article was first published in Sunday Times: Business Times*

~ o O o ~

U16-NHL-613


Should Zandile Gumede step down as a KZN MPL while she deals with criminal charges against her?
WWW.POLITY.ORG.ZA
Vote

https://www.polity.org.za/article/brown-moves-to-stabilise-eskom-leadership-with-appointment-of-molefe-as-acting-ceo-2015-04-17

Brown moves to stabilise Eskom leadership with appointment of Molefe as acting CEO

17TH APRIL 2015 BY: TERENCE CREAMER - CREAMER MEDIA EDITOR



Minister Lynne Brown (in foreground) with Brian Molefe (far left) and Deputy Minister Bulelani Magwanishe at the Eskom announcement
Photo by: Duane Daws

Public Enterprises Minister **Lynne Brown** announced that Transnet's **Brian Molefe** had been seconded as acting CEO of Eskom, with immediate effect.

Brown said the appointment formed part of government efforts to stabilise the Eskom leadership, following the suspension of four senior executives, including CEO **Tshediso Matona**.

Speaking at Megawatt Park on Friday, Brown indicated that, although the suspensions of Matona and the other executives were due to be lifted in less than three months, she wanted

U16-NHL-614

Molefe to remain at Eskom for at least a year to oversee a turnaround process, as he had done at both Transnet and the Public Investment Corporation.

Three candidates had been identified to replace Molefe at Transnet and the appointment of an acting CEO of the freight logistics utility should be made known in the coming week.

Eskom interim CEO **Zethembe Khoza** would resume his role as a nonexecutive director on the power utility's board.

Sharing a platform with Brown at the briefing, Molefe said his first priority would be to assess what could be done to minimise the ongoing load-shedding. Eskom was implementing stage two load-shedding at the time of the announcement, having vacillated between stage one and three throughout the week, beginning Sunday, April 11.

The immediate focus would be on improving the efficiency of the coal fleet, the poor performance of which was largely to blame for the fact that Eskom was unable to keep the lights on. Unplanned outages had risen precipitously since 2010, with average plant availability falling to the low 70% level from well over 80% five years ago.

In the medium-term, Molefe would focus on introducing alternative energy sources into South Africa's coal-heavy mix, while still optimising South Africa's extensive coal resources, with the country said to have a 200-year resource in the ground.

Asked whether he was prepared to take up the position on a permanent basis, Molefe said: "We will deal with the matter when the time is right."

Brown stressed that she had no intention of "unfairly discriminating" against Matona, who was only appointed to the position in late 2014. But she needed the skills and experience that Molefe possessed immediately. "I need that support now," she said, reporting that Molefe's secondment had been canvassed and endorsed by President **Jacob Zuma**, Deputy President **Cyril Ramaphosa** and the Eskom and Transnet boards.

She also did not discount Molefe and Matona working together for a period. "I would like [Molefe], for the full year, to actually work in turning around Eskom. And if that means with Mr. Matona beyond three months time, we will find another title for him."

Transnet chairperson **Linda Mabaso** confirmed that the board had been consulted and described Molefe's appointment as part of a strategy "to address what is currently inarguably the country's biggest challenge".

Brown also announced that the terms of reference of the so-called "deep dive" probe of Eskom's finances, maintenance protocols, diesel costs and coal supply and costs had been finalised by the board. The four executives were suspended in mid-March in order for the investigation to proceed on an "unfettered" basis.

U16-NHL-615

The delay in finalising the terms of reference had arisen as a result of former chairperson **Zola Tsotsi,** who resigned on March 31, having sought to draft the terms alone. He had also not followed correct procedure in appointing **Nick Linnell** to oversee the investigation.

Subsequent to Tsotsi's resignation, the board had agree to the terms and had sought to meet Brown's stipulation that the probe be conducted by a firm that had international experience and was fully independent of Eskom.

Following a short-listing process, global law firm Dentons had been appointed to lead the inquiry.

Phone: +27 (0)11 622 3744

Fax: +27 (0)11 622 9350

Email: newsdesk@polity.org.za

Website: www.polity.org.za

To subscribe email subscriptions@creamermedia.co.za or click here

To advertise email advertising@creamermedia.co.za or click here

U16-NHL-616

Print this page (#)

Eskom's board game risks leaving everyone a loser

Jan 18, 2015 | Bruce Whitfield

Sunday morning quiz time! How many Eskom board members does it take to keep the lights on?



Bruce Whitfield

Photograph by: Business Times

"

"

A clue may lie in the composition of its new board.

As new CEO Tshediso Matona painted a gloomy outlook this week about a rapidly deteriorating power generation grid, pleaded for money to keep diesel supplies to two Western Cape gas-fired turbines flowing and made new cash-dependent commitments on the way-overdue Medupi and Kusile power stations, economic forecasters conveniently set aside the biggest threat to 2015 growth and projected a better year for the country due to higher levels of global optimism.

It's bizarre.

U16-NHL-617

For the first time since the severity of the power grid crisis became evident in 2008, Eskom is not ruling out the very real possibility of a national black-out. Previously it seemed confident that it could manage the crisis, using load-shedding as a mechanism to keep the grid running. A grid collapse if demand exceeds supply could plunge the country into darkness for weeks.

Which raises the next question.

Where are you most likely to find a long-serving former civil servant, the head of a theatre company, the controversial former chairperson of the failing state broadcaster, a former bank executive, a high-flying sim card salesman, the husband of a former Miss South Africa, the head of customer service at Telkom and a solitary electrical engineer all sitting round the same table?

Yep, that's right. The Eskom boardroom. These are the individuals charged with the onerous responsibility of keeping the country's power grid running.

There is just one electrical engineer on the recently reconstituted Eskom board.

One.

The upside is that it is one more than there was on the previous board, which was replaced last month after descending into factionalism, ostensibly over the cash-strapped power generator's R43-million support of the business breakfasts hosted by the Guptas' The New Age newspaper.

That board was a motley crew, including PR company owners, chartered accountants, an astronomer, a labour lawyer and an assortment of people whose experience of running boards was at other parastatals in various degrees of decay.

So, based on recent history, we're ahead.

Although there is just one electrical engineer on the board, there are three people on the board with telecommunications experience.

The electrical engineer is Pat Naidoo, who runs a consulting engineering business in Durban. As for the rest of the board, Norman Baloyi, an electronic engineer (not the same as electrical) by training, is chairman of the Windybrow Theatre, and once worked at the CSIR.

Chairman Zola Tsotsi kept his position in the December board shakeout by default - mostly, it would seem, because there was a revolt in the upper echelons of the ANC to ensure that medical doctor Ben Ngubane didn't get the position.

At least Tsotsi, who worked at Eskom, has some institutional knowledge. Ngubane, who has high-level chums and a long political career behind him, is best remembered for his resignation from what became a dysfunctional SABC board during his tenure. Venete Klein, once at Absa, has reinvented herself as a professional director and is chairwoman of the Institute of Directors in Southern Africa.

With three board members connected to telecommunications on the Eskom board, it's almost as if the cabinet got the memos mixed up between who should have been sent to Telkom rather than Eskom.

Vodacom executive Romeo Kumalo has an impressive academic CV and counts Insead and Harvard among his alma maters. Zethembe Khoza is managing executive of customer services at Telkom (the title is an oxymoron if there ever was one), and the third comes from the energetic hallways of listed Blue Label, where Mark Pamensky, a chartered accountant by training, is director of The Prepaid Company.

At least when the power grid crashes, Eskom's fault reporting line will work. Maybe.

Just this week I met with a veteran of the boards of SAA, Eskom and the SABC, Len Konar, who bemoaned the

U16-NHL-618

cadre deployment of people ill-suited for positions on complex and critical boards. South Africa faces the very real possibility of an energy catastrophe going way beyond the inconvenience of a cold supper.

While the esteemed members of the Eskom board may be perfectly charming and good at what they do in their day jobs, it's hard to see how they are equipped to deal with an inevitable looming crisis.

Whitfield is an award-winning broadcaster and writer, who keeps his electronic devices fully charged at all times

~ o O o ~

U16-NHL-619

Eskom and Government Keeping SA in the Dark On Operation Breaking Dawn [press release]

User1

March 29, 2015

No Comments

Deputy President Cyril Ramaphosa and Eskom need to take the nation into their confidence and be frank about the possibility of a national blackout.

Documents show that Eskom is running simulation exercises in preparation for a national blackout. These simulation exercises are being run under the codename Breaking Dawn, under the command of Ayanda Noah, Eskom's Chairperson of the Emergency Response Command Centre.

On 18 March 2015, during an Oral Questions Session with the Deputy President, I asked Deputy President Ramaphosa if he was aware of any drills being run in preparation for a national blackout. The Deputy President replied, stating that:

"I am not aware of any provincial war rooms that are conducting drills in case of system failure and I guess that if that was happening I am sure that the national war room would have been aware of such activities."

This is in stark contrast to an Eskom briefing document, dated 17 March 2015, on operation Breaking Dawn, which stated that these simulation exercises were being conducted. The briefing document reads:

"Eskom annually undertakes a national exercise to prepare the organization for responding to extreme events. In the past these exercises have addressed issues such as emergency demand reduction. This year's exercise will address a national blackout scenario, as confirmed by the Mancom Operations Committee."

Given the Deputy President's position in government and the War Room falling within his purview, it seems highly unlikely that he would not be aware of Breaking Dawn. Did Deputy President Ramaphosa intentionally mislead the nation?

While business, industry and households are doing what they can to take strain off the grid, if there is a possibility of a national blackout, a report on the true state of Eskom will sensitize South Africans to what power-saving measures are needed.

I have therefore written to the Deputy President requesting that he provide Parliament and the nation with the following:

An accurate, comprehensive report on the maintenance needs of power stations

The likelihood of a national blackout and

A fortnightly briefing by the Deputy President to the National Assembly on the state of Eskom

For the sake of public trust, these measures need to put in place until the crisis at Eskom has been remedied.

The crisis at Eskom has a severe impact on the country's already weak economy, and in many instances the livelihood of our people. It is therefore vital that Government and Eskom are transparent and open about the problems facing Eskom.

Furthermore, the internal tribulations at Eskom are cause for concern, especially now that the power utility is essentially leaderless.

Mmusi Maimane

Deputy Federal Chairperson of the Democratic Alliance | Parliamentary Leader of the Democratic Alliance

U16-NHL-620

Source : Democratic Alliance

‹ Spot report by the OSCE Special Monitoring Mission (SMM) to Ukraine on the escalation of the situation in Shyrokyne and SMM aggressively treated at “DPR” checkpoint at Shyrokyne, 28 March 2015

45 day Ebola 'health emergency' ... ›

Related Articles

UN: Somalia Faces Dire Threats From Conflict, Natural Disasters, COVID

- Governance

May 9, 2020

Malawi President Announces New Measures Against Coronavirus

- Governance, National

April 29, 2020

Nigeria President Announce Easing of Some Lockdown Restrictions

- Governance, Government

April 28, 2020

News Search

Search ... Search

Page Links

› Home

› About Us

› Contact Us

› Submit Press Release

› Sitemap

Advertisement

MonthlyArchives

Monthly Archives

Select Month

Advertisement

News Archives

M	T	W	T	F	S	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

August 2020

« Jul

© Copyright 2020 - Africa News Wire. All Rights Reserved

NATIONAL

Eskom chiefs put on ice by gatvol board

Qaanitah Hunter 12 Mar 2015

Lynne Brown is determined to find a long-term solution to the energy crisis

Deputy President Cyril Ramaphosa and Public Enterprises Minister Lynne Brown pulled the plug on Eskom's top four executives this week.

Frustration over Eskom's confused and confusing response to its electricity generation and cash-flow crises led to the Cabinet "war room" and the utility's board suspending Eskom's chief executive and his three key lieutenants.

Ramaphosa and Brown drove the drastic move to suspend the four to clear the way for an independent inquiry into the utility, many sources have confirmed.

Ramaphosa is in charge of the war room that the Cabinet set up in December to try to turn the troubled Eskom around, and Brown is the government's shareholder representative in Eskom.

The war room comprises ministers, directors general and officials from public enterprises, energy, the treasury and co-operative governance and traditional affairs.

A well-placed war room source said Ramaphosa and Brown finally lost patience with "the quality

THE AMPERSAND
The best local and international journalism handpicked and in your inbox every weekday
Subscribe now

Frustration

Eskom board chairperson Zola Tsotsi made the dramatic announcement about the suspensions on Thursday, and named the suspended quartet as the chief executive, Tshediso Matona, the finance director, Tsholofelo Molefe, the head of group capital, Dan Marokane, and the head of technology and commercial, Matshela Koko.

In a statement released shortly afterwards, Brown said she had met the board on Wednesday evening and expressed her "concerns, fears and frustration" on a raft of issues.

These included "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".

Eskom sources at board and executive level said Molefe and Marokane had raised the ire of the war room for their handling and communication of Eskom's financial problems, as had Koko for the utility's new build, maintenance and procurement problems.

Matona, who has only been chief executive for six months, was also suspended because he had apparently failed to demonstrate decisive leadership, including guiding his executives, said the sources.

The war room source warned that Tsotsi had been lucky to escape the chop. "He's presided over Eskom for more than four years now and is on very shaky ground. If this exercise fails, his head will roll."

An Eskom executive confirmed that the war room had finally lost patience with the executives. "Since December, it has had enough time now to see what is and isn't working at Eskom, and they have been endlessly frustrated by Eskom's response, and these four executives in particular," they said.

A source on the Eskom board said Ramaphosa's office had settled on a co-ordinator for the external inquiry before talks of a shake-up at the power utility started on Monday.

"Blowing a gasket"

Eskom's executives met on Monday and Tuesday this week for a strategic planning session.

The war room was waiting for an update from this session, but the first sign that something was amiss was when a media briefing by Brown about the war room's progress was scheduled – then cancelled – on Tuesday.

The Eskom board met on Wednesday, with Brown in attendance.

According to a source with knowledge of the meeting, the two executive board members –

THE AMPERSAND

The best local and international journalism handpicked and in your inbox every weekday

Subscribe now

Tsotsi called a hastily arranged press conference on Thursday morning, at which he announced the inquiry and suspensions.

Hinting at why the executives were suspended, Tsotsi said the inquiry "will be given unfettered rights of access to all information deemed necessary for this probe to be successful".

This chimes with the war room source's explanation that the quality of information from Eskom had been a problem.

Details of the inquiry's composition are still sketchy, but a board source told the *Mail & Guardian* that Ramaphosa's office had appointed a co-ordinator even before talks of a shake-up at the power utility started on Monday.

Nick Linnell, a business turnaround consultant, confirmed on Thursday that he had been appointed to the role.

He declined to comment further.

Spokespersons for Ramaphosa, Brown and Eskom were all unavailable at short notice.

Lionel Fault is an investigator with amaBhungane, the M&G Centre for Investigative Journalism

Subscribe to the M&G

These are unprecedented times, and the role of media to tell and record the story of South Africa as it develops is more important than ever.

The **Mail & Guardian** is a proud news publisher with roots stretching back 35 years, and we've survived right from day one thanks to the support of readers who value fiercely independent journalism that is beholden to no-one. To help us continue for another 35 future years with the same proud values, please consider taking out a subscription.

Qaanitah Hunter

Biography coming soon. Search for author on Twitter

THE AMPERSAND

The best local and international journalism handpicked and in your inbox every weekday

Subscribe now

Cyril braces for Ace camp's big flex

Eusebius McKaiser: What happens if we accept Ramaphosa is a monumental disappointment?

THE AMPERSAND
The best local and international journalism handpicked and in your inbox every weekday
Subscribe now

Richard Calland: Cyril and Ace can't both survive

MPs demand answers from Ramaphosa on Covid corruption

Government kickstarts the National Infrastructure Fund

THE AMPERSAND

The best local and international journalism handpicked and in your inbox every weekday

Subscribe now

Independent investigation into Eskom reveals fractious board discussions, involving accusations and counter-accusations, as allegations of corruption sink contract
Sabelo Skiti

NATIONAL

Real action on gender-based violence a pipe dream as women...

Backlogs, booze, testicular cancer — all factors blamed for the apparent ineptitude or unwillingness to tackle a pandemic that is silently killing women all over the country.
Athandiwe Saba & Sarah Smit & Mg Data Desk

PRESS RELEASES

UKZN academics create video on healthcare worker anxieties related to COVID19
28 Aug 2020

Entrepreneurship friendship and endurance a media company postCOVID19
27 Aug 2020

Response to media query UKZN return to campus of students under lockdown level two
26 Aug 2020

NWU Career Centre hosts first virtual fair with resounding success
25 Aug 2020

Some experts have warned that up to 95 of schools may not be POPIA compliant
25 Aug 2020

THE AMPERSAND
The best local and international journalism handpicked and in your inbox every weekday
Subscribe now

iab. south africa
Blow The Whistle

Contact Us
Story Tip-offs
Legal
Ethics & Social Media Policy
About Us
Corrections And Clarifications
Advertising
Subscriptions
Mail & Guardian Jobs
Find property for sale
We value your feedback
Subscriber login FAQ

All material © Mail & Guardian Online. Material may not be published or reproduced in any form without prior written permission.

COMMISSION OF INQUIRY INTO STATE CAPTURE

THE AMPERSAND
The best local and international journalism handpicked and in your inbox every weekday
Subscribe now

uncategorized (https://citizen.co.za/category/uncategorized/) 26.3.2015 11:00 am

Eskom problem will be overcome – Ramaphosa

Warren Mabona



(https://citizen.co.za/uncategorized/351469/eskom-problem-will-be-overcome-ramaphosa/)
FILE PICTURE: Deputy President Cyril Ramaphosa. Picture: Werner Beukes/SAPA

Deputy President Cyril Ramaphosa yesterday assured South Africans government's efforts to tackle the country's electricity crisis would yield results.

Privacy

U16-NHL-630

Ramaphosa was appointed by President Jacob Zuma to oversee the turnaround strategies for Eskom, South African Airways and the South African Post Office.

His brief includes the implementation of a five-point plan aimed at addressing the country's electricity crisis. Ramaphosa said the government was working with various stakeholders, including the business sector, to make sure the state's power utility adheres to its generator maintenance programme.

He was replying to questions at a joint sitting of the National Council of Provinces (NCOP).

"The war room [the team ensuring the implementation of the plan] is facilitating engagement between Eskom and municipalities to improve management of load shedding," said Ramaphosa.

"This will include the utilisation of technology … I want to assure all South Africans that we are addressing this problem. We have overcome massive problems in the past and this electricity problem, we will overcome."

The war room had been working with businesses on ways to reduce demand for electricity, added Ramaphosa. South Africa had been experiencing sporadic power outages since March last year as Eskom implemented load shedding, citing a lack of capacity to produce enough electricity.

Ramaphosa's announcement came two weeks after the electricity parastatal suspended its CEO, Tshediso Matona and other senior executives, to allow an internal investigation to take place.

Ramaphosa said the probe would include looking into moneys owed to Eskom by, among others, municipalities, members of the public and government departments.

He said the inquiry would soon commence and it would present its outcomes to Public Enterprises Minister Lynne Brown. Ramaphosa called on Eskom debtors to pay the company so it could have enough resources to address its challenges.

A process substituting diesel with gas was under way, he said. This was a cost-saving measure aimed at reducing the money spent on diesel to power Eskom's generators.

Matona is reportedly fighting for for his reinstatement at the Labour Court.

BACK TO CITIZEN (https://citizen.co.za) BACK TO PREMIUM (https://citizen.co.za/category/premium/)

JOIN PREMIUM (https://shop.citizen.co.za) SIGN IN

Related Stories

Pick a side…ANC or SA? MPs ask Ramaphosa in parliament (https://citizen.co.za/news/south-africa/politics/2350739/pick-a-side-anc-or-sa-mps-ask-ramaphosa-in-parliament/) **28.8.2020**

How the hell can we believe you, ANC? (https://citizen.co.za/news/opinion/opinion-editorials/2350654/how-the-hell-can-we-believe-you/) **28.8.2020**

Daily news update: Covid-19 stats, Bushiri rape allegations, petrol price and Zuma's alleged involvement in ANN7 (https://citizen.co.za/news/south-africa/general/2350372/daily-news-update-covid-19-stats-bushiri-rape-allegations-petrol-price-and-zumas-alleged-involvement-in-ann7/) **27.8.2020**

Top Searches | Powerball Results | Moscow | Peppa Pig | Schools | Superbalist

rral&utm_content=organic-thumbnails-a:Below Article Thumbnails 2nd:)

Privacy

U16-NHL-631

From The Citizen (https://citizen.co.za)

(https://citizen.co.za/lifestyle/2308254/for-adults-only-5-tips-to-keep-your-head-in-the-game-in-the-bedroom/)

For adults only: 5 tips to keep your head in the game (in the bedroom)

(https://citizen.co.za/lifestyle/2308254/for-adults-only-5-tips-to-keep-your-head-in-the-game-in-the-bedroom/)
(https://citizen.co.za/lifestyle/fitness-and-health-your-life-your-life/2044871/8-celebrities-who-are-hiv-positive-activists/)

8 celebrities who are HIV positive activists

(https://citizen.co.za/lifestyle/fitness-and-health-your-life-your-life/2044871/8-celebrities-who-are-hiv-positive-activists/)
(https://citizen.co.za/news/covid-19/2267758/ramaphosa-to-address-the-nation-at-8pm/)

Ramaphosa to address the nation at 8pm

(https://citizen.co.za/news/covid-19/2267758/ramaphosa-to-address-the-nation-at-8pm/)

MOST POPULAR

PAST 24 HOURS PAST WEEK

1 lotto (https://citizen.co.za/category/news/south-africa/lotto/) PowerBall and PowerBall Plus results, Friday, 28 August 2020 (https://citizen.co.za/news/south-africa/lotto/2351080/powerball-and-powerball-plus-results-friday-28-august-2020/)

2 politics (https://citizen.co.za/category/news/south-africa/politics/) READ: '... Hang your head in shame' – Zuma's scathing letter to Ramaphosa (https://citizen.co.za/news/south-africa/politics/2351086/read-hang-your-head-in-shame-zumas-scathing-letter-to-ramaphosa/)

3 government (https://citizen.co.za/category/news/south-africa/government/) Sars offers new services from 1 Sept to help you file your tax return (https://citizen.co.za/news/south-africa/government/2350822/sars-offers-new-services-from-1-sept-to-help-you-file-your-tax-return/)

Privacy

U16-NHL-632

4 courts (https://citizen.co.za/category/news/south-africa/courts/) Gigaba-linked 'non-businessman' wants R5 million from media houses (https://citizen.co.za/news/south-africa/courts/2350446/gigaba-linked-non-businessman-wants-r5-million-from-media-houses/)

5 state capture (https://citizen.co.za/category/news/south-africa/state-capture/) Witnesses back Rajesh Sundaram's evidence against Zuma in ANN7 saga (https://citizen.co.za/news/south-africa/state-capture/2350100/witnesses-back-rajesh-sundarams-evidence-against-zuma-in-ann7-saga/)



EDITOR'S CHOICE

covid-19 (https://citizen.co.za/category/news/covid-19/) Global virus cases cross 25 million as India sets grim record (https://citizen.co.za/news/covid-19/2351615/global-virus-cases-cross-25-million-as-india-sets-grim-record/)

world (https://citizen.co.za/category/news/news-world/) Sparking fury, White House halts election security briefings to Congress (https://citizen.co.za/news/news-world/2351609/sparking-fury-white-house-halts-election-security-briefings-to-congress/)

general (https://citizen.co.za/category/news/south-africa/general/) Daily news update: Covid-19 stats, Ramaphosa to face integrity committee and Mashaba launches new party (https://citizen.co.za/news/south-africa/general/2351543/daily-news-update-covid-19-stats-ramaphosa-to-face-integrity-committee-and-mashaba-launches-new-party/)

politics (https://citizen.co.za/category/news/south-africa/politics/) ANC NEC: Cyril Ramaphosa offers to subject himself to integrity committee (https://citizen.co.za/news/south-africa/politics/2351552/anc-nec-cyril-ramaphosa-offers-to-subject-himself-to-integrity-committee/)

crime (https://citizen.co.za/category/news/south-africa/crime/) Police officers arrested for Eldorado Park's murdered Nathaniel Julies (https://citizen.co.za/news/south-africa/crime/2351334/police-officers-arrested-for-eldorado-parks-murdered-nathaniel-julies/)

Privacy

U16-NHL-633

today in print



(http://thecitizen.pressreader.com/)

© 2020 The Citizen. All rights reserved.

Privacy

(https://citizen.co.za)

Privacy